
(1879) 08 AHC CK 0006

Allahabad High Court

Case No: None

Asa Ram

APPELLANT

Vs

Durga Prasad

RESPONDENT

Date of Decision: Aug. 25, 1879

Citation: (1880) ILR (All) 366

Hon'ble Judges: Straight, J; Oldfield, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Oldfield, J.

The plaintiff claims to obtain possession of the property which is the subject of this suit as having belonged to one Kannu Lal, whom he represents by purchase of his interests in execution of a decree. The particular portion to which this appeal has reference is the half of a shop called in the proceedings the western shop. This is claimed by the appellant Durga Prasad in his own right. It appears that he and his father Balkishen were transported for life thirty-seven years ago, and the former has returned under a pardon granted at the time of the Delhi Darbar; and he avers that when he and his father left the country, they made over the property to Bhawani Prasad and Kannu Lal, his adopted son, in trust, and they collected and gave the rents to their wives, and the wife of Durga Prasad received them till her death, nine or ten years ago. It is admitted that the property belonged to Durga Prasad and his father up to the time of transportation. The lower Appellate Court has found, however, that there is no proof of any express trust being made of it to Bhawani Prasad and Kannu Lal when they left, or of the appellant's wife receiving the rents, and that she died seventeen or eighteen years ago, and that Bhawani Prasad and Kannu Lal have held the property adversely to the appellant, and have acquired a title by length of possession.

2. This finding cannot be sustained. If the facts be as found by the lower Appellate Court that Bhawani Prasad and Kannu Lal never made over the rents to the wives of

Durga Prasad or his father, and themselves took possession of the property on transportation of the owners, although there may have been no actual and express trust, yet there are circumstances which the lower Appellate Court has overlooked, which amount to fraudulent conduct on their part, such as would by equitable construction convert their holding into that of trustees. The parties were nearly related to each other, living in what may be assumed to be terms of close intimacy and mutual confidence, and the appropriation of the absent relations' property could only have been carried out by a shameful abuse of the friendly and confidential terms on which they had lived, and by taking advantage of the enforced absence of the owners, who had no means of asserting their right. But the Subordinate Judge has failed to notice some evidence which shows that the wives of Durga Prasad and his father were in possession until their deaths, and that Bhawani Prasad and Kannu Lal never disputed their title, nor that of the appellant, and only asserted their right when they believed appellant to have died in transportation. This appears by proceedings taken in 1867 by Bhawani Prasad, when he claimed the property, admitting that Durga Prasad's wife had succeeded Durga Prasad, and claiming to succeed her at her death, and it is clear from a perusal of the judgment in that case that the claim proceeded on an assumption that Durga Prasad was dead. Thus Bhawani Prasad and Kannu Lal appear never to have asserted or intended to assert any title adverse to Durga Prasad. The appeal must be allowed with costs in both Courts, and the decree of the lower Appellate Court modified by exempting the half of the western shop from the decree in plaintiff's favour. Straight, J.

3. It appears to me that in this case the Court is properly-called upon to exercise its powers of equitable interference to the fullest extent. The appellant, Durga Prasad, was, at the time of his conviction and sentence, some 30 years ago, admittedly entitled, jointly with his father Balkishen, to a half share of the western shop, part of the property now in suit. Both the wife and mother of Durga Prasad were then alive, and so long as they lived it is beyond dispute that they enjoyed the income derived from this half share, which, so I gather from the findings, was paid over to them, first by Bhawani and afterwards by Kannu Lal. I do not think it is in the least material to the view I hold as to the mode in which this case should be treated, whether the wife of Durga Prasad did or did not die within the twelve years preceding the institution of this suit. According to my judgment the whole point is, whether from all the circumstances and the relationship between them, the Court is justified in holding that a constructive trust existed in Bhawani and Kannu Lal for and on behalf of Durga Prasad and Balkishen, from the day their imprisonment commenced. A person may declare a trust either directly or indirectly: indirectly by evincing an intention, which the Court will effectuate through the medium of an implied trust, Lewin, 6th ed., p. 95. Again, "Constructive trusts are those which the Court elicits by a construction put on certain acts of parties." Is the Court then, looking to the whole of the facts of this present case, entitled to come to the conclusion that a

constructive trust is established? I am very clearly of opinion that it is, and that we are bound so to hold upon the plainest principles of equity, which in my view should be most liberally applied in a case where otherwise grave hardship and injustice would arise, By his imprisonment Durga Prasad was placed under a disability, just as much as a person "beyond the seas," or "lunatic," or "under age," and was thus deprived of the power of looking after his own interests, or asserting his rights, and during such time as it lasted it is obvious that Bhawani Prasad first and Kannu Lal, so far as his share in the property was concerned, occupied towards him a fiduciary position, of which the latter seems to have taken advantage in fraud of his "cestui que trust." Till Durga Prasad obtained his release it would have been impossible for him to know what had happened, his wife was dead and he does not seem to have had any children to complain of the misappropriation of Kannu Lal or any means of gathering information of his misconduct. "No time will cover fraud so long as it remains concealed, for until discovery (or at all events until the fraud might with reasonable diligence have been discovered) the title to avoid the transaction does not properly arise," Lewin, 6th ed., p. 710. No limitation therefore can affect the rights of Durga Prasad and he is entirely justified in setting them up against the plaintiff's claim to the extent of his own interest. I therefore agree in Mr. Justice OLDFIELD'S order, both as to the shape in which this appeal is to be allowed and as to his order on the question of costs.