
(1927) 06 AHC CK 0002
In the Allahabad High Court

Mata Dayal Lal

APPELLANT

Vs

Lalji Sahai and Others

RESPONDENT

Date of Decision : 28-06-1927

Acts Referred:

Citation : (1927) 06 AHC CK 0002

Judgement

Sulaiman, J.—This is a plaintiff's appeal arising out of a suit brought for recovery of possession of a one-anna zamindari share and for a declaration that certain sir and khudkasht lands appertain to that share. The plaintiff's case was that the property in dispute belonged to his maternal grandfather, Nand Kishor Lal, on whose death it was inherited by his grandmother, Mt. Shitab Kunwar for her lifetime; that Mt. Shitab Kunwar had two daughters, Mt. Maharani Kunwar and Mt. Daulat Kunwar, plaintiff being a son of Mt. Maharani, and defendants grandsons of Mt. Daulat Kunwar. Plaintiff alleged that, on the death of the two daughters, he was the sole surviving daughter's son and he became the heir to the estate in preference to the grandsons of Mt. Daulat Kunwar. He referred to the fact that he himself had executed a sale-deed in favour of Lalji Sahai, but that he was not at that time aware of the fact of his legal right. The contesting defendants pleaded that plaintiff was fully aware of all the circumstances and that he agreed to the transfer. It was further pleaded that under an arrangement arrived at in the lifetime of Mt. Shitab Kunwar, the property had been divided between the two branches represented by the two daughters and that the settlement was binding on the plaintiff. It was further pleaded that the present claim, in view of the previous declarations, acts and conduct of the plaintiff, was barred by the principle of estoppel u/s 115, Evidence Act, as well as by the provisions of Section 41, T.P. Act. The learned Subordinate Judge came to the conclusion that although there was no valid surrender of Hindu widow's estate by Mt. Shitab Kunwar, there must have been some settlement of a dispute and a family arrangement about the year 1890, under which the property was divided between the two branches equally and that plaintiff is bound by such an arrangement. As regards Section 115, he was of opinion that there was no

estoppel, but he was inclined to the view that the claim was barred by Section 41, T.P. Act. The question of estoppel, however, was dealt with very summarily by the learned Judge.

2. The facts appear to be as follows: Nand Kishor Lal died some time about 1869 leaving his widow Mt. Shitab Kunwar and two daughters, Mt. Maharani Kunwar and Mt. Daulat Kunwar. Undoubtedly Mt. Shitab Kunwar entered into possession of the estate as a Hindu widow and relinquished her life-interest in favour of the next reversioners. On 15th May 1883, she executed a document called "tamliknama" (deed of settlement by which she purported to give 1/3rd of the estate to Mt. Daulat Kunwar, 1/3rd to Mt. Maharani Kunwar and Kauleshar Dayal, the then living son of Mt. Daulat Kunwar. At that time, however, the property in question was in the possession of certain mortgagees and a provision was made in the deed that the transferees would be entitled to obtain possession on redemption. Mt. Shitab Kunwar also made provision to retain about 10 bighas of land for her own maintenance. The khewats up to the year 1890 indicate that the usufructuary mortgagees remained in possession of this property till then, and that the property was not redeemed. In the khewat for 1890-91 the entries are as follows:

Mussammat Daulat Kunwar for self and as guardian of her son Jugat Narain Lal, in equal shares-half, and Mt. Maharani Kunwar for self and as guardian of her son Gayatri Prasad, in equal shares-half.

3. There is, with the exception of the statement of a witness, Lachhmi Sahai, no evidence whatsoever on the record to show the circumstances under which these entries came to be made. As regards the evidence of Lachmi Sahai the learned Judge has characterized him as a liar, and has rejected his evidence completely. He has noted that the evidence of this witness made a very poor impression upon him while he was in the witness-box, and the learned Judge thought that he had been "well coached and was stumbling at every place." He accordingly had no faith in his statement. The learned advocate for the respondent has not relied on the evidence of Lachhmi Sahai and it must, therefore, be altogether ignored.

4. All that remains on the record then is the fact of the entry in the khewat of 1890-91. Obviously that entry was not in pursuance of the provisions of the tamliknama inasmuch as it did not follow that disposition of the property strictly. The learned Judge has made a conjecture that the entries of 1890-91 would not have come into existence if there had been no dispute and a settlement of that dispute. We are of opinion that such a conjecture, in the absence of any evidence to prove it, was totally unjustified. Mt. Shitab Kunwar, without there being any dispute, might very well have liked to hand over possession of the estate in her possession to her daughters and their sons. It is difficult to understand that dispute could have arisen between them as the daughters had no locus standi to claim the property. If there had been no other circumstances in this case, we would have found great difficulty in accepting the view of the Court below that

there was a family arrangement in the year 1890-91 which is binding on the plaintiff and prevents him from succeeding.

