
(1925) 04 AHC CK 0030
In the Allahabad High Court

Jai Narain Singh and Another

APPELLANT

Vs

Mandhai Singh and Others

RESPONDENT

Date of Decision : 08-04-1925

Acts Referred:

Citation : (1925) 04 AHC CK 0030

Hon'ble Judges : Mukerji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mukerji, J.—Two of the plaintiffs are the appellants before this Court. Originally there were three plaintiffs: the appellants and one Ori. Ori withdrew from the claim at an early stage of the suit which was dismissed by the Court of first instance. Ori and the father of the appellant No. 2, Bhagwati, claimed to be the sons of Gaya Singh and on foot of that right claimed the property. The appellant No. 1 Jai Narain is a transferee from them and is a party as such. The suit having been dismissed, Jai Narain alone appealed to the lower appellate Court and he did not make Bhagwati a party. In the grounds of appeal no doubt Jai Narain stated that he was appealing under Order 41, Rule 4 of the C.P.C. The learned District Judge considered the question whether he should pass a decree (the appeal succeeding) in favour of the Jai Narain alone or also in favour of Bhagwati. Considering the point, he came to the conclusion that he should pass a decree in favour of only Jai Narain.

2. In this Court the sole ground taken is that the lower Court ought to have made a decree in favour of Bhagwati as well.

3. So far as Jai Narain himself is concerned he got all the property that he had purchased decreed in his favour. He had, therefore, no right of appeal, As regards Bhagwati the question is whether the Court below was wrong in not making a decree in his favour as well. The matter was within the discretion of the lower Appellate Court and it having exercised that discretion, in my opinion, no

appeal lies on behalf of Bhagwati. The Court was not bound to make a decree in favour of Bhagwati simply because his title had been made out. Ori abandoned his suit. Bhagwati was only a nephew to Ori and according to the statement in the plaint Ori and Bhagwati formed a joint Hindu family. It is possible that Bhagwati too did not wish to prosecute the suit. He preferred not to appeal. In *Narain Dikshit Vs. Benaik Bhat and Others*, it was held that a Court is not bound to exercise its discretion in favour of a party under Order 41, Rule 4 of the Civil P.C. The appeal, therefore, must fail in its entirety.

4. Cross-objections have been filed on behalf of the respondents. It is urged on their behalf that the lower appellate Court did not consider any plea other than the legitimacy of Ori and Aughu that had been raised on their behalf. The learned Judge, however clearly mentions that the defendants had raised all conceivable pleas to resist the suit and it is clear, therefore, that the Judge was not unaware of the fact that pleas other than that of legitimacy had been raised in the suit. But the learned Judge goes on to say that the only question that he had to decide in the appeal was the question of legitimacy. This shows that the respondents never put forward, in support of the decree, the other pleas that they had raised by way of defence in the suit, and had already been decided against them. I am not, therefore, prepared to accept the cross-objections and to call upon the Court below to decide the other points raised by the respondents in the Court of first instance.

5. In the circumstances the appeal and the cross-objections are both dismissed with costs, the costs including counsel's fees in this Court on the higher scale.