

(1922) 12 AHC CK 0028
In the Allahabad High Court

Ram Bahadur

APPELLANT

Vs

Bahadur Singh and Sri Ram and Others

RESPONDENT

Date of Decision : 19-12-1922

Acts Referred:

Citation : (1923) ILR (All) 277

Hon'ble Judges : Ryves, J;Gokul Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ryves, J.—This appeal raises a very difficult question of law and I have arrived at my decision with some hesitation. The facts are as follows:

One Salig Ram died in 1905, leaving him surviving two daughters only, Musammats Krishna Kuar and Ilaichi Kuar. It is stated that ho had separated in 1891 from Eaghunath and Bal Gobind, his first cousins, who were brothers, and that Eaghunath separated from Bal Gobind in 1895. On the death of Salig Bam in 1905 disputes arose as to the succession of his property. What exactly those disputes were is not established by any evidence on the record, but this much is certain that on the 22nd of September, 1905, about a month sifter the death of Salig Ram, an agreement in writing was entered into between Bal Gobind, Eaghunath and the two daughters of Salig Ram as to the division of the property left by Salig Ram. That document was executed by all four and is in the following terms:

The aforesaid property left by Salig Bam has devolved upon us, the executants, in equal shares by right of inheritance. Besides us there is no-other claimant of the property of the said deceased. Now we, all the four parties, have, with our mutual consent, divided the property left by the said deceased in equal, shares.... All the four parties shall remain in separate possession and shall be the exclusive owners thereof. Bach party may have his own share separately partitioned and one party will have no objection as against the other.

2. This agreement was given effect to and mutation of names was made accordingly, that is to say, Musammat Ilaichi Kuar, Musammat Krishna Kuar, Eaghunath and Bal Gobind each took possession of a separate one-fourth share and dealt with it as their own exclusive property. Thus we find that Eaghunath Prasad sold his share and he is no party to this litigation, nor are his transferees; and on the death of Bal Gobind, in 1906, his three sons, Sri Ram, Babu Bahadur Singh and Ram Charan, defendants Nos. 1--3, obtained mutation of names in respect of the fourth share which Bal Gobind had acquired under the agreement and have been in possession of it ever since. This position of affairs lasted until the 7th of February, 1920, when Musammat Krishna Kuar died without issue. Thereupon a dispute arose in the mutation department between the plaintiff Lala Ram Bahadur, the husband of Musammat Krishna Kuar deceased, her sister Ilaichi Kuar and the three sons of Bal Gobind, namely Sri Ram, Babu Bahadur Singh and Ram Charan, for the entry of their names, respectively, in the place of that of Musammat Krishna Kuar with respect to her one-fourth share. The revenue court directed the entry of each set of claimants over one-third of the property left by Musammat Krishna Kuar, that is to say, it decided that Ram Bahadur was entitled to one-third, Musammat Ilaichi Kuar to one-third and the three sons of Bal Gobind to one-third.

3. This suit was brought by Lala Ram Bahadur to recover the two thirds share which was entered in the names of Musammat Ilaichi Kuar and the defendants Nos. 1--3. He based his claim on the allegation that under the compromise of the 22nd of September, 1905, his wife became absolute owner of one-fourth of the property left by her father Salig Ram, and that it became her stridhan and, on her death without issue, he succeeded to it; he was the next heir and, as such, entitled to the property.

4. Musammat Ilaichi Kuar did not contest the suit, but defendants Nos. 1--3 raised several defences. Their written statement is not very easy to understand. They say:

(1) Under the deed of partition dated the 22nd of September, 1905, the property acquired by Musammats Krishna Kuar and Ilaichi Kuar, as daughters of Salig Ram, cannot constitute their stridhan, nor is the same their self-acquired property. Under the Hindu law they were the owners of the entire property left by Salig Ram. They took a little less, than the share under the Hindu law and gave something to the brothers of their father.

(2) Musammat Krishna Kuar died without leaving any issue. According to the Hindu law her property devolved upon her sister Musammat Ilaichi Kuar. The plaintiff is not the heir to the property in dispute under the Hindu law. His claim should be dismissed.

