

(1920) 12 AHC CK 0005
In the Allahabad High Court

Mohammad Shakur Khan and Another	APPELLANT
Vs	
Musammat Shahjahan Begam and Others	RESPONDENT

Date of Decision : 16-12-1920

Acts Referred:

Transfer of Property Act, 1882 — Section 41

Citation : 63 Ind. Cas. 125

Hon'ble Judges : Ryves, J;P.C. Banerji, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit Drought by the appellants for possession of a three-fourths share in certain property known as Ahata Ghammu Khan and for a declaration that the sale-deed, dated the 24th of November 1915, executed by defendant No. 2 in favour of defendant No. 1 was null and void so far as the plaintiffs' right was concerned. The defendant No. 2 was the widow of one Fakhruddin Khan, who was admittedly the owner of the enclosure in dispute. Fakhruddin Khan died on the 6th of April 1905. According to the plaintiffs he left as his heirs Musammat Amir Begam, his widow, and his first cousin, Afzal Khan. The plaintiffs as residuaries claimed possession of three fourths share out of his estate, saying that Amir Begam owned a quarter share only in the estate under the Muhammadan Law. This suit was brought on the 25th of June 1917, that is to say, more than 12 years after the date of the death of Fakhruddin Khan aforesaid. The plaintiff No. 1 is the son and plaintiff No. 2 a nephew of Afzal Khan, who died a year or two after the death of Fakhruddin Khan. This has been held by the Court below and that finding has not been challenged before us in appeal Amongst the pleas taken in defence were (1) that the plaintiffs were not related to Fakhruddin Khan, and (2) that they were estopped from challenging the transfer in dispute having regard to the provisions of Section 41 of the Transfer of Property Act (IV of 1882). The lower Court came to the conclusion that the plaintiffs had failed to prove the pedigree set up by them and were further estopped from questioning the validity of the transfer because of the provisions of Section 41 of the Transfer of Property Act. The plaintiffs have some

here in appeal and have challenged the correctness of both the findings mentioned above. Having regard to the view which we hold on the second point raised before us, namely, the applicability or otherwise of Section 41 on the Transfer of Property Act, we do not think it necessary to enter into the first question, namely, the correctness or otherwise of the pedigree put forward by the plaintiff, although, if it were necessary for us to decide that question, we might have had some difficulty in agreeing with the Court below in its view of the evidence and the circumstances of the case. To turn now to the question of Section 41 of the Transfer of Property Act, we think the following facts are proved from the evidence led in the case. Soon after the death of Fakhruddin Khan, that is, in August 1905, his widow, Musammat Amir Begum, applied to have her name entered in regard to the enclosure in dispute in the Municipal Register, claiming to be entitled to it as the sole heir of her deceased husband. Her name was so entered. From the year 1906 commenced to deal with various portions of this enclosure by executing about nine documents, which are set forth in detail in the judgment of the Court below and which bring us down to the year 1914. Some of these documents are deeds of absolute sale and the purchasers have been and are in possession of the various items of property so transferred; some of them have erected houses on the portions transferred, others are mortgagees in possession and some of them are simple mortgagees. The tenants who occupy portions of this enclosure have been paying rent to Musammat Amir Begum aforesaid, and so far as the present plaintiffs or their alleged predecessor-in-title, Afzal Khan, is concerned, there is absolutely no reliable evidence on the record to show that they have anything to do with the enclosure in dispute. It is further admitted that the plaintiffs have all along been living in a village in the Rae Bareilly District. It appears from the statement of M. Ata Husain, the husband of Musammat Shahjahan Begum, the first defendant, that he made enquiries from the various transferees, the tenants and other persons and was told that except Musammat Amir Begum there was no other person who had any interest in this property. He inspected the Municipal Records and made enquiries in the Registration Office, but could find nothing which might and could have put him on further enquiry as to the existence of any other residuaries or person entitled to a share in the property of Fakhruddin Khan. There was nothing to put defendant No. 1 or her husband on enquiry, as the plaintiffs have been living in an out of the way village in Rae Bareilly District. There can be no doubt that the money which was paid for the transfer in dispute was paid in full and that the transfer was in good faith and for consideration. Having regard to all these facts, we have no hesitation in agreeing with the finding of the Court below that this was a case fully covered by Section 41 of the Transfer of Property Act. We might here mention that Afzal Khan, father of one of the plaintiffs and uncle of the other, would, if the pedigree put forward by the plaintiffs be proved, be the only other heir of Fakhruddin Khan besides his widow, Musammat Amir Begum. He survived Fakhruddin Khan for at least one year, if not two, and took no steps whatever to assert his right to a share, if any, in the property in dispute. He allowed Musammat Amir Begum to represent herself as the sole owner of the

property. Both the plaintiffs, according to the statement of Mohammad Husain Khan, the only plaintiff examined, were majors in 1905. The result, therefore, is that Musammat Amir Begam has ever since the death of her husband in 1905 been allowed, with at least the implied consent of Afzal Khan and the plaintiffs, to represent herself as the sole owner and has been dealing with portions of the property as such owner, has been receiving rent from the tenants, has been entered as such in the public papers and has made the present transfer for valuable consideration. The defendant No. 1 is, therefore, protested by Section 41 of the Transfer of Property Act, and the plaintiffs, even if they were found to be the heirs of Fakhruddin Khan, are not entitled to dispossess her. The appeal, therefore, fails and we dismiss it with costs, including in this Court fees on the higher scale.