
(1931) 07 AHC CK 0033
In the Allahabad High Court

Jangi Singh

APPELLANT

Vs

Gudri Singh and Another

RESPONDENT

Date of Decision : 06-07-1931

Acts Referred:

Evidence Act, 1872 — Section 108

Citation : AIR 1932 All 365 : 140 Ind. Cas. 12

Hon'ble Judges : Sen, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sen, J.—This is an appeal by the plaintiff and it arises out of a suit for possession of a one-third share in a certain zamindari, which, at one time, belonged to one Sukhdeo Singh. Sukhdeo Singh died in 1924. Plaintiff alleged that Sukhdeo Singh left three heirs, namely, Bam Kumar Singh. Umrao Singh and Subaram Singh. Plaintiff purchased the one-third share of Ram Kumar Singh in the estate left by Sukhdeo Singh under the sale deed, dated 11th February 1927. Defendants contested the suit inter alia on the ground that no part of Sukhdeo Singh's estate devolved upon Ram Kumar Singh, the plaintiff's vendor, inasmuch as one Mahadeo, brother of Sukhdeo Singh, was alive at the date of the execution of the sale deed in controversy. It is not contested that Sukhdeo Singh had a brother Mahadeo. He has not been heard of for a number of years. The question is as to whether Mahadeo was (lead on 11th February 1927 when Ram Kumar executed the sale deed of the one-third of his property in favour of the plaintiff. Reliance has been placed upon Section 108, Evidence Act. That section is an authority for the proposition that where the question in issue between the parties is as to whether a particular person is alive or dead, and it is proved that the said person has not been heard of for a period of more than seven years by persons who are likely to hear of him, the onus of establishing that that person is alive lies upon the person who affirms it. It follows that a presumption arises as to the death of the said person; but there can be no presumption that the said person was dead at a particular time. Where, in order to succeed in a suit it is necessary for a

person to establish that a particular person was dead at a particular time, he has to prove the factum of his death at the said time by affirmative evidence either direct or circumstantial. In the present case the plaintiff has failed to prove that Mahadeo was dead on 11th February 1927. It follows therefore that no title accrued to his vendor and consequently he is not competent to maintain the present suit. We are clearly of opinion that the view taken by the Court below is correct and we accordingly dismiss this appeal with costs.