
(1916) 06 AHC CK 0017
In the Allahabad High Court

Kanhaya Lal and Others

APPELLANT

Vs

Kishori Lal and Others

RESPONDENT

Date of Decision : 06-06-1916

Acts Referred:

Transfer of Property Act, 1882 — Section 41

Citation : AIR 1916 All 88 : 35 Ind. Cas. 683

Hon'ble Judges : Piggott, J;Lindsay, J

Bench : Division Bench

Judgement

1. This is a litigation in respect of two shops in the town of Hathras. There were three sets of defendants originally impleaded, but we are really concerned only with the case as between the plaintiffs and the first set of defendants, namely, Kanhaiya Lal and two members of his family. The suit related to two adjoining shops which may conveniently be spoken of as shop No. 1 and shop No. 2. The plaintiffs admitted that the defendants of the first party were in actual occupation of the shops, but alleged them to be in occupation of both shops as tenants. With regard to shop No 1 these defendants admitted the plaintiffs' title. They pleaded that they had as a matter of fact paid the rent due from them to date and so denied the plaintiffs' right to any relief in respect of this particular shop. We are concerned, so far as the appeal before us goes, only with the question at issue between the parties about shop No. 2. The title of the plaintiffs in respect of this shop is simple. They are the reversioners of one Bohra Dwarka Das, who died in or about the year 1854 A. D. leaving him surviving two widows. One of those widows, Musammat Lachcho, survived the other and continued to represent the estate of her husband up to the time of her death in 1904. The title of Kanhaiya Lal and his co-defendants in respect of the shop in question may be set forth in this way. Har-mukh Rai father of Kanhaiya Lal purchased this shop at auction on the 24th of July 1901. The sale was held on a decree dated 19th November 1900 in a suit brought by one Kundan Lal against Kunj Lal and Duli Chand. These persons had made a mortgage of this shop in favour of Kundan Lal on the 7th of October 1895. There can be no doubt that Harmukh Rai as auction-purchaser

thereby acquired the right, title and interest of Kunj Lal and Duli Chand in this shop No. 2. The question really in issue is what that title was. The Court below has found in favour of the plaintiffs on the question of title and has overruled all the objections taken by the contesting defendants, except with regard to the alleged payment of rent on account of shop No. 1. The appeal of Kanhaiya Lal and his co-defendants is against the decree of the Court below awarding to the plaintiffs possession of shop No. 2 with mesne profits. There are seven paragraphs in the memorandum of appeal to this Court. The 1st and the 7th of these are argumentative and general. The points taken in the remaining paragraphs are substantially four. (1) It is contended that the plaintiffs have failed to prove their title as owners of the shop in question. (2) It is pleaded that there is some bar of limitation against the plaintiffs' suit. (3) It is contended that the ownership of the shop in question had passed to Kunj Lal and Duli Chand, through whom the plaintiffs derived their title, by reason of valid transfers under circumstances to be presently considered. (4) It is pleaded that the position of the defendants-appellants is that of bona fide purchasers for value, and that in any case they are entitled to be compensated for expenditure incurred by them upon improvements. We may take up these points in order.

The plea with regard to the plaintiffs' title was not considered in the Court below precisely in the form in which it has been argued before us. It requires to be taken apart from the remaining issues. The plaintiffs claim as reversioners, deriving title from Bohra Dwarka Das after a long interval, during which that gentleman's estate was in the hands of his widow. It was undoubtedly incumbent upon them to prove that Dwarka Das was at the time of his death owner of the shop in question, As was to be expected, in a matter of this sort no document of title is forthcoming. The nearest thing to a document of title which plaintiffs possess is a list of the houses in the town of Hathras prepared by public authority sometime in the years 1860-1861 A. D. giving the names of the proprietors and of the persons occupying these houses. This list shows two shops presumably adjoining shops, to which are assigned consecutive serial numbers, as the property of, Dwarka Das. Dwarka Das, as we know, had died four years previously; but there is nothing surprising in his name being mentioned as the owner of any shop which had previously belonged to him. The occupiers of one of these two shops are the predecessors of Kunj Lal and Duli Chand. As to the identity of the shop in question, the plaintiffs have been in a position to prove a number of admissions against the defendants. We shall have to refer presently to a compromise decree under which Kunj Lal and Duli Chand derived their title. With reference to the particular point now in question, it is sufficient to say that that compromise admits in clear terms that the shop then in dispute, which is certainly identical with shop No. 2 now in question, was the property of Muswrnmat Lachcho, widow of Dwarka Das. In the boundaries given in that compromise the house immediately to the west of the shop then in question is described as the property of Musammat Lachcho jointly with one Chunni Lal who was then claiming to be the adopted son of Dwarka Das. Now the defendant-

appellant Kanhaiya Lal is admittedly the tenant of shop No. 1 and he has signed a kerayanama in respect of this latter shop. In this document the shop immediately to the east is described as the property of Musammat Lachcho and of Chunni Lal. The plaintiffs have also produced certain account books which require to be considered along with the evidence of the plaintiffs' witness Kadhira Mai, printed at page 1 R of the records before us. The whole of this evidence taken together seems to be quite sufficient to prove that Dwarka Das was the owner of shop No. 2 and to justify the inference that he continued to be the owner of the same up to the time of his death and was succeeded by his widow, Musammat Lachcho.