(3) No Hindu is competent to establish succession contrary to the provisions contained in the Hindu law and legislative enactments, and, according to the document dated the 22nd of September, 1905, plaintiff's succession under Hindu

law has not been established.

(4) The document dated the 22nd of September, 1905, is based upon a clear misconception of the principles of the Hindu law. In reality there was no dispute. Neither Bal Gobind nor Eaghunath Prasad had any right at that time. The plaintiff has misinterpreted the aforesaid document. It has no effect against the succession under the Hindu law.

5. The, trial court dismissed the suit. On appeal, however, the lower appellate court decreed it, holding that the compromise of the 22nd of September, 1905, was a settlement of a family dispute and, as such, was binding upon, the parties. Babu Bahadur Singh alone has appealed, and two main grounds have been strenuously urged on his behalf. Firstly, that the agreement of the 22nd of September, 1905, cannot be regarded as a settlement of a family dispute such as has been upheld on many occasions by the Privy Council, and, secondly, that the defendants, being no parties to the compromise, are entitled to set up their claim as reversioners and that they do not claim as such through their father Bal Gobind, but independently.

6. On the first point, having regard to the evidence on the record it may be that this agreement was not a settlement of a family dispute recognized as such by the Privy Council. It is manifest, on the face of it, that the settlement arrived at in 1905 and given effect to was one wholly unjustified by Hindu law. If Salig Ram was separate from his cousins, then his two daughters were undoubtedly his heirs and were entitled to succeed to his property. If Salig Ram was joint with his two cousins, then they would be entitled to succeed by survivorship and his daughters would be entitled to maintenance only. The position would be further complicated if Raghunath and Bal Gobind were separate from each other. But, whatever was the actual state of facts, the two daughters and Raghunath and Bal Gobind could not possibly be entitled to proprietary rights in a one-fourth share each. However, in the view I take, it is unnecessary to decide this question; and I rely, for the view I have taken, on two recent decisions of the Privy Council, namely, *Kanhai Lal v. Brij Lal* ILR (1918) All. 487 and *Musammat Hardei v. Bhagwan Singh* 24 C.W.N. 105.

7. It seems to me that although defendants Nos. 1-3 (including the appellant) were no parties to the partition of 1905, nevertheless since 1906, on the death of Bal Gobind, their father, who was a party to it, they have been in possession of the share which Bal Gobind acquired under that partition and to which they would not have been otherwise entitled, ever since, that is for over fourteen years. They have taken the place of their father and have enjoyed possession of the property in succession to him, and I, therefore, hold that they are now estopped. It must be noted that as Ilaichi Kuar is still alive, even according to their own written statement, they have no present valid claim under Hindu law to the one-fourth share of Salig Ram's property, and if Raghunath, who is also alive, was also separate from Bal Gobind, may never have a legal claim. In *Kanhai Lal v. Brij Lal* ILR (1918) All. 487 a similar argument was raised, but it was held that as

under the compromise Kanhai Lal had obtained a substantial benefit which he had hitherto enjoyed, he was bound by it and could not now claim as a reversioner, though he was no party to the compromise in that case. Similarly in the case of Musammat Hardei v. Bhagwan Singh 24 C.W.N. 105 their Lordships of the Privy Council held: "Whether this arrangement is binding on the grandsons cannot be determined in this suit, and on that question their Lordships express no opinion, but the plaintiff, at all events, is bound by her own agreement; and in view of this fact, and of the favour shown by courts to family arrangements and the long period of time which has elapsed since the arrangement was made, she cannot now be allowed to repudiate the agreement." It is quite clear that one of the grounds, if not the main ground, for their decision was that the plaintiff, being a party to the agreement, could not be allowed to repudiate it. Here, although the defendants were no parties to the agreement, their father was, and, on his death, they adopted it and obtained possession of the property which had come to their father under the agreement and were in possession of it for over fourteen years, and, even now, they do not repudiate it. They wish not only to hold what they got under that agreement but, at the same time to go behind that agreement and claim as reversioners (vide their written statement). In my opinion they are estopped from so doing. I would dismiss the appeal with costs.

Gokul Prasad, J.

8. I agree.