

(1929) 12 AHC CK 0018
In the Allahabad High Court

Pancham Singh and Another

APPELLANT

Vs

Balak Ram and Others

RESPONDENT

Date of Decision : 10-12-1929

Acts Referred:

Transfer of Property Act, 1882 — Section 41

Citation : AIR 1930 All 374

Hon'ble Judges : Banerji, J

Bench : Division Bench

Judgement

Banerji, J.—This is a plaintiffs' appeal in a suit for possession of certain property.

2. At p. 14 of the paper book will be found the pedigree of the plaintiffs family. The present plaintiffs are relations of one Gulab Singh who died in or about the year 1886. Mt. Kenchan Koer, widow of Gulab Singh, obtained possession of zamindari property and the property now in suit, and it is found by the Courts below that she obtained possession in lieu of maintenance. She transferred some of her property, but as regards the property in suit she, by an application to the revenue Courts, got the name of her cousins entered in the revenue papers. The defendants are transferees from the cousins of Mt. Kenchan Koer.

3. The Court of first instance decreed the plaintiffs' claim. The lower appellate Court dismissed a portion of the claim on the ground that the transferees were protected u/s 41, T.P. Act.

4. The plaintiffs have come up in appeal before us. The learned Judge found that "the person interested" within the meaning of Section 41, was Mt. Kenchan Koer, and further held that on the date of the transfer by her cousins she had the right of possession and she was the only person entitled to consent or withhold consent to possession by others. The learned Judge hold that the conditions of Section 41 were satisfied by the consent which he considered to have been given by Mt. Kenchan Koer and that the defendants were protected u/s 41.

5. We are unable to accept the view of the law which was accepted by the

learned District Judge. In the case of Khwaja Mohammad Khan v. Muhammad Ibrahim [1904] 26 All. 490 a Bench of this Court has stated as follows:

The Privy Council has laid down the principle upon which Section 41, T.P. Act, is founded in the case of Ram Coomar Koondoo v. John and Maria McQueen [1872] Sup. I.A. 40. Their Lordships say as follows; It is a principle of natural equity which must be universally applicable, that where one man allows another to hold himself out as the owner of an estate, and a third person purchases it for value from the apparent owner in the belief that he is the real owner, the man who so allows the other to hold himself out shall not be permitted to recover upon his secret title, unless he can overthrow that of the purchaser by showing either that he had direct notice, or something which amounts to constructive notice of the real title, or that there existed circumstances which ought to have put him upon an inquiry that, if prosecuted, would have led to a discovery of it.

6. Applying the principles so stated the person who is estopped from questioning the transfer made to a bona fide transferee must be deemed to be Mt. Kenchan Koer, as she was the person interested within the meaning of Section 41. The plaintiffs do not claim title under Mt. Kenchan Koer, who had admittedly been in possession of the property in lieu of her maintenance as the Hindu widow of a joint Hindu family.

7. Under these circumstances we are of opinion that the plaintiffs' appeal must succeed. We allow it and restore the decree of the Court of first instance with costs.