(1950) 20 AWR 662

Allahabad High Court (Lucknow Bench)

Case No: Second Civil Appeal No. 272 of 1946

Jagat Narain and Others		APPELLANT
	Vs	
Radhey Shiam and Others		RESPONDENT

Date of Decision: Aug. 8, 1950

Acts Referred:
Limitation Act, 1908 â€" Section 28

Citation: (1950) 20 AWR 662

Hon'ble Judges: Kidwai, J

Bench: Single Bench

Advocate: H.D. Srivastava, for the Appellant; M.M. Lal, for the Respondent

Judgement

Kidwai, J.
The following pedigree will help to elucidate the facts of this case:

2. Kesho Ram, who owned the property in suit, died in 1906 and mutation of names was effected in favour of.

1. The two sons of Ram Udit, Ram Milan and Shyam Milan,

2. Govind Saran

3. Jadubans

4. Kundan

5. Sarjudei

3. After this Shrimati Sarju Dei obtained possession over 1/5th share of the property and remained in possession till her death in 1942. Possession

was then obtained by her daughter''s sons, Radhey Shyam and Bhawani Baksh.

4. In 1945 two actions were committed in the court of the Munsif of Utrenala(sic) (district Gonda) for recovery of possession of the property by

persons claiming to be the reversioners of Kishore, husband of Sarju Dei. The first suit was No. 98 of 1945 and was instituted by Ram Kirpal. Raj

Kumar, Ram Dhiraj, Ram Charan and Suraj Prasad, who claimed one-fourth of the property as the descendants of one of the brothers of Kishore.

They impleaded Radhey Shyam and Bhawani Baksh as well as the other surviving descendants of Kesho Ram as Defendants. The second suit No.

177 of 1945 was instituted by Jagat Narain. Radhika, Ram Milan and Ram Achal who claimed 3/4th of the property and impleaded Radhey

Shyam, Bhawani Baksh and the Plaintiffs of suit No. 88 as Defendants. Both the suits were consolidated and disposed of by one judgment but

separate decrees were prepared.

5. In both the suits the Plaintiffs alleged

(1) That Kishore died after his father and the property was mutated in favour of Sarju Dei since Kishore died during the pendency of mutation

proceedings and was succeeded by Sarju Dei.

(2) That, in the family of Kesho Ram, daughters and daughters'' sons are excluded from inheritance and consequently, on the death of Sarju Dei,

the two sets of Plaintiffs became entitled to succeed to the extent of the shares specified by them in their plaints as the reversions of Kishore.

6. The defence was that:

(1) Kishore died before his ''father and consequently Sarju Dei obtained possession without any legal right, and

(2) Sarju Dei perfected her title by adverse possession for over 12 years.

7. Other pleas were also taken but they are no longer material. The learned Munsif held:

(1) That Kishore died before his father;

(2) That Sarju Dei was in possession without legal right and perfected her title by adverse possession.

(3) That, in the family of Kesho Ram, there exists a custom of the exclusion of daughters and their sons but this is immaterial because that custom

does not apply to the property of Sarju Dei

(4) That the Plaintiffs of both the suits are reversioners of Kishore.

8. On the above findings the Munsif dismissed the suit.

9. Both sets of Plaintiffs appealed. Appeal No. 160 of 1945 was tiled by the Plaintiffs in suit No. 177 of 1945 and all the parties to that suit were

impleaded. Appeal No 151 of 1945 was filed by the Plaintiffs in suit No. 98 of 1945 and only Radhey Shyam and Bhawani Baksh were

impleaded as Respondents the remaining Defendants being dropped from the array of parties. Both the appeals were disposed of by one judgment

but again separate decrees dismissing each of the appeals were prepared.

10. Both sets of Plaintiffs have come up in second appeal Appeal No. 272 of 1946 arises out of First Appeal No. 160 of 1945 and appeal No.

273 of 1946 arises out of First appeal No. 151 of 1945. The array of parties is the same as in the court of appeal and this has given rise to two

preliminary objections one in second appeal No. 273 of 1946 and the other in Second Appeal No. 272.

11. It was contended by the Respondents" learned Advocate that the array of parties in appeal No. 273 was not complete and so the appeal was

incompetent. This preliminary objection must be over ruled. As has already been stated the Plaintiffs in the suit out of which that appeal arises

claimed only their own share of the property as reversioners. They no doubt impleaded the other reversioners but they claimed no relief against

them and, when the suit was dismissed and they appealed, they claimed no relief in the appeal against them nor did they implead them. The

Defendants other than Radhey Shyam and Bhawani Baksh were, therefore, not necessary parties and failure to implead them does not make the

appeal incompetent.

12. The preliminary objection with regard to Second Appeal No. 272 was that the other appeal being incompetent, it must be dismissed and

consequently the decision in the suit out of which that appeal arose would be final and would be res-judicata. Since I have held that Second

Appeal No. 273 is not incompetent no question of res-judicata arises and this objection also fails.

13. I now come to the merits of the case. The first contention of Appellants'' learned Advocate was that Sarju Dei, being a widow in possession of

family, property must be deemed to have prescribed only for a widow''s estate. If this argument were accepted then Sarju Dei would prescribe

only for an estate terminable with her life and, since there was no adverse possession with regard to the remainder or reversion on the death of

Sarju Dei, the property would revert to the original owners. In this case, since the finding of fact is that Kishore died before his father, he was

never the owner of the property in suit, and there could be no reversion to him. It would thus not become his property and would not be heritable

by his reversioners and it is only as his reversioners that the Plaintiffs have, made a claim to the properties in this suit. When this consequence of his

argument was pointed out to the Appellants'' learned Advocate, he changed his ground and claimed the property as having become, by reason of

Sarju Dei''s adverse possession part of her husband''s estate.

14. In Musammat Lachhan Kunwar Anant Singh L.R. 22 IndAp 25, Rupan Singh v. Dah Koer L.R. 29 IndAp 132 it has been laid down by their

Lordships of the privy council that if a widow is in possession of the property to which she is not entitled for over 12 years, the rights of the heirs of

the decesased are barred and the property becomes her property.

15. In Lajwanti v. Safa Chand 51 I.A. P. 171 there was an elucidation, or it, might be called a modification, of this view and it was held that the

former owner''s right ceased u/s 28 of the Indian Limitation Act'' but that if the widow ''''held as a widow'''' he made the property good to her

husband''s estate and it descended to her husband''s heir.

16. After the death of a Hindu his widow continues in possession of his estate because she is, in theory, deemed to be a part of her husband''s self

and her husband theoretically survives so long as she is alive. At the same time she possesses an entity of her own able to own property for herself-

her stridhan-which has nothing to do with her husband''s property. Thus she has two entities: one her own self and the other that as the surviving

half of her husband when, therefore, she acquires property by adverse possession the question that arises is whether she holds it for the benefit of

her own estate as a part of her stridhan or whether she acquired it in the capacity of her husband''s widow and thus made it good to her husband''s

estate.

17. It was explained in Raj Bahadur Singh v. Kandhaiya Bukhsh singh O.W. No Page 350 that it was only if the widow claimed to hold the

property as her husband''s widow that she made it goods her husband''s estate; otherwise she became its owner as stridhan holder. Similarly in

Gaya Din v. Badri Singh 1943 A.W.R. (H.C.) 5 and it Chandrabali Pathak Pandit v. Bhagwan Prasad Pande 1944 O.W.N. (H.C.) 264 it was

laid down that ""if there.