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(1925) 02 AHC CK 0010

Allahabad High Court

Case No: None

Ramrup Pande and Others		APPELLANT
	Vs	
Sarju Pande and Others		RESPONDENT

Date of Decision: Feb. 5, 1925

Citation: AIR 1925 All 786 : 87 Ind. Cas. 668

Hon'ble Judges: Mukerji, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Mukerji, J.
These two Appeals Nos. 986 and 987 of 1923 arise from similar circumstances, the only difference being that in one case the property in dispute is zamindari property and in the other case it is a tenancy.

2. One Kanhaiya had six sons, one of these being Ramjas. The respondents in these appeals, who were the plaintiffs in the Court of first instance, are sons of Ramjas. They are suing to recover a sixth share in the property left by their grandfather Kanhaiya. It has been found as a matter of fact, that Kanhaiya died separate from his sons and grandsons. The question raised is whether Kanhaiya''s property would go only to his sons or also to his grandsons by a deceased son.

3. So far as zamindari property is concerned it is conceded that the defendants-appellants have no case. The property is bound to be divided into six shares and one share must go to the sons of Kanhaiya''s deceased son Ramjas.

4. So far as the tenancy is concerned it is contended that the nearer male descendant must exclude the more remote ones. The law on the point is laid down in Section 22 of the Tenancy Act, 1901, and is as follows:

When...a tenant dies, his interest in the holding shall devolve as follows:

(a) On his male lineal descendants in the mala line of descent.

5. According to the language of the law the tenancy is to go to the male lineal descendants in the male line of descent. The word "descendants" would imply that there may be more than one descendant and they also may be in different degrees. No particular principle is involved in the rule which may indicate that the remote descendants were to be excluded by the nearer ones. In the circumstances the letter of the law and the spirit of the law are one and the same and the nephews and the sons all must share.

6. The result is that the appeals fail and they are hereby dismissed with costs which will include Counsel fees in this Court on the higher scale.