5. There are, however, other circumstances which have to be taken into account before the plaintiff can succeed. There can be no doubt that in the lifetime of Mt. Shitab Kunwar her daughters and daughters' sons obtained possession of the bulk of the property. Mt. Shitab Kunwar remained alive till 1916, and, while she was alive the names of her grandsons were entered. We find that in the khewat for 1909 the name of Mt. Daulat Kunwar was struck off and that of her son Jagat Narain alone entered. Similarly, in 1913, the name of Mt. Maharani Kunwar also disappeared from the khewat and that of her son Gayatri Prasad alone remained. The plaintiff, Mata Dayal, must therefore have been aware that during the lifetime of Mt. Shitab Kunwar his mother, Mt. Maharani Kunwar, and after her death his brother, Gayatri Prasad, were in possession of a half-share in the estate. As Mt. Shitab Kunwar was the widow originally entitled to possession, the plaintiff must have been aware of some arrangement under which the partition of the family property had taken place. This fact could not have been concealed from the plaintiff when he was joined with his elder brother Gayatri Prasad and must have been appropriating the profits and benefiting from the estate.

6. There is also the fact that a large number of sir and khudkasht plots were joint and the names of the two branches were jointly recorded in the revenue papers. Mt. Shitab Kunwar died in 1916. Her death was followed by that of Mt. Daulat Kunwar in November 1916. Later Jagat Narain died in 1917 and then Mt. Maharani Kunwar in 1918. On the death of Maharani Kunwar, the plaintiff, Mata Dayal, was the sole surviving daughter's son alive, who would be entitled to the estate if there was no other difficulty in his way. The plaintiff, however, admittedly did not assert his right and allowed the names of the sons of Jagat Narain, namely, Shimbhu Nath and Prem Nath, to be entered in the revenue papers as against the share which had been allotted to Mt. Daulat Kunwar. The plaintiff undoubtedly attained majority some time before 1919. According to the defendant's evidence, in March 1919, Bhagwan Prasad, who was the husband of Daulat Kunwar and the grandfather of Shimbhu Nath and Prem Nath, approached the vendee's son, Dargahi Lal, with a request that he should purchase the 1-anna share in dispute. Dargahi Lal was shown partition quras and khewats, as well as a copy of a mortgage-deed previously executed in favour of B. Durga Dutt, vakil. Dargahi Lal states that he raised objections on the ground that the sir plots were jointly recorded in the revenue papers and also that there was fear of a claim of preemption by cosharers. According to Dargahi Lal it was at his request, and on objections being raised by him, that Bhagwan Prasad applied to the Dist. Judge for permission to sell the property belonging to his minor grandsons. It is an undoubted fact that, in August 1919, an application was made to the Dist. Judge for the necessary sanction, which was granted. All this must have taken some time.

7. We also know as a fact that, although in the revenue papers the wand

khudkasht lands were jointly recorded, there is a detailed specification in the sale-deed in dispute of the plots which were expressly assigned to the vendee, Lalji Sahai. The sale-deed further contains a recital that the division has been accepted by Mata Dayal who, in token of acceptance, has attested the document. In our opinion it is impossible to believe that if Mata Dayal had not, prior to the execution of the sale-deed, agreed to a division of the plots, it could have been entered in the deed and attested by him. As a matter of fact, the evidence of Dargahi Lal is that Mata Dayal had promised early in the year to get the sir lands divided and that later, when he came to the village, Mata Dayal showed him separate lists of the plots. Under these circumstances, we are utterly unable to accept Mata Dayal's statement that he was not aware of the contents of the document and that it was brought over to him ready written and he blindly attested it.

8. The recitals in the sale-deed do indicate that precaution was being taken by the vendee to ensure against a possible claim of inheritance. It contains an admission that the property which was re-transferred had been inherited by the father of the minors from his mother's family, and it contains a covenant that in case any dispute arose relating to the inheritance on behalf of any one of the mother's house, the vendee shall have power to realize all damages with interest at the rate of 1 per cent per mensem from the person and the property of the executants. This covenant has been strongly relied upon on behalf of the plaintiff in order to show that the vendee must have been fully aware that Mata Dayal was a claimant to the estate. The deed further shows that the vendee was very keen on obtaining a relinquishment of the ex-proprietary rights in the sir lands which amounted to nearly 12 1/2 bighas of land. There was a condition that the vendee shall have the power not to pay Rs. 4,500 unless there was a relinquishment of the sir lands. The rights in the sir lands could not possibly have passed to the vendee unless there was a relinquishment by the executants as well as a division of the sir plots by Mata Dayal. To our minds it is perfectly clear that Mata Dayal must have been aware that the property in question was being sold to Lalji Sahai and that the sir plots were divided, and it was in token of his consent to this that he attested the document.

