

(1913) 03 AHC CK 0022
In the Allahabad High Court

Ram Khelawan Rai and Another

APPELLANT

Vs

Meghu Rai and Mata Kunwar and Others

RESPONDENT

Date of Decision : 17-03-1913

Acts Referred:

Citation : (1913) ILR (All) 326

Hon'ble Judges : Tudaball, J; Henry Richards, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Henry Richards, Kt. C.J. and Tudball, J.—This appeal arises out of the following circumstances: The plaintiffs sued alleging that they were the reversioners to a property which had been alienated by way of mortgage by one Musammat Mata Kunwar, the widow of Ram Saran Rai, and mother of one Jagmohan. The claim was that the mortgage made by the Musammat Mata Kunwar should be declared not to be binding upon the plaintiffs as reversioners. There was no allegation in the plaint that the plaintiffs were suing as distant reversioners, the nearer reversioners having done something to prevent them from bringing the suit. No such allegation was necessary, because, as already mentioned, the claim of the plaintiffs was that they were the next reversioners. This contention was based upon the allegation that Jagmohan survived his father Ram Saran Rai. The lower appellate court found that the plaintiffs' allegation that Jagmohan survived Ram Saran Rai was not only false but was supported by fabricated evidence. The learned District Judge gives very cogent reasons for this finding, and in any event we are bound by it in second appeal. The result of this finding and a further finding of the lower appellate court is that even the nearest of the plaintiffs can only succeed to the estate if four males and one female die in his life-time. The learned District Judge dismissed, and we think rightly dismissed, the plaintiffs' suit on these findings. The learned Judge of this Court seeing an allegation in the plaint that there had been collusion between the transferee and the defendants 3 and 4 raised the issue whether or not the defendants 3 and 4

had done something which rendered them unfit to protect the estate and having come to a finding upon this issue in favour of the plaintiffs, decreed the plaintiffs' suit. We doubt very much that the plaintiffs would ever have brought the present suit at all if they had to do so in the capacity of reversioners who had four males and a female in front of them, and certainly suits for a declaration by remote reversioners are not to be encouraged. The learned Judge of this Court seems to have overlooked the fact that there were reversioners nearer than the plaintiffs who were not even parties to the suit at all, and other nearer reversioners were minors. Had the plaintiffs brought the present suit upon the allegation that they were the distant reversioners, and brought the suit as such, we would not be disposed to interfere with the decision of the learned Judge of this Court merely on the ground that there was no specific allegation in the plaint that the nearer reversioners had precluded themselves from bringing the suit; but we think, in the circumstances of the present case and after the finding of the court against the plaintiffs as to their being the next reversioners to the property, that it was not right to read into the plaint an allegation that they were bringing the suit as distant reversioners because the nearer reversioners had either precluded themselves from bringing this suit or had refused to do so. We think that the present appeal ought to be allowed. We accordingly allow the appeal, set aside the decree of this Court and restore the decree of the lower appellate court. The appellant will have his costs of both the hearings in this Court.