2. This, of course, is subject to a finding in favour of the plaintiffs on the question of limitation. The learned Subordinate Judge laid on the plaintiffs the burden of proving that either they or Musammat Lachcho had been in proprietary possession of this shop No. 2 within 12 years of the institution of the suit. He found in their favour on this point, clearly on the strength of the evidence of Kadhira Mai and of the account books. We cannot regard the question of limitation from precisely the same point of view. The suit must be regarded as one brought under Article 141 of the Schedule to the Indian Limitation Act. If the shop in question belonged to Dwarka Das at the time of his death, the plaintiffs as reversioners of Dwarka Das were entitled to sue for recovery of possession over this shop at any time within 12 years from the death of Musammat Lachcho. The only possible alternative would be for the contesting defendants to prove that either they or their predecessors-in-title had been in proprietary and adverse possession as against Dwarka Das before and up to the time of his death. It is enough to say that there is no real evidence in favour of the defendants on this point. We, therefore, find that the plaintiffs have proved their title, and we are satisfied that they have brought their suit within limitation.

3. We now come to consider the most important issue in the case, namely, the question whether Kunj Lal and Duli Chand had acquired a good title to this shop under a certain compromise decree dated 9th April 1895. "We have already referred incidentally to the fact that one Chunni Lal claimed the estate of Dwarka Das as his adopted son. There was, prolonged and complicated litigation before the claim of Chunni Lal was disposed of, and this question was definitely decided against Chunni Lal by their Lordships of the Privy Council on December 15th, 1908, when they disposed of certain consolidated appeals then pending before them arising out of previous litigation in this country. There is no question of the rights of Chunni Lal arising in the suit now before us. The matter is referred to us only to explain the previous array of Chunni Lal as a co-plaintiff with Musammat Lachcho in a litigation which we are called to consider. It would seem that during the year 1893, there was friction between Musammat Lachcho and Kunj Lal and Duli Chand, who were then occupiers of this shop No. 2. Musammat Lachcho brought a suit in her own name to recover certain money as arrears of rent for this shop. This suit was decreed by the Court of first instance on November 15th, 1893; but was dismissed on June 7th, 1894, by the Court of first appeal. We find

from documentary evidence on this record that this dismissal had nothing to do with any claim of Chunni Lai, or with any doubt as to the proprietary title of Musammat Lachcho. The claim for rent was dismissed simply on the finding that Musammat Lachcho had failed to prove the rent agreement on which she was suing. It was, however, presumably in consequence of this dismissal that on 22nd November 1894 a second suit was filed by Musammat Lachcho and Chunni Lal jointly against Kunj Lal and Duli Chand, to establish their title to this shop and to recover possession. This suit ended in a compromise which was made "the basis of a decree passed on 9th April 1895. The compromise is printed at page 26 R of the record before us. The parties in question agreed that a decree for proprietary possession be passed in favour of the then plaintiffs, Chunni Lal and Musammat Lachcho; but this decree is subject to a condition. It is provided that, if the defendants Kunj Lal and Duli Chand pay into Court for the benefit of the plaintiff within 6 months Rs. 1,500 with interest, they shall then be considered to be in proprietary possession of the shop in question from the date on which such payment is made. We know that it was in order to raise money for "the payment of this sum of Rs. 1,500 as well as in return for a certain further advance, that Kunj Lal and Duli Chand proceeded to mortgage this shop in favour of Kundan Lai, and it has already been explained how the latter was eventually compelled to bring a suit upon his mortgage, and how the title of the contesting defendants is derived from their auction-purchase on Kundan Lai's decree. The question is, whether by this compromise decree Kunj Lal and Duli Chand did or did not obtain full proprietary title to the shop in question, that is to say, a title binding upon the reversioners. According to the case for the plaintiffs-respondents they acquired nothing more than Musammat Lachcho was competent to transfer, namely, that lady's life-interest. If this contention is sound, then Harmukh Rai as auction-purchaser also acquired a proprietary title terminable with Musammat Lachcho's death and he had no valid title to plead against the present plaintiffs. The case laid on the question of the effect of a compromise decree obtained against a Hindu female in possession of limited interest or estate may be said to go back to the decision of their Lordships of the Privy Council in *Imrit Konwur v. Roup Narain Singh* 6 C.L.R. 76. The question directly in issue in that suit was in regard to the validity of an adoption. At page 81 of the report certain general remarks are made as to the effect of litigation against a Hindu widow, when such litigation results in a compromise decree. That case has been considered and the principles believed to be laid down therein have been followed in subsequent decisions of various High Courts in this country. We may refer to *Musammat Raj Kunwar v. Musammat Indirjit Kunwar* 5 B.L.R. 585 : 13 W.R. 52; *Rajlakshmi Dasee v. Katyayani Dasee* 12 Ind. Cas. 464 : 38 C. 539; *Gobind Krishna Narain v. Khunni Lal* 29 A. 487 : 4 A.L.J. 365 : A.W.N. (1907) and *Mahadei v. Baldeo* 30 A. 75 : 5 A.L.J. 43 : A.W.N. (1908) 16. Following broadly the principles derivable from these cases the correct view would seem to be that the compromise decree of April 9, 1895, which we are now considering, was in effect nothing more than an alienation on the part of Musammat Lachcho of a shop which had formed part of the estate of her late

