

(1917) 03 PAT CK 0005
In the Patna High Court

Musammat Janak Kishori Kuer

APPELLANT

Vs

Debi Prasad Singh and Others

RESPONDENT

Date of Decision : 15-03-1917

Acts Referred:

Citation : AIR 1917 Patna 490 : 39 Ind. Cas. 750

Hon'ble Judges : Edward Chamier, C.J; Sharfuddin, J

Bench : Division Bench

Judgement

Edward Chamier, C.J.—The following pedigree shows the relationship between the parties to this suit and other persons whose names will be mentioned in this judgment:

Bissesser Saran Singh, died in 1869-70 | _____
| | | | Shamsheer Deo Narain,
Barhamdeo Udeo Narain, Narain, died on Narain, died on died in 25th January
died on 23rd July 1881, 1883 1902 27th April married to | | 1885,
Musammat | | married to Raj Kuer, | | Musammat who died | | Juhi Kumari,
before June Debi Prasad, Daughter who died 1891, defendant Musammat on
8th June No. 1. JanakKishori 1910. Kuer, | plaintiff. | | Kamesher Narain,
died, while minor and without issue, on 25th June 1885. 2. The appellant's
case is that her father Deo Narain was joint in estate with his brother Barhamdeo
Narain and that on the latter's death on April 27th, 1885, the joint property of
the two brothers became the property of Deo Narain alone and so devolved upon
the plaintiff on his death.

3. It appears that Deo Narain, Barhamdeo Narain and their brothers Shamsheer Narain and Udeo Narain were at one time joint in estate. It is admitted by the appellant that Shamsheer Narain and Udeo Narain separated but she has tried to make out that Deo Narain and Barhamdeo Narain remained joint in estate. The Subordinate Judge has, however, found that all four brothers became separate from each other. The evidence upon which the Subordinate Judge has arrived at this conclusion is very clear and convincing, and Mr. Pugh who has appeared for

the appellant in this Court has admitted that he cannot challenge the finding with any hope of success. It must, therefore, be taken that Deo Narain and Barhamdeo Narain were separate in estate when the latter died on April 27th, 1885, leaving a widow Musammat Juhi and a son Kamesher Narain. The property of Barhamdeo Narain devolved on his son. The latter died on June 25th, 1885, i.e., two months after his father and the property then passed to his mother Musammat Juhi. She died on June 8th, 1910, and as Deo Narain had died on January 25th, 1902, the defendant Debi Prasad as the first cousin of Kamesher Narain is prima facie entitled to the property to the exclusion of the appellant. But the appellant contends that she is entitled to the property under or by virtue of an ekrarnama which was executed by Deo Narain and Musammat Juhi on November 27th, 1886. It appears that upon the death of her husband Barhamdeo Narain Musammat Juhi propounded a Will said to have been executed by the deceased on April 24th, 1885, i.e., one day before his death, whereby Barhamdeo left all his property to his son Kamesher, but directed that Musammat Juhi was to have charge of the same as the guardian of Kamesher and if Kamesher died, she was to take the property absolutely with full power of alienation. Musammat Juhi applied for Probate of the Will, whereupon Deo Narain put in a caveat and also an application for a certificate under Act XXVII of 1860. The District Judge of Patna decided both cases against Musammat Juhi and ordered that a certificate under Act XXVII of 1860 should be issued to Deo Narain. Musammat Juhi appealed to the High Court against the decisions in the two cases and her appeals were pending when the ekrarnama was executed. The ekrarnama recites the course of the litigation between the parties and states that they have settled, their disputes on certain conditions. Condition I provides that Musammat Juhi shall have no claim to the property on the basis of the Will propounded by her. Condition II declares that all the property left by Kamesher Narain shall remain in the possession and enjoyment of his mother Musammat Juhi as a Hindu widow (zanaibewa Hanud) without any right of alienation, and that Deo Narain has abandoned, his right to have his name registered in the Collector's books in respect of the property. Condition III runs as follows:

I, Musammat Juhi, do hereby further declare that after my death the entire estate of Kamesher Narain shall devolve upon Deo Narain and in case he is not alive at my death upon his heirs and representatives. I do further declare that except Deo Narain and his lawful heirs no one else shall be the heir of Kamesher Narain.

4. It was at first contended that this document evidenced a complete surrender of her estate by Musammat Juhi, with the result that Deo Narain became at once the proprietor of the estate and entitled to possession of it, and that the ekrarnama also evidenced a re-grant of the estate by Deo Narain to Musammat Juhi for life that in other words the effect of the document was to give a vested reversion or remainder to Deo Narain. After some argument this position was abandoned. It is quite clear on the authorities that in order that the estate of a presumptive reversioner under the Hindu Law may be accelerated in the way

now suggested, there must be a complete surrender by the widow of her estate. The ekrarnama certainly does not evidence any abandonment of her estate by Musammat Juhi. On the contrary it shows that she is to have possession of the estate as the mother and heir of her son Kamesher. The use of the words "as a Hindu widow" in the second condition is curious, because Musammat Juhi was not entitled to the property as the widow of any person but as the mother of Kamesher Narain. But she was in fact a widow and this may account for the way in which she is described.

