

(1912) 02 AHC CK 0003
In the Allahabad High Court

Musammat Bela Rani and Another	Vs	APPELLANT
Mahabir Singh and Others		RESPONDENT

Date of Decision : 15-02-1912

Acts Referred:

Evidence Act, 1872 — Section 11, 32, 33

Citation : 14 Ind. Cas. 116

Hon'ble Judges : Henry Richards, C.J.; Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Henry Richaeds, C.J.—This appeal arises out of a suit for possession of Immovable property. The property originally belonged to one Beni Ram who died in the year 1866. He was succeeded by his wife Musammat Mathuri, who died in the year 1878. After her death, Musammat Dasodri, daughter of Beni Ram, was in possession. The plaintiffs are more or less speculative purchasers from the persons who would be entitled to the property on the death of Musammat Dasodri assuming that she had made no valid transfer. The defendants are transferees (or their representatives) of Musammat Dasodri. The main defence was that the suit was barred by limitation and the learned Subordinate Judge found that the suit was so barred.

2. It is common case that the right to bring the present suit arose on the death of Musammat Dasodri. It is also admitted that neither the plaintiffs nor their predecessors-in-title have ever been in possession of the property in dispute. There can be no doubt, therefore, that it lay upon the plaintiffs to establish their case and to show that Musammat Dasodri died within twelve years before the institution of the suit. I also think that it is very just and equitable that the plaintiffs should be held to strict proof. A very long time has elapsed since the transfers were made. The reversioners did not attempt themselves to challenge the transfers and it is not easy now for the transferors to bring forward proof of legal necessity. The suit was instituted on the 4th of March 1910. In the plaint it

was alleged that Musammat Dasodri died on the 28th of March 1898. In appeal here the date of her death is alleged to be the 16th of March 1898. It will, therefore, appear that on the plaintiffs' own case, the suit was not instituted until the period of limitation had almost expired.

3. The learned Subordinate Judge considered that the oral evidence adduced by the plaintiffs was almost worthless, and in this I quite agree. It is, however, contended on behalf of the appellants that there was certain documentary evidence to which great weight should be attached. It appears that on the death of Musammat Dasodri, applications were made for mutation of names in respect of some of the property in the possession of which she had been. These applications were supported by depositions of the reversioners two of whom were sons of the Musammat, and the date of her death was stated to be the 16th of March 1898. There is no doubt that if these depositions are admissible in evidence, they support the case of the plaintiffs. They are not necessarily conclusive but having regard to the date at which they were made, and the persons who made them, they would be, important. The persons who made the depositions are dead, and the depositions accordingly are simply the statements of relevant facts of persons who are dead. Such statements are not relevant facts, unless they come under some one or more of the sub-sections of Section 32 of the Evidence, Act. It has to be admitted that, under the circumstances of the present case, the depositions in question are not admissible u/s 32. The learned Advocate for the appellants ingeniously argues that while the depositions cannot be admitted under the provisions of Section 32, nevertheless the fact that these persons made the statement that Musammat Dasodri died on the 16th of March 1898 makes it highly probable that she did die on that particular date and that, therefore, the depositions are admissible u/s 11 of the Evidence Act. In my opinion, this argument is not sound. I think it impossible to hold that a statement of a relevant fact, which would be inadmissible u/s 32, could be admissible u/s 11. If these depositions are excluded, there is practically no evidence as to the actual date of the death of Musammat Dasodri and I think that the learned Subordinate Judge was correct in holding that the plaintiffs had failed to prove their case.

4. I would accordingly dismiss the appeal with costs including in this Court fees on the higher scale.

Banerji, J.

5. I am of the same opinion. The question is whether Musammat Dasodri died at some time subsequent to 4th March 1898 and if it cannot be established that she died subsequently to that date, the claim is clearly time-barred. The oral evidence adduced to prove the date of her death is unreliable though not for the reasons given by the learned Subordinate Judge which are clearly erroneous. Unless, therefore, the statements made in the mutation case, referred to in the judgment of the learned Chief Justice, can be admitted in evidence, the allegation of the plaintiff as to the date of Musammat Dasodri's death must be

held not to have been proved. I agree with the learned Chief Justice that the statements relied on cannot be admitted in evidence. They are the statements of persons who are dead. Statements of such persons can only be admitted under Sections 32 and 33 of the Evidence Act. It is conceded that the statements in question do not come within the purview of these sections and are, therefore, not admissible under those sections but it is contended that they are admissible u/s 11 as being facts which make the existence or nonexistence of a fact in issue highly probable. The making of such a statement is, no doubt, a "fact" which would make the fact in issue highly probable and as such might be admissible in evidence but it must be proved before it can be admitted. The terms of Section 11 are, no doubt, wide but they must be read subject to the other sections of the Act, and, therefore, the fact relied on must be proved in accordance with the provisions of the Act. If that fact is a statement made by a person who is not called or cannot be called, the statement cannot be admitted unless it comes within the purview of subsequent sections of the Act, for example, Sections 32 and 33. That such was the intention of the Legislature is manifest from the elaborate provisions of the Act as to relevancy of evidence. Surely, it cannot be said that the statement of a person who said to another person that he had seen a murder committed can be admitted unless the person who made the statement is called. As I have pointed out above, a statement made by a person who is not produced as a witness is only admissible in the exceptional cases provided for by the Evidence Act and in no other cases. The statements which the plaintiffs ask us to admit are clearly not statements which come within the exceptional provisions of the Act; they are, therefore, not admissible and we must hold that the plaintiffs have failed to prove that their claim is within time. I agree in dismissing the appeal.

6. The appeal is dismissed with costs including fees in this Court on the higher scale.