9. The subsequent conduct of Mata Dayal also shows that at that time he raised no objection as regards the title of the vendors and never put forward any claim of his own. When an application for mutation of names was made in the revenue Court, Mata Dayal was examined as a witness and stated that mutation of names may be effected in accordance with the sale-deed to which he had no objection and that the name of Lalji Sahai should be recorded in accordance with the application. Simultaneously with the application for mutation of names there was an application in which it was expressly prayed that, although the names of the vendors and Mata Dayal had stood recorded jointly, the sir plots had been divided into two lists, A and B, and it was further prayed that the name of Mata Dayal might be expunged from the lands in his name. To this proceeding Mata Dayal was a party and he never objected.

10. Subsequently, certain tenants executed kabuliyats in favour of the vendee in respect of certain specific plots and these kabuliyats were also attested by Mata Dayal, and in some cases he identified the tenants before the Sub-Registrar.

11. These circumstances are relied upon on behalf of the plaintiff and it is urged that they indicate precautions taken by Bhagwan Prasad and the vendee to obtain the admission of Mata Dayal in various ways. It has been suggested that he was absolutely ignorant of all the facts and of his legal rights, and that a trick was played upon him and he was entrapped into admitting that he had no title to the property.

12. One may have a suspicion that, so far as Bhagwan Prasad was concerned, he might have been aware of the nature of the claim which might be put forward by Mata Dayal. There is, however, no evidence on the record to show that Lalji Sahai was aware of any defect in the title of Shimbhu Nath and Prem Nath.

13. Although the plaintiff in his plaint alleged that he was not aware of all the facts, and that he was made to attest the document without being informed of these facts, and that he was also unaware of his legal rights, when he went into the witness-box he did not state more than this: that he did not know that he was the owner of the property. The plaintiff did not in the witness-box make clear whether he was not aware of the rule of Hindu law that a daughter's son succeeds in preference to the sons of another predeceased daughter's son, or whether he was not aware that he would be entitled to have the arrangement, made in the lifetime of Mt. Shitab Kunwar, as regards the division of the property, set aside through a Court of law. The learned Subordinate Judge has thought that the plaintiff was unaware of the rule of Hindu law on this point. The plaintiff himself has not said so, and we find it very difficult to believe that this was the case. It is a matter of common knowledge, especially among educated Hindus, that a daughter's son succeeds in preference to remoter heirs. There is, therefore, no justification for assuming that the plaintiff was Unaware of this elementary rule of Hindu law. On the other band, it might very well be that he did not know that it would be open to him to avoid the arrangement which was arrived at in the life time of Mt. Shitab Kunwar. Arrangements which have been acted upon for nearly 30 years might well create an impression in the minds of laymen that they are good and cannot be avoided. It is only when the mind of the claimant has been disabused of the false notion by a judgment of a Court that he can feel certain that such an arrangement is not binding upon him. We are, therefore, prepared to assume that the plaintiff did not know that the arrangement which had stood for such a long time was not binding upon him. Had he known this he might possibly not have easily agreed to attest the document or agreed to a division of the sir lands.

14. The learned advocate for the plaintiff-appellant has argued that Section 41, T.P. Act, can have no application when the plaintiff is not aware of his legal rights and that it cannot be assumed that the position of the vendors was that of ostensible owners with the consent, express or implied, of the plaintiff, when he

was not aware of his legal rights. In support of his contention he has relied on the remark of a learned Judge of this Court in the case of *Dungaria v. Nand Lal* [1905] 3 A.L.J. 534 that the content referred to in that section must be an intelligent consent and not a consent based on misapprehension on the part of the person making it as to his legal rights. As regards Section 115, Indian Evidence Act, his contention is the same, namely, that there could be no estoppel if the plaintiff was not aware of his legal rights. The learned advocate relies on a judgment of a Bench of this Court in *Jai Narain Vs. Jafar Beg and Another*, where it was remarked that

the party possessing the legal right must know of the existence of his own right which is inconsistent with the right claimed by the other, and he must know of that other's mistaken belief of his rights, and he must have encouraged that other in his expenditure of money or in the other acts done by him, before estoppel arising out of acquiescence can be a bar.

