

(1888) 05 PRI CK 0001

In the Privy Council

Partab Singh and Others

APPELLANT

Vs

Mussummat Chand Kour and another

RESPONDENT

Date of Decision : 02-05-1888

Acts Referred:

Citation : (1888) 15 IndApp 156

Hon'ble Judges : Watson, Hobhouse, Richard Couch, JJ.

Judgement

Watson, J. 1. In this case the Defendants in the original suit, who bring this appeal, are (1) Mussummat Chand Kour, widow of the late Kalian Singh, and (2) Perak Singh, to whom the first Appellant in 1879 made over by deed of gift the fee of her deceased husband's estate. The Plaintiffs and Respondents are the four nearest agnates of Kahan Singh, and the present suit was instituted by them for the purpose, inter alia, of obtaining a declaration that the widow's gift is inoperative, and cannot affect their reversionary rights. It is admitted that Chand Kour has merely a widow's interest in the estate; and it is also admitted that Perah Singh, in whose favour she executed the deed of gift, is a stranger to the succession. The only point which has been argued, on behalf of the Appellants, is that the suit is barred by certain proceedings in a suit which was begun and concluded, in the Court of the Judicial Assistant Commissioner, before the date of the deed of gift. That action was instituted by two of the Respondents, Partab Singh and Gopal Singh, and their plaint prayed for a declaratory decree, and for an injunction forbidding alienation of the moveable and immoveable property of the deceased, which was then in possession of his widow. The plea in bar can only affect these two Respondents, and cannot exclude the other Respondents from obtaining a declaratory decree in this suit which will have the effect of protecting the reversionary interests of themselves and of their lineal descendants. 2. The proceedings which followed upon the plaint in the suit referred to were these : A defence was lodged for the widow, and on the 7th of October, 1878, the Judicial Assistant Commissioner pronounced this order, which has become final : "As the Plaintiff has not appeared, though waited for up to the rising of the Court, and as the Defendant, who is represented by her agent,

denies the Plaintiff's claim, it is ordered: That the case be struck off under Section 102, Civil Procedure Code." 3. The provisions of sects. 102 and 103 of Act X. of 1877 require therefore to be considered. The dismissal of a suit in terms of Section 102 was plainly not intended to operate in favour of the Defendant as *res judicata*. It imposes, however, when read along with Section 103, a certain disability upon the Plaintiff whose suit has been dismissed. He is thereby precluded from bringing a fresh suit in respect of the same cause of action. Now the cause of action has no relation whatever to the defence which may be set up by the Defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the media upon which the Plaintiff asks the Court to arrive at a conclusion in his favour. 4. The Judge of first instance, the Assistant Commissioner, held that the cause of action set forth in the present plaint is not the same with that disclosed in the plaint of 1878. The Commissioner differed from that view, but it was upheld by two Judges of the Chief Court of the Punjab upon appeal. Their Lordships are of opinion that the decision of the Assistant Commissioner and of the Chief Court is in accordance with the statute. The ground of action in the plaint of 1878 is an alleged intention on the part of the widow to affect the estate to which the Plaintiffs had a reversionary right by selling it, in whole or in part, or by affecting it with mortgages., The cause of action set forth in the present plaint is not mere matter of intention, and it does not, refer to either sale or mortgage. It consists in an allegation that the first Defendant has in point of fact made a *de præsenti* gift of their whole interest to a third party, who is the second Defendant. That of itself is a good cause of action, if the Appellants' right is what they allege. It is a cause of action which did not arise and could not arise until the deed of gift was executed, and its execution followed the conclusion of the proceedings of 1878. 5. It appears to their Lordships that the two grounds of action, even if they had both existed at the time, are different. If there had been a deed of gift in 1878 it might have afforded another and separate ground for granting the remedy which was prayed in that suit; but in point of fact it did not exist; and it is impossible to say that a cause of action, which did not exist at the time when the previous action was dismissed, can be regarded as other than a new cause of action subsequently arising. 6. Under these circumstances their Lordships are of opinion that the judgment appealed from ought to be affirmed, and the appeal dismissed, and they will humbly advise Her Majesty to that effect.