

(1938) 01 CAL CK 0038
In the Calcutta High Court

Uchmatan Bibi and Others

APPELLANT

Vs

Rajendra Nath Sanyal and Others

RESPONDENT

Date of Decision : 31-01-1938

Acts Referred:

Citation : AIR 1938 Cal 689

Hon'ble Judges : M.C. Ghose, J

Bench : Division Bench

Judgement

M.C. Ghose, J.—This is an appeal by the defendants in a suit for declaration of title and recovery of khas possession of the lands in suit consisting of two gardens. Upon "hearing the learned advocates on both sides, it appears that the lands in suit belonged to one Ramdoyal who held the same on a rental of Rs. 3 per annum. He died in April 1914 leaving two widows Atarmoni and Saroshi Bala. Atarmoni made a deed of relinquishment of her share to the younger widow Saroshi Bala who however died in 1916 and thereby Atarmoni again possessed her husband's estate as the surviving widow. While she was possessing the lands one of the landlords under whom she held another jama instituted a suit and obtained a decree. The decree was transferred to another person who executed it and attached the lands in suit. The attachment was made on 21st June 1919. Within a month thereafter the widow Atarmoni transferred these lands on 30th July 1919 to Jugalmohini, the mother of the two reversioners, Pachcouri and Satcowri. Later, on 19th May 1920, the defendants purchased the lands from the said Jugalmohini. The sale in execution was held on 1st September 1919 and the plaintiffs were the auction-purchasers. The sale was made final on 8th December 1919 and the plaintiffs took delivery of possession on 30th May 1920. The suit was instituted on 9th October 1931.

2. The first question in appeal is whether the plaintiffs having bought in auction the lands against Atarmoni purchased the whole 16 annas interest or only 8 annas interest of Atarmoni. The point arises in this way. It is urged that when Atarmoni transferred her 8 annas interest to Saroshi Bala, she thereby

relinquished her right of survivorship to that share and so when Saroshi Bala died, Atarmoni inherited the 8 annas interest of Saroshi Bala, but the 8 annas which Atarmoni transferred to Saroshi Bala would go immediately to the reversioners, viz. Pachcouri and Satcowri. The trial Court accepted this view and gave the plaintiffs a decree as to 8 annas share. The learned Subordinate Judge has rejected the view and held that Atarmoni possessed the whole 16 annas share on the death of Saroshi Bala. Under Hindu law, when there are two or more widows succeeding as co-sharers to the estate of their deceased husband, they take as joint tenants with rights of survivorship and equal beneficial enjoyment. The right of survivorship may be relinquished by agreement between the widows. It is urged in this case that by the Nadabi deed, Atarmoni relinquished her right of survivorship. Portions of the document were read in Court. They only show that Atarmoni in transferring her share to Saroshi Bala asserted that neither she nor her successor would claim back that share. That is not equivalent to say that she relinquished the right of survivorship. As a matter of fact, Atarmoni was the elder widow and Saroshi Bala was the younger widow and in ordinary course Saroshi Bala would survive Atarmoni. But it so happened that Saroshi died soon after the Nadabi deed was executed and Atarmoni thereby became the sole surviving widow possessing the whole estate of the husband.

3. The next question urged is that the suit fails on the ground of limitation. This ground has been rejected by both the Courts below. Upon the facts, it appears that plaintiffs' suit is within 12 years of the date of their auction-purchase, and therefore they are within time. The defendants actually purchased on 19th May 1920, namely some time after the auction-purchase by the plaintiffs. By that purchase of 1920 they cannot take away the plaintiffs' right. It is urged that the defendants purchased from Jugalmohini who had purchased on 30th July 1919 and as her successor they can claim to add the time during which she was in possession to which the finding of the Court is that the sale by Atarmoni to Jugalmohini on 30th July 1919 was void inasmuch as the properties had been attached before the date of sale. The Courts found that when Atarmoni found that the property was going to be sold in execution of a rent decree, she to avoid the Court sale made a fraudulent transfer in favour of Jugalmohini, the widowed mother of the reversioners. It was urged by the learned advocate that the Courts below committed an error in throwing the onus on the point of limitation upon the defendants. What the Court of Appeal below really meant was that the plaintiffs having come within 12 years of their auction-purchase, they were within time and the defendants' deed showing that they had purchased after the auction-purchase of the plaintiffs they could not resist the plaintiffs' suit and if they wanted to resist it by showing previous possession, the onus was upon them. I do not think, in the circumstances of the case, the observation of the Court below was wrong. The appeal is dismissed with costs.