

(1909) 12 AHC CK 0012
In the Allahabad High Court

Mewa Singh and Others

APPELLANT

Vs

Bhagwant Singh and Another

RESPONDENT

Date of Decision : 18-12-1909

Acts Referred:

Citation : 5 Ind. Cas. 252

Hon'ble Judges : Piggott, J

Bench : Single Bench

Judgement

Piggott, J.—One Tirmal Singh, the owner of certain landed property, died childless leaving a widow Musammat Hanso. This lady left the village shortly after her husband's death and Budh Singh, brother of Tirmal Singh, entered into possession of the property admittedly, on behalf of Musammat Hanso, and under an agreement to restore the property to her possession in the event of her return. In the year 1881, Budh Singh executed a sale-deed transferring this property to the predecessor-in-title of the defendants-appellants in this case. It has been found as a fact, and I am bound by that finding, that Musammat Hanso died in or about 1905 A.D.; by this time Budh Singh was dead and the reversioners entitled to succeed to the estate of Tirmal Singh, upon the death of the widow, were the plaintiff-respondent, Bhagwant Singh and his brother, Mohan Singh. They brought the present suit for recovery of the property transferred by the sale-deed of 1881. Mohan Singh died while the appeal was pending in the Court of the Subordinate Judge and it is admitted that the right to sue survives in favour of Bhagwant Singh alone. The lower appellate Court has decreed the plaintiffs' suit, of the grounds of appeal taken before this Court those based on the question of limitation have not been pressed and obviously could not lie in face of the finding of the lower appellate Court. The one question which I have to decide is whether Bhagwant Singh, by the mere fact of his having signed as an attesting witness the sale-deed of 1881, is estopped from asserting that full proprietary title in the property transferred by the said sale-deed had not at that date vested in Bhagwant Singh.

2. The lower appellate Court in deciding against the plea of estoppel has been partly influenced by a belief that the property in suit was in some way described or referred to as Musammat Hanso's in the sale-deed itself. This is not the case, but I am nevertheless of opinion that the finding of the learned Subordinate Judge is correct. The mere fact of a person attesting a deed is not in itself sufficient proof that he consented to it or knew its contents and does not necessarily import assent to all the recitals, *Ram Chunder Poddar v. Hari Das Sen* 9 C. 463(P.C.) *Rajlakhi Debia v. Gokul Chandra Chowdhry* 3 B.L.R. 57 (P.C.) : 12 W.R. 47 (P.C.) : 13 M.I.A. 209. The appellant relies upon the ruling of this Court in *Mohar Misr V. Bishambhar Misr A.W.N.* (1888) 294, but that ruling proceeds upon an express finding of fact that a person: against whom the doctrine of estoppel was there applied, had signed a certain document as a witness consenting to the transfer. The plaintiff in the present case went into the witness-box and his attention was called in cross-examination to his signature as a marginal witness to the deed of 1881, but no question was put to him as to the knowledge of the contents of the said deed or as to his intention in signing it. Apart from this point, it seems to me that the very utmost the appellant can say with reference to Bhagwant Singh's attestation of this sale-deed is that Bhagwant thereby conveyed to them his belief at the time that Musammat Hanso was already dead in the year 1881. It may be that the defendants-appellants might have made more of this point in the Courts below by pressing it against the plaintiffs as an admission, but I am certainly not prepared, on the evidence as it stands, to hold that they have made out a valid case of estoppel. I was asked to send back the case to the lower appellate Court for an express finding, if necessary upon further evidence, as to whether Bhagwant Singh signed the deed of 1881 as a witness consenting to the transfer. I have not thought fit to do so. The vendee under the deed of 1881 purchased property which was still recorded in the name of Musammat Hanso in the revenue papers and which continued to be so recorded for many years afterwards. He should have been aware that he was taking a certain amount of risk, and as regards the conduct of the case in the Court below I think defendants had every reasonable opportunity of establishing their case.

3. I dismiss this appeal with costs.