

(1898) 04 CAL CK 0008

In the Calcutta High Court

Case No : Appeal from Original Decree No. 216 of 1896

Kooldip Singh and Pardip Singh

APPELLANT

Vs

L. Macdonald, Executor and Trustee to the estate of the late
N. Macdonald, who appeared; and Musst. Khatrani Koer and
others

RESPONDENT

Date of Decision : 27-04-1898

Acts Referred:

Citation : (1898) 04 CAL CK 0008

Judgement

1. In this case we regret that we are unable to agree with the learned Subordinate Judge in the view he has taken. The case is a simple one. It is alleged in the plaint that there were three persons, Kooldip Singh, Pardip Singh and Udit Narain Singh, who formed a joint Hindu family. Udit Narain Singh was as a first cousin, once removed of the others. On Udit Narain's death his interest passed to Kooldip Singh and Pardip Singh. As a matter of fact Udit left a widow by name Khatrani Koer. Disputes arose between the Plaintiffs Kooldip and Pardip, and Khatrani Koer, and those disputes were settled by an ekrarnamah. The ekrarnamah gives the lady possession for her life on account of her maintenance of her husband's share in the property; and there is a provision in it which has given rise to the present question. That provision is this :--"If I (that is, Khatrani Koer) take and execute any sort of document, then it will be null and void. And be it known that if any party out of the two parties be under the necessity of executing a simple potta, suripeshgi potta, mokurari and khastakari, jointly or individually, then it would be executed and delivered, by mutual consultation of both the parties. And if it be signed by both the parties, then it would be valid and trustworthy, and the document not signed and consented to by both parties shall be null and void." The lady executed a lease for eleven years in favour of the proprietors of the Dooria Indigo Concern. The Plaintiffs claim that the execution of that lease is a breach of this covenant; and that they are entitled to a declaration to that effect, and to have the lease set aside. There were other questions raised which have not been determined.

2. The learned Subordinate Judge has held that the covenant is invalid and has no operation. He has therefore dismissed the suit.

3. We are unable to follow the reasoning upon which he comes to that conclusion. Admittedly there is nothing in any statute law which renders such a provision inoperative. Secs. 10 and 15 of the Transfer of Property Act have no application here; and we are unable to see any principle underlying those sections which can be applied to the present case, or that there was any sort of absence of equity in an arrangement of this kind. This was a settlement of a dispute, and effect should be given as far as possible to every portion of it. It is not at all an unreasonable provision that reversioners giving up their claim and allowing a Hindu widow to remain in possession of their property should wish to retain supervision over it and to prevent any acts on her part which might cause injury to their reversionary rights. A provision of this kind is not only not contrary to law, but is one which might reasonably be made in common prudence by reversioners. There being nothing admittedly in law to show that this covenant is illegal, effect must be given to it.

4. This does not dispose of the case. There are other questions. The case must, therefore, go back to the Subordinate Judge to have those questions determined, the decree of the lower Court being set aside. The Respondents who appeared must pay the costs of the appeal. The Court-fee on the memorandum of appeal will be refunded to the Appellant under sec. 15 of the Court-fees Act.