
(1927) 04 AHC CK 0011
In the Allahabad High Court

Sita Saran

APPELLANT

Vs

Jagat and Others and Ananto and Others

RESPONDENT

Date of Decision : 03-04-1927

Acts Referred:

Citation : (1927) ILR (All) 815 : 102 Ind. Cas. 296

Hon'ble Judges : Kendall, J;Boys, J

Bench : Division Bench

Judgement

1. This second appeal arises from a suit brought by certain reversioners to the estate of one Sheo Sampat deceased for a declaration that a deed of gift executed by Musammat Khatrani, the widow of Sheo Sampat, in favour of her grandson, Godari, (now deceased) and some mortgage-deeds based upon it, are void and ineffectual against the plaintiff. Other reliefs were also prayed for in the plaint with which we are not now concerned. The following genealogical table will show the relations of the parties concerned:

Ram Gghulam Upadhya _____|_____ | | Madho Sadho |
_____|_____ Sheo Sampat | | | Musammat Khatrani, Jagat Dip
Ram (widow) plaintiff Narain, Niranjan, defendant No. 7 No. 1. plaint- plaintiff |
iff No. 3. | No. 2. | _____ | | |
Sukhnandan= Musammat Sumetra, Musammat Musammat (dead) Umraoti,
Biranjiya, | defendant (widow) Sita Saran No. 8 dead. Tiwari, | defendant
Barhamdeo No. 1 Pande, minor, defendant Godari (dead). No. 9.

2. The facts are sufficiently related in the judgment of the Court below, and they need not be repeated here. It has been found that the property concerned was not joint family property but was the personal property of Sheo Sampat, who was separate from the plaintiffs. It has also been found that the plaintiffs are not the nearest reversioners to Sheo Sampat, because there intervened, at the time when the suit was filed, Musammat Umraoti, a daughter of Sheo Sampat, and her minor son Barhamdeo Pande. The decree given by the lower Appellate Court, which upheld the decision of the trial Court, in favour of the plaintiffs, has been

challenged in second appeal only on the ground that the plaintiffs as remoter reversioners, had no right to sue.

3. The circumstances in which a remoter reversioner may sue for a declaration in the presence of a nearer reversioner have been described in [the well-known decision of their Lordships of the Privy Council in the case of *Rani Anand Kunwar v. Court of Wards* 6 C. 764 : 8 C.L.R. 361 : 8 I.A. 14 : 4 Sar. P.C. 195 : *Rafique and Jackson's* P.C. No. 63 : 4 L.R. 78 : 5 Ind. Jur. 161 : 3 Ind Dec. (N.S.) 495 (P.C.). After remarking that, as a general rule, a suit of this nature must be brought by the presumptive reversionary heirs, their Lordships go on to say: "They are also of opinion that such a suit may be brought by a more distant reversioner, if those nearer in succession are in collusion with the widow, or have precluded themselves from interfering.... The right to sue must, in their Lordships' opinion, be limited. If the nearest reversionary heir refuses, without sufficient cause, to institute proceedings, or if he has precluded himself by his own act or conduct from suing, or has colluded with the widow, or concurred in the act alleged to be wrongful, the next presumable reversioner would be entitled to sue.... In such a case, upon a plaint stating the circumstances under which the more distant reversionary heir claims to sue, the Court must exercise a judicial discretion in determining whether the remote reversioner is entitled to sue, and would probably require the nearer reversioner to be made a party to the suit."

