

(1929) 07 CAL CK 0019
In the Calcutta High Court

(Sreepati) Bhusan Mondal and Another	APPELLANT
Vs	
Sarbeswar Mondal and Another	RESPONDENT

Date of Decision : 24-07-1929

Acts Referred:

Citation : AIR 1930 Cal 474

Hon'ble Judges : Mukerji, J;Mitter, J

Bench : Full Bench

Judgement

Mitter, J.—This is an appeal by the plaintiffs and it arises out of a suit brought by them for recovery of possession of several plots of land, 19, in number mentioned in the plaint after declaration of their title thereto. The plaintiffs claimed the disputed plots as the reversionary heirs of one Syam Chandra Mondal. There is a genealogical tree attached to the plaint which shows the relationship between Syam Chandra and the present plaintiffs and it has not been questioned before us that the plaintiffs are the reversionary heirs of Syam Chandra. The defendants' case was that plots 1 to 3 and 17 and 19 belonged to Syam Chandra but that their father purchased the same from Syam Chandra on 18th Falgun 1272 B.S. and that since then they had been in possession thereof in their own right. They further said that plots 14, 15 and 16 were their own ancestral property and that Syam Chandra had no interest therein. As regards plot 18, their case was that it was the stridhan property of their sister Nistarini and that they had got it from her. The Court of first instance found in favour of the defendants as regards plots 14, 15, 16 and 18; and as regards the remaining plots, it held that the defendants had made out a case of adverse possession although it disbelieved the story of the purchase of those plots by the defendants' father from Syam Chandra in 1272 B.S. The plaintiffs' suit in respect of all these plots was accordingly dismissed by the trial Court. On appeal that decision has been affirmed by the learned Subordinate Judge. The plaintiffs have thereupon preferred this second appeal.

2. The points taken before us are with reference to plots 1 to 13 and 17 and 19

and plot 18. We shall first deal with plots 1 to 13 and 17 and 19; and plot 18 will be dealt with afterwards separately.

3. It has been contended before us by the learned advocate appearing for the plaintiffs-appellants that the decision of the lower appellate Court on the question of adverse possession by the defendants is wrong as it has not been shown that, at the time of Syam Chandra's death, the defendants' predecessor-in-interest had acquired a right by adverse possession to plots 1 to 13 and 17 and 19. It appears from the genealogical tree appended to the plaint that Ramlal, the son of Syam Chandra, predeceased his father leaving behind him. his widow Nistarini who died in Pous 1327 B.S. and it is argued that, as the present suit was instituted within 12 years of the date of the death of Nistarini the limited owner, it should have been held that the suit was in time and that it should also have been held that the right of Syam Chandra to the plots in question was not extinguished by adverse possession. It appears, however, on the finding of the lower appellate Court that Syam Chandra was not in possession of these lands shortly before his death and that Court also finds on a consideration of the documentary evidence in the case that Ram Narain Mondal, the defendants' father, was in possession of these plots as would appear from the thoka of the year 1277 B.S. in which it is stated that these plots appertain to the June of Syam Chandra, but are in the possession of the defendants' father Ram Narain. The lower appellate Court has rightly approached the question from the point of view, namely as to whether Syam Chandra was in possession of these disputed plots at the time of his death. If Syam Chandra was not in possession of these plots at the time of his death, limitation would begin to run against him from that time and, as he died more than 50 years before the institution of the suit, the defendants have been in possession for a period of upwards of 12 years so as to acquire a title by adverse possession. If time had once begun to run from Syam Chandra's lifetime, no subsequent interposition of a life estate would be of any avail. If any authority is needed for this proposition, reference may be made to the case cited by the learned Subordinate Judge in his judgment, namely, the case of Mohendra Nath Biswas v. Shamsunnessa Khatun [1915] 27 I.C. 954. This was the only point urged on behalf of the appellants as regards plots 1 to 13 and 17 and 19 and we think that the lower appellate Court was right in coming to the conclusion that the reversioners' title to these plots was barred. by the. statute of limitation by adverse possession for more than the statutory period by the defendants' father Ram Narain and the defendants. The result is that the appeal in so far as it relates to these plots must fail and be dismissed.