15. We may also add that there is no doubt that the vendee Lalji Sahai acted in good faith and paid full consideration. We cannot accept the suggestion that he was a party to any trick or fraud having been practised on Mata Dayal. He must, as the Court below has found, be deemed to be an innocent party who has paid full consideration. Even assuming that the plaintiff was ignorant of his legal rights and is in that way innocent, there can be no doubt that he was negligent in not taking steps for ascertaining his legal rights. We would thus have a competition between two innocent parties of whom the plaintiff, who is suing for possession, has been negligent. Under such circumstances he would not be entitled to succeed as against the other innocent party who has been guilty of no laches.

16. It is not necessary for us to consider the effect of Section 41, T.P. Act, because we are satisfied that the plaintiff must, under the circumstances of the case, be estopped u/s 115, Indian Evidence Act, from disputing the right of the vendee. We need not also consider whether the knowledge of a person's legal right is necessary in the case of mere omissions. As regards declarations and conduct: there can be no doubt that Section 115 does not require that a person who by his declarations or conduct induces a belief in the mind of the other must of necessity have been aware of his rights. Their Lordships, in the case of *Sarat Chandra Dey v. Gopal Chunder Laha* [1893] 20 Cal. 296 remarked that they

think it right to say that it would make no difference in the effect to be now given to the plea of estoppel against a purchaser, though it clearly appeared that he was under the belief that a certain document was valid, which he could not set aside.... The law of this country gives no countenance to the doctrine that in order to create estoppel the person whose acts or declarations induced another to act in a particular way must have been under no mistake himself, or must have acted with an intention to mislead or deceive. What the law and the Indian statute mean is that the position of the person who was induced to act, and the principle on which the law and the statute rest is, that it would be most inequitable and unjust to him that if another by a representation made, or by

conduct amounting to a representation, had induced him to act as he would not otherwise have done, the person who made the representation should be allowed to deny or repudiate the effect of his former statement, to the loss and injury of the person who acted on it.

17. The principle laid down in this case was accorded full concurrence by their Lordships in the case of AIR 1925 146 (Privy Council) We have, therefore, to see whether, in spite of the fact that the plaintiff was not fully aware that he had a right to challenge the arrangement which had stood for so many years, he did by his declarations or acts induce a belief in the mind of the vendee that the vendors had good title. The disposition of the property by Mt. Shitab Kunwar during her life time would at best be a voidable transaction on the same footing as an alienation without any legal necessity. The reversioner would have the option of either accepting the division or repudiating it. Once he accept it and ratifies it, he loses his option of repudiation. A layman may not be aware that an arrangement of this kind during the life time of a Hindu widow between herself and her daughters and acquiesced in by her daughter's sons when, after coming of age, and which has stood for nearly 30 years, can still be avoided by other reversioners who have not been parties to the transaction. A layman might well believe that an arrangement which has been acted upon for such a long time cannot be set aside. This belief might further be strengthened if the person himself has been benefiting out of this arrangement. In the same way the vendee might honestly have believed that an arrangement which stood for nearly 30 years and had been acted upon, would be binding on all the reversioners. In spite of all this there might have been an anxiety in the mind of the vendee to make sure of his title by obtaining consent of the only possible claimant, Mata Dayal. There is, therefore, nothing strange if the vendee obtained the consent of Mata Dayal to the mutation of names in his favour. The conduct of Mata Dayal shows that he did not put forward any claim whatever, but agreed to the transfer of the property in favour of the vendee. It is also clear that if Mata Dayal had not agreed to a division of the sir and khudkasht plots, there would have been considerable difficulty in effecting the division and it is probable that the vendee would not have agreed to take the property at all. He paid a high value for the 1-anna share and the reason given for it in the sale-deed is that it was agreed that the ex-proprietary rights in the sir lands would be relinquished. The position of the vendee has, therefore, undoubtedly been compromised, and it is difficult to believe that he would have agreed to take the property if Mata Dayal had not been a consenting party. It may be a misfortune of Mata Dayal that he was not aware of his legal rights and could not be certain that the arrangement could have been set aside in a Court of law.

18. Nevertheless his declarations and conduct did induce a belief in the mind of the vendee that he was not claiming any title to the property and that, therefore, there was no defect in the title of the vendors. The pedigree makes it quite clear that there could possibly be no claimant other than Mata Dayal, and if Mata Dayal was willing to abide by the arrangement which had stood for so many

years, the vendee would feel sure that there was no defect in his title.

19. We have, therefore, come to the conclusion that the plaintiff Mata Dayal is estopped by reason of his own previous conduct from denying the title of Shimbu Nath and Prem Nath to the property transferred under the sale-deed of 26th September 1919, which he himself attested. The result, therefore, is that this appeal is dismissed with costs.