(1879) 07 AHC CK 0001
Allahabad High Court
Case No: None

Kamal Singh		APPELLANT
	Vs	
Batul Fatima		RESPONDENT

Date of Decision: July 25, 1879
Citation: (1880) ILR (All) 460
Hon'ble Judges: Spankie, J; Oldfield, J
Bench: Division Bench

Judgement

Spankie, J.

The property in suit was recorded in the name of Kesri Singh, who fell into arrears in 1838 to the amount of Rs. 108. In 1839, Ratan Singh and Dirgpal Singh bought the rights and interests of Kesri Singh, and in 1840 they paid up the arrears of the entire share of four biswas. It is now alleged that Bal Singh, a brother of Kesri Singh, was also the owner of half the land, and the plaintiff relies upon an entry in the settlement record of 1840, which it is contended not only amounts to a recognition of Bal Singh''s title by Ratan Singh and Dirgpal Singh, but shows that they continued to hold Bal Singh''s share in trust, and plaintiff now seeks to pay the share of arrears due by Bal Singh and to take over the share. We are far from satisfied that the acknowledgment can be regarded as evidence of a trust as between Bal Singh and the original purchasers of Kesri Singh''s rights. The entry is to the effect that a petition had been presented by Bal Singh claiming to be the owner of half of the four biswas in possession of Ratan Singh and Dirgpal Singh, and that the latter are willing to allow his share, when he pays the arrears due on it. We doubt whether these words are sufficient to raise a valid trust such as that which the plaintiff is endeavouring to set up. There is no undertaking on the part of Ratan Singh and Dirgpal Singh that they would continue to hold Bal Singh''s share in trust for him and his heirs, over any extent of time, until some one of them was able to recover the land. In effect they did not do more than express their willingness, if Bal Singh chose to pay up his arrears, to give him up the land. Bal Singh might have availed himself of this opportunity, but he never did. There does not appear to have been any promise to give up the land at any future time after long years of enjoyment of it to any other person than Bal Singh. If there was any agreement at all, it was a present one between the parties, but beyond the entry already referred to there is no sufficient evidence of any agreement, and Ratan Singh and Dirgpal Singh continued to be recorded as the owners of the entire four biswas. They were not the first purchasers of Kesri Singh''s rights, which had been bought previously by one Pitambar Singh, and had been sold by him to Ratan Singh and Dirgpal Singh on the 7th June 1839, and it was probably owing to this circumstance, and not caring to litigate the point whether Pitambar Singh had bought four or two biswas, when ho purchased Kesri Singh''s rights, they, who had paid up the arrears due to Government on the entire share, which was recorded in the name of Kesri Singh alone, were willing to release two biswas to Bal Singh, if he chose to discharge the arrears that would be payable by him. Beyond what has been stated there is nothing to show that the transaction had any of the characteristics of a trust. Pitambar Singh was put in possession of the share; Ratan Singh and Dirgpal Singh purchased it from him, and had to pay Rs. 108, Government arrears, on account of it, and certainly obtained possession of the four biswas as Kesri Singh''s. They continued to hold them as owners, being recorded as such in the settlement record, until Dirgpal Singh died, and subsequently Ratan Singh and his brother Mardan Singh sold the four biswas, on the 20th November 1843, to the defendant''s husband, in whose possession and that of his family the property remained for twenty-nine years before the plaintiff made any claim to it in 1874, to the Settlement Officer, who, in October 1874, rejected his claim. The plaintiff then allowed two years and a half to elapse before he brought the present suit. The lower Appellate Court, after reviewing the old Regulations which related to transfers by the Collector of a defaulting share or patti of an estate, distinguishes the alleged transfer in this case from those made by authority, and if we understand him aright, he appears to regard it as one made by agreement or mutual understanding between Bal Singh and Ratan Singh and Dirgpal Singh, and accepting that view, he looks upon their possession as that of trustees or mortgagees. But as already observed, there is no other evidence of a mutual understanding or agreement than the entry in the settlement record, by which, as we are advised at present, no trust was raised. All the circumstances point to a different conclusion from that at which the Judge has arrived. There was a sale in execution of a decree, and very soon after a sale by the auction-purchaser to Ratan Singh and Dirgapal Singh, and immediately, or very soon afterwards, the latter obtained full possession of the four biswas and paid up all the arrears due upon the share, and at this time the lower Appellate Court itself admits " that there is no record to show that Bal Singh''s rights and interests were recognised as then existing, and that an assignment of them was made to Ratan Singh and Dirgpal Singh by authority," though, strange to say, he adds that the presumption is that they were so transferred as in similar cases of default of land revenue. The presumption would appear to be the other way, assuming it to be the fact, as stated by the Judge, that Bal Singh''s rights were not even recognised by the revenue authorities. It is also inconsistent with the other view of the case which he immediately adopts, that by private agreement or mutual understanding Ratan Singh and Dirgpal Singh held as mortgagees or trustees. Assuming however that the Judge is right in this view, we are of opinion that he was justified in holding that the claim was barred by limitation, for there is nothing whatever to prove, nor is it alleged, that the purchasers from Ratan Singh and Mardan Singh, in November 1843, took the property with any notice of the trust, and it is certain that the purchasers in 1843 bought for a valuable consideration and have been holding ostensibly as proprietors from that date. Under these circumstances, limitation would run from the date of that conveyance. So that this suit fails altogether, whether or not we admit a trust in 1839-40, and we therefore dismiss the appeal and affirm the judgment with costs.