4. As regards plot 18, the defendants in para. 14 of their written statement aver that Nistarini had got an absolute title to this property. Evidence was led, on behalf of the defendants to prove that Nistarini got this property from Syam Chandra who was her father-in-law. The plaintiffs' witness Jatil who was examined on commission did, as a matter of fact, admit in his examination-in-chief that this property, plot 18, was given to Nistarini by Syam Chandra. It is said also that this was given to her for her maintenance. The lower Courts have

held that Nistarini had got an absolute title to this property, and have dismissed the plaintiffs' suit in respect of this plot. In second appeal before us, it has been strenuously argued on behalf of the appellants that this decision of the Courts below is wrong inasmuch as the grant in favour of Nistarini having been made only for her maintenance, the said grant spent its force when she died and that, after her death, the property would revert to the heirs of Syam Chandra which the plaintiffs claim to be and which claim has been established on the findings of the Court. It appears clear that Nistarini was the widow of the predeceased son of Syam Chandra and that Syam Chandra was not under any legal obligation to maintain Nistarini. This grant, therefore, which was made in favour of Nistarini could not be regarded as a maintenance grant in the technical sense of the term that is, a grant which is given to a person for maintenance who is entitled to claim maintenance under the Hindu law. It is not a case where the grant is evidenced by a document wherein it is expressed that the grant is in lieu of maintenance or for maintenance. The effect of the evidence of defendant 2 Bishnu Chandra and of the plaintiff's witness Jatil is that this property was given to Nistarini and those witnesses proceeded to state that it was given to her for her maintenance. The evidence also shows that, after the grant was made, Nistarini left her father-in-law's place and went to reside at her father's place and lived there with her brothers up to the time of her death which took place in 1327 B.S. The evidence is that the property was given to her and it must be taken that it was given to her absolutely. Where a property is given to a person whether that person is a man or a woman, the grant must be taken to be an absolute grant. If a person says : "I give this property to a particular woman," there is no rule of Hindu law which limits that grant to the lifetime of that particular woman. The matter was considered in the case of *Rollany Kooer v. Luohmee Pershad* [1875] 24 W.R. 395, which was decided in 1875 by Ramesh Chunder Mitter, J., and the learned Judge pointed out that:

Adopting the rule of construction above quoted, we must hold that the gift in question was an absolute gift unless it can be shown that by the Hindu law gift to a female means a limited gift or carries" with it the effect of erecting an estate exactly similar to the "widow's estate" under the law of inheritance. I am not aware of any such provisions in the Hindu law nor have we been referred to any authority in support of it.

5. This passage is quoted and approved by their Lordships of the Judicial Committee in the case of *Surajmani v. Babinath Ojha* [1908] 30 All. 84. We are not called upon here, it is to be observed, to construe any grant on paper or to construe a particular grant the terms of which are known to us. The effect of the evidence, as we have already stated, is that this gift was made to Nistarini. This was a gift of a small portion of the property which belonged to Syam Chandra and was a gift to the widow of his predeceased son of the same kind as, the evidence shows, as the gift to his daughter Sarbeswari. The evidence discloses that Sarbaswari parted with the property which she got by way of gift in favour of her son-in-law and that there was subsequently a sale thereof by this son-in-

law to another man. It is argued on behalf of the respondents that the effect of the evidence of the witnesses is that both these gifts namely, the gift to Nistarini and the gift to Sarbeswari stood on the same footing. There is considerable force in this argument. The learned advocate for the respondents has attempted to draw a distinction with regard to maintenance grants, that is, grants which are made in favour of persons who are entitled under the Hindu law to claim maintenance. But it has already been stated that Nistarini was not such a person. The gift to her must be taken to stand on the same footing as a gift to a stranger whether male or female.

6. Our attention has been drawn to several cases by the learned advocate for the appellants to the effect that, in construing the wills of Hindus, the ordinary notions of Hindus are to be taken into consideration and it is said that there is a general disposition amongst Hindus not to make a bequest of an absolute interest in favour of a female, the tendency being to retain the property in the family of the person bequeathing the property. This consideration, however, does not apply to the present case, for we find that Syam Chandra had no son at the time of his death. There was his daughter Sarbeswari and there was this Nistarini his predeceased son's widow. In these circumstances, the consideration which will apply to a case where there is either a son or an adopted son in the family will not apply to the present case. After giving our best consideration to the evidence of the two witnesses, namely the plaintiffs' witnesses Jatil and defendant 2 Bishnu Chandra, we think that the effect of that evidence is that this property plot 18 was given to Nistarini absolutely. These witnesses state that because she wanted to be maintained, therefore, Syam Chandra gave this property to her. It is a very different thing from saying that this was a gift to her in lieu of maintenance. We think, therefore, that the decisions of the Courts below are right with regard to this property plot 18. The result is that the appeal fails and must be dismissed with costs.

Mukerji, J.

7. I agree.