

(1923) 02 AHC CK 0062
In the Allahabad High Court

Jagdeo Tiwari and Others

APPELLANT

Vs

Kuber Nath Pandey and Others

RESPONDENT

Date of Decision : 08-02-1923

Acts Referred:

Citation : AIR 1923 All 312 : 71 Ind. Cas. 755

Hon'ble Judges : Ryves, J;Gokal Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The facts which have given rise to this appeal are briefly as follows and the following pedigree will make them more clear.

BUJHAWAN | |-----|-----| Bhagwan Ram Agyan=
| | Musammat Sheoamber | Rekha, | | defendant No. 2 |
|-----| | Jagdeo, Sahdeo. | Plaintiff No. 1 plaintiff No. 2. | |
|-----| Madho" Musammat defendant Dukhan, No. 3
daughter | | Kuber Nath defendant No 1.

2. The suit was by the plaintiffs to set aside a gift made by Musammat Rekha of certain property to Kuber Nath; They pleaded that Musammat Dukhan was not the daughter of Rekha but she was the daughter of Sheoamber and, consequently, the transfer by Rekha was not justified in any case. They, therefore, prayed for a declaration of the invalidity of the gift in favour of defendant No. 1 and consequential reliefs. The plaintiffs' suit was based on the ground that the three brothers, Bhagwan, Ram Agyan and Sheoamber, were members of a joint Hindu family, and the plaintiffs being the sole survivors were entitled to the declaration claimed; in the alternative also they claimed the declaration as being the next reversioners after the death of Musammat Rekha. The First Court came to the conclusion that the three brothers, Bhagwan, Ram Agyan and Sheoamber, were not joint but separate, that Kuber Nath was not the daughter's son of Musammat Rekha and Ram Agyan but that he was

Sheoamber's daughter's son, and coming to these findings it decreed the claim. The learned Judge of the lower Appellate Court says that the plaintiffs failed to prove that they were the next reversioners. Perhaps the learned Judge meant that Kuber Nath was the daughter's son of Ram Agyan and was thus a nearer heir, but he has omitted to consider the question that Kuber Nath being himself the donee under the deed, of gift executed by Musammat Rekha was interested in the upholding of the gift and his mother Musammat Dukhan could not object either. Therefore, even if he was the daughter's son of Musammat Rekha he had precluded himself from suing to set aside the gift in his own favour. That a remoter reversioner, could site, for a, declaration in such a case was decided by this Court in the case of Raja Dei v. Umed Singh 13 Ind. Cas. 632 : 34 A. 207 : 9 A.L.J. 158. This ruling has been followed in the cases of Gumanan v. Jahangira 46 Ind. Cas. 186 : 40 A. 518 : 16 A.L.J. 465, and Jaint Singh v. Gosain 46 Ind. Cas. 85 : 16 A.L.J. 493. Having regard to, this view, the plaintiffs, who are the sons of Ram Agyan's brother, had a right to sue to have the deed of gift declared invalid beyond the life-time o Musammat Rekha. We, therefore, allow the appeal, set aside the decree of the lower Appellate Court and restore that of the Court of first instance. The parties will bear the costs of this litigation.