
(1918) 07 AHC CK 0024
In the Allahabad High Court

Kanhai Lal and Others

APPELLANT

Vs

Ganga, Dhanno and Others

RESPONDENT

Date of Decision : 01-07-1918

Acts Referred:

Citation : (1919) ILR (All) 154

Hon'ble Judges : Tudball, J;Abdul Raoof, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Tudball and Abdul Raoof, JJ.—This is a defendant's appeal. The facts of the case are not in dispute. One Tika Ram was the owner of the property in respect of which this suit has been brought. He had a wife, Musammat Jhunia, two sons and two daughters. His two sons predeceased him, and one of them left a widow, Musammat Ganga. Tika Ram died and his wife Musammat Jhunia survived him, She died some sixteen years before the present suit was brought. On her death her two daughters, Musammat Dhanno and Musammat Jethi, were in law entitled to take the property. However, Musammat Ganga took possession and obtained mutation of names in her own favour and admittedly has been in possession ever since. Neither Musammat Dhanno nor Musammat Jethi apparently opposed her. Musammat Jethi died some eight years before the suit leaving the three plaintiffs, her sons. Musammat Dhanno is still alive. On the 6th of April, 1915, Musammat Ganga made a will, bequeathing this property, as if it were her own, to the defendants Khacher Mal and Chadda Lal. The plaintiffs have brought the present suit. They alleged collusion between Musammat Dhanno and Musammat Ganga. They pointed out that Musammat Dhanno had allowed Musammat Ganga to acquire title by prescription as against her (Musammat Dhanno). They claimed that they were entitled to take possession on behalf of Musammat Dhanno and to manage for her. They sought not only to recover possession of the property, but they also asked for a declaration which is relief A in their plaint. That runs as follows: "On establishment of the plaintiffs" right it may be declared that the

name of defendant first party stands recorded against the property given below without any right, and that she has no adverse or proprietary right to the property aforesaid, nor has she any right to make the will, dated the 6th of April, 1915." The court of first instance dismissed the suit. The lower appellate court held that the plaintiff's were entitled to a declaration that they are the owners of the property in suit as from the death of Musammat Dhanno and that as against them, Musammat Ganga's possession is not and cannot become adverse or proprietary, and the will of the 6th of April, 1915, made by her is void and unenforceable. An examination of the lower appellate court's decree will show that this was not the declaration which was actually granted in the decree. In that decree it was declared that the plaintiffs have been in possession of the property in dispute since Musammat Dhanno's death (a fact that nobody has asserted at any time, Musammat Dhanno being still alive), Secondly, that the possession of Musammat Ganga neither is nor can be adverse or proprietary as against the plaintiffs, and that the will, dated the 6th of April, 1915, executed by Musammat Ganga is void and ineffectual. This is followed by an order that Musammat Ganga should bear her own costs. This decree has been signed by the Judge and the pleaders for the parties as well as by the Munsarim of the court below. It is quite clear on the facts that the plaintiffs ought not in these circumstances to receive any declaration whatsoever. It is an absurdity to declare that the plaintiffs will be the owners of the property after the death of Musammat Dhanno. It is impossible to predict that they will be alive at the time of her death, and no such declaration can or ought to be granted. As regards the declaration that Musammat Ganga's possession is not and cannot become adverse as against the plaintiffs, there is no need for any such declaration at all. It is a question of law which has been repeatedly decided that possession taken by a trespasser during the life-time of a Hindu widow or Hindu female with a life-interest is not adverse as against the reversioners until after the death of the widow, but the courts in this country do not grant declarations on points of law simply for the convenience of parties. Thirdly, as regards the will executed by Musammat Ganga, the declaration in respect thereto is a declaration which ought not to be granted. We would refer to the decision in the case of Umrao Kunwar v. Badri I.L.R.(1915) . All. 422 and also to the remarks of their Lordships of the Privy Council in the case of Jaipal Kunwar v. Indar Bahadur Singh I.L.R.(1903) All 238.. We do not think it is necessary on this branch of the case to make any further observations. It is obvious that the declaration which the court below sought to grant ought not to be given any more than the absurd declaration which was entered in the decree. We allow the appeal; set aside the decree of the court below and restore that of the court of first instance. The appellant will have his costs in all courts.