husband. Such alienation could only bind the reversioners if it were shown to have been made for such purposes as would justify a sale by a Hindu widow. No question of this sort is raised in the case now before us. It is, however, contended ? that the general principle that a decree obtained by compromise against a Hindu widow representing the estate of her late husband will not bind the reversioners, is subject to certain qualifications. It has been pointed out to us that the decision of this Court in *Gobinda Krishna Narain v. Khunni Lal* 29 A. 487 : 4 A.L.J. 365 : A.W.N. (1907) 151 was actually reversed by their Lordships of the Privy Council *Vide Khunni Lal v. Gobinda Krishna Narain* 10 Ind. Cas. 477 : 15 C.W.N. 545 : 8 A.L.J. 552 : 13 Bom. L.R. 427 : 13 C.L.J. 575 : 21 M.L.J. 645 : 33 A. 356 : (1911) 2 M.W.N. 432 : 10 M.L.T. 25 : 38 I.A. 87 and we have also been referred to another case *Behari Lal v. Baud Husain* 18 Ind. Cas. 721 : 35 A. 240 : 11 A.L.J. 352. In both these cases the litigation was between members of the same family, and their Lordships took the view that the compromise decree was of the nature of a family settlement. They laid down, however, a test which appears to tell very strongly against the appellants in the case now before us. They said that the true test to apply to a transaction which is challenged by the reversioners as an alienation not binding upon them, is whether the alienee derives title from the holder of the limited interest or life-tenant." Now on the terms of the compromise decree which we are now considering and which have already been set forth, it is obvious that the alienees, namely, Kunj Lal and Duli Chand, derived their title from the holder of a limited interest, namely, from Musammat Lachcho. We disregard, of course) the position of Chunni Lal as a co-plaintiff because the question of his alleged adoption has been finally determined in the negative. The decree itself recognises the right of the plaintiff Musammat Lachcho, who along with Chunni Lal had sued to recover possession of the property. It contains what is virtually a covenant to transfer the shop in favour of the defendants on payment of Rs. 1,500 to be made within the specified time. We do not think that the doctrine of family settlement can or ought to be extended to suits in which the parties to the litigation were undoubtedly not members of the same family. It seems to us that the general principle laid down by this Court in *Mahadei v. Baldeo* 30 A. 75 : 5 A.L.J. 43 : A.W.N. (1908) 16 applies to the facts now before us. The contention of the appellants, therefore, that Kunj Lal and Duli Chand had a valid title under the compromise decree of 9th April 1895, in our opinion, fails.

4. The only other point taken is that the appellants should be treated as bona fide purchasers for value. We do not think that the doctrine embodied in Section 41 of the Transfer of Property Act, IV of 1882, has any possible application to the facts now before us. The plaintiffs in the present case are reversioners suing to recover their own property by avoidance of alienation made by a Hindu widow. They cannot be said to have done anything to put forward that widow as holding an estate longer than that actually possessed by her. The contesting defendants must suffer by reason of the defective title of the original mortgagee from whom they, as auction-purchasers, derive their own.

There has been a cross-objection filed on behalf of the plaintiffs, contesting the dismissal of their claim for rent in respect of shop No. 1 and also with regard to part of the plaintiffs' claim on account of shop No. 2. On this point, we think it sufficient to say that there is nothing in the evidence to lead us to differ from the conclusion arrived at by the learned Subordinate Judge.

The result is that the appeal and cross-objection both fail, and we dismiss them both with costs. The said costs will include fees on the higher scale.