

(1908) 02 AHC CK 0011
In the Allahabad High Court

Sundar Deo

APPELLANT

Vs

Bhagwan Das and Others

RESPONDENT

Date of Decision : 07-02-1908

Acts Referred:

Citation : (1908) ILR (All) 165

Hon'ble Judges : George Knox, J;Aikman, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

George Knox and Aikman, JJ.—The appellant in this second appeal was plaintiff in the Court of first instance. According to the plaint his grandfather left the plaintiff at the time of his death a minor and not fit to manage his affairs, and therefore he appointed Babu Kishan Dat an agent and made over all the jewelry and property to him in trust for the plaintiff. The plaintiff attained majority, but allowed the defendant to continue in possession of the aforesaid property on his behalf. He subsequently found out that a considerable portion of the property had been pawned by Kishan Dat through Lachhmi Nandan, another of the respondents and brother-in-law of Kishan Dat, to the other three respondents. Kishan Dat and Lachhmi Nandan have been prosecuted and convicted of embezzlement with regard to the said property. The ornaments had during the criminal trial been deposited in the Criminal Court. This suit was brought under the direction of that Court to declare the plaintiff's right to possession of them. The Court of first instance gave the plaintiff a declaration that the plaintiff was entitled to redeem the ornaments in dispute, with one exception, upon payment of the money which might be still due in respect of the ornaments pawned by Kishan Dat through Lachhmi Nandan, and that Kishan Dat and Lachhmi Nandan were liable to the plaintiff for such amount as he might pay. On appeal the learned District Judge confirmed the decree of the first Court. He found that Kishan Dat's possession over the property was not acquired by any offence or fraud and that the pawnees acted in good faith. He applied the law as contained

in Section 178 of Act No. IX of 1872. The plaintiff comes here in second appeal and contends that Kishan Dat was not in possession of the jewelry pawned within the meaning of Section 178 of Act No. IX of 1872 and that neither Kishan Dat nor Lachhmi Nandan had any authority to pawn the jewelry. The case has been very ably argued by the learned advocate for the appellant and our attention has been called to several rulings. None of these is exactly on all fours with the circumstances of the present case, and there is no ruling that we can find by this Court. The section is undoubtedly a difficult) one to construe, especially when taken in connection with the language of Section 179 of the same Act. Having regard to the findings by the lower appellate Court we think that the case does fall within the provisions of Section 178 and that the pawnees are protected by the provisions of that section. We dismiss the appeal with costs.