

(1916) 07 AHC CK 0027
In the Allahabad High Court

Kamala Devi

APPELLANT

Vs

Gur Dayal and Others

RESPONDENT

Date of Decision : 10-07-1916

Acts Referred:

Citation : (1917) ILR (All) 58

Hon'ble Judges : Henry Richards, C.J.;Walsh, J;Muhammad Rafiq, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Henry Richards, C.J., Muhammad Rafiq and Walsh, JJ.—This appeal arises out of a suit for redemption of a mortgage. Amongst other pleas taken was the plea that the property had been acquired in the name of the plaintiff but really for her husband Khub Lal who occupied the Government post of registrar kanungo, and that under the rules dealing with the conduct of public servants, such an officer was not entitled to acquire property. The court of first instance having found the other issues in favour of the plaintiff dismissed the plaintiff's suit on the ground that the assignment to her was "contrary to public policy." The lower appellate court, without dealing with the other issues, upheld the decision of the court of first instance on the same ground. The plaintiff comes here in second appeal, contending that the decision on the point of law was not correct. We have this day in a connected Second Appeal No. 1503 of 1914 dealt with very much the same question. In that case a patwari had taken an assignment in the name of his mother, of a certain mortgage. A suit brought by the mother to enforce the mortgage was dismissed on the same ground. Section 234 of the Land Revenue Act provides for the making of rules in connection with patwaris and kanungos. Certain rules have been made with regard to patwaris, but apparently no similar rules have been made with regard to kanungos. At least our attention has not been called to any such. Our attention has been drawn to "rules for the conduct of Government servants" and in particular No. 311. Part of that rule is as follows: "A native of India, who is a member of the Indian Civil Service, or holds any

office ordinarily reserved for member of the Indian Civil Service, and any Government servant belonging to the provincial or subordinate civil service may continue to hold any immovable property actually held by him at the time of his entry into Government service, and may thereafter acquire any immovable property by succession, inheritance or bequest, or, with the previous sanction of the Local Government or such Heads of departments as may be specially empowered by the Local Government in this behalf, by purchase or gift." It may perhaps be implied that it was intended to prevent a Government servant from acquiring immovable property after his appointment without the sanction of the Government or Head of his department, but there is no express provision that he shall not do so. We think that it is impossible to argue that this rule by itself is sufficient to make the transfer to the kanungo's wife null and void. Nor do we think, for the reasons stated in our judgement in the connected case, that the transfer can be considered void on the ground of public policy. We, therefore, allow the appeal, set aside the decrees of both the courts below and remand the case to the lower appellate court with directions to re-admit the appeal upon its original number in the file and to proceed to hear and determine the same according to law, having regard to what we have said above. Each side will bear their own costs of this appeal, The other costs will be costs in the cause.