
(1915) 12 AHC CK 0033
In the Allahabad High Court

Jadubansi Kuer alias Gulab Koer and Others

APPELLANT

Vs

Mahpal Singh and Others

RESPONDENT

Date of Decision : 02-12-1915

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(11)

Citation : AIR 1916 All 34 : 32 Ind. Cas. 104

Hon'ble Judges : Henry Richards, C.J.; Rafique, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal arises out of a suit for possession of Immovable property. The property originally belonged to one Rampal Singh. He was succeeded by his widow Musammat Zamira. Rampal left four daughters (Musammat Raghubansi Kunwar, Musammat Jadubansi Kunwar, Shyam Rani Kunwar and Bahuria Brij Raj Kunwar). The present suit was instituted by Bahuria Brij Raj Kunwar. She alleged herself to be entitled to the property upon the death of her mother to the exclusion of her sisters, because she was unmarried whilst the others were married. She made her sisters pro forma defendants. Whilst the suit was pending she died, and thereupon an application was made by the surviving sisters that their names should be changed from the array of defendants to that of plaintiffs. The application was granted apparently without any opposition on the part of the defendants. The evidence was taken but on the case coming up for decision and during the course of the arguments, it was contended by the defendants that on the death of the original plaintiff the suit abated inasmuch as the right to sue did not survive to the substituted plaintiffs. The Court below without going into the merits of the case made a decree in which it is stated: It is ordered and decreed that it is declared that Musammat Birj Raj Kunwar being dead, the suit has abated". The plaintiffs have appealed.

2. A preliminary objection is taken by the respondents that no appeal lies. It is contended that the decree or order (whichever it is called) is not a decree" within

the meaning of Section 2, Clause 2, of the CPC and that, therefore, (no appeal being directly given by the Code) no appeal lies. It seems to us very doubtful whether under the circumstances of the present case the order of the Court below is not a decree within the meaning of Section 2 (Clause 2). After the death of original plaintiff so far from the suit having been declared to have abated," new plaintiffs were brought on the record and a formal decree has in fact been drawn up. In its very words it states that "it is ordered and decreed." If on the death of the original plaintiff the defendants had asked the Court to declare the suit abated and it had done so and if on the application of appellants the Court had refused to set aside the abatement on the ground that the right to sue did not survive, an appeal would have lain against such order. It is unnecessary, however, to decide whether the present appeal lies as such, because in our opinion the circumstances of the present case demand that if necessary, we should treat the present appeal as an application in revision.

3. We now come to the merits of the case. If the original plaintiff's allegations be true, she was entitled to possession of the property claimed for a Hindu woman's estate. On her death her married sisters (surviving her) would take jointly. It is contended on behalf of the respondents that the claim of the original plaintiff was one personal to her, that her sisters would not take as her heirs but as the persons entitled next after her, and, therefore, they can in no way be said to be her "legal representatives" u/s 2 (Clause 11). The respondents rely on the case of Balak Puri v. Durga 30 A. 49 : 4 A.L.J. 783 : (1903) A.W.N. 6 : 3 M.L.T. 181. In that case an unmarried daughter claimed to redeem a mortgage on her father's property, making her surviving married sister and the minor children of another deceased sister defendants to the suit. During the pendency of the suit, the plaintiff died. On the application of the married sister and the children of the deceased sister to be brought on the record as plaintiffs, it was held that the claim of the original plaintiff being personal to her, the suit abated and the surviving sister could not carry on the litigation. The other side relies on the recent case of Mahadeo Singh v. Sheo Karan Singh 21 Ind. Cas. 464 : 35 A. 481 : 11 A.L.J. 796. In this case a daughter obtained a decree for possession of her father's estate against trespassers. Before she got possession she died and her sons applied for execution. The argument was that the sons did not take as heirs of the mother but as reversioners to their grand-father and that accordingly they were not entitled to execute the decree obtained by their mother. It was held that the suit by their mother must be deemed to be a suit by a Hindu woman representing the estate, and that accordingly her sons who were reversioners were entitled to execute the decree. In the very recent case of Vankatanarayana Pillay v. Subbammal 29 Ind. Cas. 298 : 38 M. 406 : 28 M.L.J. 535 : 17 M.L.T. 435 : 21 C.L.J. 515 : 17 Bom. L.R. 468 : 19 C.W.N. 641 : 2 L.W. 596 : (1915) M.W.N. 555. the question arose whether on the death of a reversioner who had brought a suit for a declaration that an alleged adoption was illegal and invalid, the next reversioner could be substituted for him and carry on the litigation as plaintiff. Their Lordships held that he could be so substituted. At

page 413 their Lordships say: "Sub-section 11 was embodied in Act V of 1908 with the object of putting in statutory language the results of the decisions of the Indian Tribunals on the meaning of the words legal representative;" but it is not clearly worded and has already been the subject of criticism by at least one of the High Courts in India. The phraseology of Sub-section 11, in their Lordships' opinion, is fairly open to the contention that the suit was brought by the deceased plaintiff as representing in his reversionary right, the estate of the last male owner, and that on his death such right devolved on the petitioner."

4. It is true that their Lordships go on to say that the case could be decided on broader ground. It is, however, an expression of opinion by their Lordships that even a reversioner can represent the estate. If a reversioner can represent the estate, there seems to be much stronger reason for holding that a Hindu woman in possession of the estate as such represents the estate. It has been held over and over again that in honest litigation the widow does so represent the estate, and that reversioners are bound by the results of the litigation. If reversioners are bound by the result of the litigation on the principle of *res judicata*, there seems very little reason why the persons who succeed one after another to the estate should not be entitled on successions to continue the litigation commenced by their predecessors. We think that the decision of the Court below was not correct and we accordingly allow the appeal, set aside the decree (or order) of the Court below and remand the case with directions to re-admit the suit upon its original number and to proceed to hear and determine the same according to law. Costs will abide the result, including fees in this Court on the higher scale.