5. The main contention advanced by Mr. Pugh was that the ekrarnama evidenced a family settlement. He relied upon the decision of their Lordships of the Privy Council in the case of *Khunni Lal v. Gobind Krishna Narain* 10 Ind. Cas. 477 ; 33 A. 356 ; 15 C.W.N. 545 ; 8 A.L.J. 552 ; 13 C.L.J. 575 ; 13 B L.R. 427 ; 10 M.L.T. 25 ; (1911) 1 M.W.N. 432 ; 21 M.L.J. 645 ; 38 I.A. 87 (P.C.) and similar cases, and contended that the compromise was based on the assumption that there was an antecedent title of some kind in the parties; in other words, that the compromise assumed the correctness of the contention of Deo Narain that he was joint in estate with his brother Barhamdeo Narain and entitled to the estate on the death of Barhamdeo and his son Kamesher by right of survivorship, and that Musammat Juhi in this compromise represented not only her own estate as the mother of Kamesher, but also the estate of the reversionary heirs of Kamesher. In this way it was sought to make the compromise binding upon the defendant Debi Prasad, although he was not a party to it. It has been held in several cases that a decree fairly obtained against a Hindu widow is binding upon the reversionary heirs of her husband on the ground that the widow for the time being represents the inheritance. It has also been held in some cases that a compromise entered into by a Hindu widow is binding on the reversionary heirs of her husband on the ground that she may be taken to have represented the reversioners in the compromise. It appears to me that in the present instance Musammat Juhi cannot be taken to have represented the reversionary heirs of Kamesher and that it was beyond her powers, by means of a compromise or otherwise, to confer upon Deo Narain a vested reversion or remainder in the estate of Kamesher. The position was this.

6. Deo Narain was claiming that he and his brother and the latter's son had been joint in estate and that he was entitled to that estate as the sole survivor of the joint family. While he was putting forward such a claim he certainly cannot be regarded as having represented the reversioners. Musammat Juhi was putting forward a claim on the strength of a Will said to have been executed by her husband, according to which in the events which had happened she had become the absolute owner of the property with full power of alienation. While she was putting forward such a claim she cannot be regarded as having represented the interests of the reversionary heirs, if condition III was intended to confer a vested reversion in the estate upon Deo Narain it was, I think, ultra vires of the parties to the compromise. It is quite clear that the rights of the reversioners were sacrificed by the parties to the ekrarnama. If condition III bears the

construction which the appellant wishes to put upon it, it was an attempt to keep the succession in the line of Deo Narain, whether he survived Musammat Juhi or not. The present case is to my mind clearly distinguishable from the case cited. In that case Ratan Singh and his son Daulat Singh were members of a joint Hindu family. Ratan Singh embraced the Muhammadan faith, thereby according to the Hindu Law forfeiting his share in the joint family property. But the son made no claim on the basis of such a forfeiture and father and son remained joint until the son died in January 1851. The son left a widow and two daughters. A few months later Ratan Singh died leaving a widow Raj Kuer. Disputes then broke out between the widow and daughters of Daulat on the one hand and the widow of Ratan Singh on the other. One widow died in 1857 and the other died in 1858 and in J 1860 the daughters of Daulat and a grandson of Ratan named Khairati Lal entered into a compromise, according to which daughters of Daulat obtained an 8 1/2-annas share and Khairati Lal obtained a 7 1/2-annas share. The question for decision in that case was whether the compromise was binding on the sons of one of the daughters of Daulat. Their case was that they were not bound by the compromise, inasmuch as their mother and aunt being mere life-tenants had no authority in the absence of legal necessity to give 7 1/2-annas share to Khairati Lal. The defendants, who were the transferees from Khairati Lal or his heirs, contended that the compromise was not an alienation by the daughters of Daulat but was a family arrangement for the settlement of disputes. It was found that the compromise was effected bona fide with the object of settling disputes. Their Lordships held that the true character of the transaction was a settlement between the several members of the family of their disputes, each one relinquishing all claim in respect of all property in dispute other than that falling to his share, and recognising the right of the others, as they had previously asserted it, to the portion allotted to them respectively and that it was in this light rather than as conferring a new distinct title on each other that the parties themselves had regarded the arrangement. Their Lordships said that the compromise was based on the assumption that there was an antecedent title of some kind in the parties and that the agreement acknowledged and defined what that title was. It is to be noticed that in that case there was on the one side Khairati Lal who was entitled to the whole property if his contention was correct. On the other side there were three ladies who, it was found, were acting in the best interest of themselves and subsequent holders of the property, in other words, they represented the inheritance of Daulat. In the present case it is impossible to say that Musammat Juhi recognised or admitted the right which had been set up by Deo Narain. Deo Narain had claimed the property by right of survivorship. The compromise, so far from admitting or recognising that right, clearly negated it, for it gave him no more than a right to succeed to the property on the death of Musammat Juhi. On the other hand Musammat Juhi was putting forward a claim not in the interest of herself and the reversioners but in her own interest alone. She was claiming an absolute estate under the Will of her husband. The language used by their Lordships of the Privy Council in the case cited appears to me to have no application whatever to the present case. It is not

a case of one party to the compromise relinquishing his claim in respect of all the property in dispute other than that falling to his share and recognising the right of the opposite party, as he had previously asserted it, to the portion allotted to him. On the contrary there was a distinct attempt to confer upon Deo Narain a right which he had not claimed and to which he was clearly not entitled. In other words, there was a distinct attempt to sacrifice the rights of the reversioners for the benefit of Deo Narain. In my opinion the ekrarnama did not confer upon Deo Narain a vested interest and, therefore, when the succession opened on the death of Musammat Juhi the estate passed to the defendant and not to the plaintiff. I would, therefore, dismiss this appeal with costs.

Sharfuddin, J.

7. I agree.