4. The trial Court dealt with the question of the plaintiffs' right to sue very summarily; and the lower Appellate Court, while holding that it had not been proved that the nearer reversioner had colluded with the widow or become precluded from suing, refused to interfere with the decree of the trial Court on the ground that, if the suit were dismissed, the plaintiffs could then institute an exactly similar suit in the name of the minor Barhamdeo as his next friends, and would then be entitled to succeed. It has been urged in appeal that this was not a proper ground for allowing the plaintiffs' suit

5. We may say in the first place that no very determined effort has been made to show that the nearer reversioners had colluded with the widow (Musammat Khatrani) or had become precluded from suing in any of the ways enumerated in the decision of the Privy Council referred to above. The plaintiffs had claimed, in the first place, that Sheo Sampat had been a member of a joint Hindu, family with them and that they were entitled to possession of the property. They had also claimed that, if the Court should find that Sheo Sampat had been separate at the time of his death, they were entitled to the declaration on the ground that they were reversionary heirs according to the pedigree which they then appended. It seems to us to be a matter of importance that, when they filed the plaint, they omitted all mention of Musammat Umraoti and of her minor son Barhamdeo Pande. In other words, the pedigree with the original plaint disclosed the plaintiffs as the nearest reversioners to Sheo Sampat, and it was only after the written statement had been filed by the husband of Musammat Sumetra, who

had executed one of the mortgage deeds impugned in the plaint, and by some other transferees, that the Court ordered the nearer reversioners to be impleaded and the pedigree to be amended. Musammat Umraoti filed a written statement in which she admitted that the plaintiffs and Sheo Sampat were members of one joint Hindu family; that is to say, so far from culling with Musammat Khatrani she supported that part of the plaintiffs' suit; and, as regards the alternative plea that the plaintiffs were reversioners and could avoid the transfer based on the deed of gift executed by the widow, she professed indifference. The plaintiffs are included, however, not only by Musammat Umraoti, whose interest in the estate would be a limited one, but by her minor son, Barhamdeo Pande. There is nothing to show that his interests have been effectively represented at all. The argument that has been pressed on behalf of the plaintiffs respondents is that a decree in favour of the plaintiffs must also be for the benefit of the minor, because the minor is interested to the same extent as the plaintiffs in setting aside the transfers made on the basis of the widow's deed of gift.

6. This argument is a plausible one, and it may be that, if the appeal is allowed, the plaintiffs will then be in a position to file an exactly similar suit as next friends of the minor, Barhamdeo Pande. We are, however, by no means convinced that the interest of the plaintiffs and of the minor are identical. There is no sufficient explanation of the fact that the plaintiffs omitted all mention of Musammat Umraoti and Barhamdeo Pande in their original plaint and that they impliedly, at any rate, claimed themselves to be the nearest reversioners to Sheo Sampat. It is quite inconceivable that they did so either from ignorance or inadvertence. It is, moreover, mentioned in the written statement of Musammat Umraoti that the plaintiffs succeeded in obtaining a deed of relinquishment in their favour from Musammat Khatrani. If the plaintiffs really held such a deed of relinquishment, it is difficult to tell how far it would affect the interests of Barhamdeo Pande. Presumably it would only have the effect of transferring the limited interests of the widow; but, in the absence of evidence, it is, of course, impossible to decide what its effect would be. We have the authority of a Bench of this Court for holding that, where the plaintiffs sue as next reversioners, it is improper to read into the plaint an allegation that they are bringing the suit as distant reversioners, because the nearer reversioners have either precluded themselves from bringing the suit or have refused to do so. See *Meghu Rai v. Ram Khelawan Rai* 19 Ind. Cas. 814 : 11 A.L.J. 382 : 35 A. 326. In a decision of the Privy Council, reported as *Jhandu v. Tarif* 27 Ind. Cas. 892 : 37 A. 45 : 19 C.W.N. 197 : 17 M.L.T. 10 : 21 C.L.J. 26 : 2 L.W. 113 : 17 Bom. L.R. 44 : 28 M.L.J. 453 : (1915) M.W.N. 394 (P.C.) the plaintiff failed in somewhat similar circumstances, because he had not proved that a nearer reversioner was excluded. For the purposes of the present suit it is enough to say that the authority of the leading case quoted above does not support the plaintiffs' title to sue, and that the circumstances disclosed to us do not justify us in going beyond that authority.

7. The result is that we allow the appeal and order that the plaintiffs' suit be dismissed with costs throughout.