
(1922) 11 AHC CK 0059
In the Allahabad High Court

Suraj Mal and Another

APPELLANT

Vs

Nathwa and Others and Amin Kunwar and Another

RESPONDENT

Date of Decision : 28-11-1922

Acts Referred:

Citation : AIR 1923 All 161 : 76 Ind. Cas. 983

Hon'ble Judges : Stuart, J; Ryves, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The facts of this case are somewhat unusual and our decision is based on the facts as found by the lower Appellate Court.

2. It appears that one Nathwa, a separated Hindu, possessing ample means, died in November, 1919.

3. The suit was brought by four persons, who claimed to be the next reversioners of Nathwa, and it was filed on the 6th of January 1920. The plaint, after reciting that Nathwa died childless two months before, stated that he left surviving him two widows, Musammat Amin Kunwar and Musammat Hardei, who were entitled to a life-estate in the property and that the plaintiffs were the next reversioners. The plaint goes on to say that on the 1st of March 1916, Musammat Amin Kunwar persuaded Nathwa to execute a fictitious deed of mortgage in favour of Lakhi and Suraj Mal, her two nephews, defendants Nos. 1 and 2; that this bond is calculated to prejudice the rights of the plaintiffs if it is allowed to subsist. Musammat Amin Kunwar was in collusion with defendants Nos. 1 and 2, and Musammat Hardei refused to join as a plaintiff and so was made a defendant. The prayer was "that it may be declared that the bond dated the 1st of March, 1916, executed in favour of Lakhi and Suraj Mal, is null and void and ineffectual as against the plaintiffs and the property hypothecated." Musammat Hardei did not appear and has taken no part in the litigation. Lakhi and Suraj Mal. in their written statement contested the suit on the ground (1) that the plaintiffs were

not reversioners and (2) that the bond had been lawfully executed for a real debt and that they had already instituted a suit on the 6th of January, 1920 (the very day on which the plaintiffs instituted this suit), to recover the money due to them on the mortgage-bond. They denied that Musammat Hardei was a widow of Nathwa Musammat Amin Kunwar put in a similar defence denying that she had instigated Nathwa to execute the mortgage. She also denied that Musammat Hardei was a widow of Nathwa.

4. The Courts below have found, and the finding is conclusive in second appeal, that Nathwa was a separated Hindu possessed of ample means and that the plaintiffs are the next reversioners. They also found that Lakhi and Suraj Mal, the defendants Nos. 1 and 2, were near relations of Musammat Amin Kunwar and were living in great poverty in another village. As evidence of this it was found that in order to satisfy a petty debt they had to give up a small occupancy holding which they had, and, in execution of a decree for about Rs. too had to sell their home. Musammat Am in Kunwar had brought them to live with her and had persuaded Nathwa to execute this document in their favour.

5. The document was executed for a consideration of Rs. 4,000 of which Rs. 1,500 was said to be due on a previous mortgage made by Nathwa in favour of Lakhi and Suraj Mal. The deed further recited that the balance of the money was required to construct a well, purchase bullocks and buffaloes, and to meet the expenses of a karao marriage. In the words of the Trial Court: "All necessities known to ordinary laymen were pressed into service." The Courts below found that Nathwa was in no need of money as he was carrying on a successful banking business and was possessed of ample zamindari property, that he was 60 years of age and already had two wives; so that there was no foundation for the allegation that he wished to contract a third karao marriage. Having found that Nathwa had no occasion whatsoever to borrow money, it was found that the defendants could not possibly have advanced any money at all to Nathwa on the occasion of this bond or previously. In fact they found that Musammat Amin Kunwar had persuaded her husband to execute this fictitious bond in order to benefit her nephews. They also found that Musammat Amin Kunwar was acting in collusion with Lakhi and Suraj Mal, and this fact was corroborated up to the hilt by the circumstance that, on their suit for sale on the mortgage, she had confessed judgment and a decree had been passed against her. On these findings the plaintiff's suit was decreed.

6. Lakhi and Suraj Mal come here in second appeal and urge that Nathwa being a separated Hindu without children was entitled to do whatsoever he pleased with his property and that the plaintiffs are not entitled to sue during the lifetime of the widows, and that, in any case, they can only get the property subject to the encumbrance created by Nathwa. It is no doubt perfectly correct to say that Nathwa could have made a valid gift in favour of Lakhi and Suraj Mal, if he had so wished, and if he had done so and put them in possession of the property during his life-time, the gift could not have been contested by the plaintiffs.

Similarly he might have made a will leaving property to them to take effect after his death; but he did not do anything of the kind.

7. With regard to the second ground, it is enough to say that Musammat Amin Kunwar by her conduct in colluding with Lakhi and Suraj Mal and Musammat Hardei, if she is a widow of Nathwa (a point which has not been decided in this case as she did not appear), has, by her conduct in refusing to join in the suit, opened the way for the plaintiffs to bring this suit, having regard to a long course of rulings and decisions of the Privy Council of which it is only necessary to note *Rani Anand Kunwar v Court of Wards* 6 C. 764 (P.C.); 8 C.L.R. 381 : 8 I.A. 144 *Shome R.* 78 : 4 S P.C.J. 195 : 5 Ind. Jur 161 : *Rafique and Jackson* C. No. 63 : 3 Ind. Dec. (N.S.) 495.

8. On the third point it is necessary to observe that this suit was brought with the object of establishing the real nature of the transaction evidenced by the deed of the 1st of March 1916 That document on the face of it, created a mortgage On the property. The widows as representing the estate could have sued to set it aside, but, as shown above they deliberately made it impossible for them to do so. In the circumstances, we do not see why the reversioners should not be allowed to bring this suit now when the evidence is fresh so as to enable the Court to decide exactly what was done. It would be, it seems to us, inequitable to hold that they must wait until the widows are both dead, an event which may not happen for many years before they can bring their suit. Whether the decree which they have obtained will be of any practical use to them is a matter upon which we are not called upon to give an opinion, much less a decision.

9. In our opinion the appeal fails. It is dismissed with costs.