

(1927) 04 AHC CK 0029

Allahabad High Court

Case No: None

Mitthan Lal and Another

APPELLANT

Vs

Nabi Bakhsh

RESPONDENT

Date of Decision: April 6, 1927**Citation:** AIR 1927 All 508**Hon'ble Judges:** Iqbal Ahmad, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

Iqbal Ahmad, J.

This is an appeal by the plaintiffs who claimed the property in dispute as reversioners of one Joti Prasad, who was admittedly the last male-holder of the property in dispute. Joti Prasad on his death was succeeded by his mother Mt. Mahtabi who died in the year 1915. Mt. Mahtabi in her lifetime had, on the 29th of March 1909, sold the property in dispute to the defendant-respondent. The plaintiffs alleged that the sale was without legal necessity and was not binding on them.

2. The suit was resisted by the defendant, inter alia, on the ground that one Jamna Das was the nearest reversioner of Joti Prasad and became entitled to his property on Mt. Mahtabi's death, and as the sons of Jamna Das are alive, the plaintiffs have no right to the property in dispute. Both the Courts below have accepted this defence and have dismissed the plaintiffs' suit. The finding that Jamna Das, and not the plaintiffs, was the nearest reversioner of Joti Prasad at the time of Mt. Mahtabi's death is a finding of fact and has not been challenged in second appeal before me. But it is argued that as Jamna Das had precluded himself by a certain compromise which he entered into with one Chetan Das who claimed to be the adopted son of Mt. Mahtabi, from claiming the property in dispute, the plaintiffs, who at the time of Mt. Mahtabi's death were reversioners of Joti Prasad one degree remote from Jamna Das; were entitled to maintain the present suit.

3. There are three answers to this contention. In the first place, this plea was not raised in the trial Court; and indeed the compromise on which this plea is sought to be based is not on the record, and one does not know what the terms of that compromise were, and whether by that compromise Jamna Das relinquished his entire rights as reversioner of Joti Prasad. It is, therefore, impossible to entertain this plea. In the second place it appears from the judgment of the lower appellate Court that it was held by this Court that no title by that compromise was conferred on Chetan Das, and the title to the property of Joti Prasad remained with Jamna Das. If the compromise was ineffectual to determine the rights of Jamna Das as reversioner of Joti Prasad, the plaintiffs obviously have no shadow of title to the property in dispute.

4. Thirdly, even if by the compromise Jamna Das agreed for consideration to forego his rights as reversioner of Joti Prasad, as he was entitled to do in view of the decisions in *Kanhai Lal v. Brij Lal* AIR 1918 PC 70, *Chabli v. Parmal* [1919] 41 All. 611 and *Mohammad Hashmat Ali v. Kaniz Fatima* [1915] 13 A.L.J. 110, that compromise could only be binding between Jamna Das and Chetan Das, and could not entitle the plaintiffs to treat Jamna Das as non-existent, so as to be entitled to the property of Joti Prasad as reversioners. If Jamna Das precluded himself by that compromise from claiming the property of Joti Prasad, and if that compromise was valid, the title to the property will remain with Chetan Das and would not vest in the plaintiffs who are remote reversioners of Joti Prasad, On the other hand, if the compromise was invalid Jamna Das's rights remained intact. In either case the plaintiffs' claim was untenable. For the reasons given above, I affirm the decisions of the Courts below and dismiss the appeal with costs.