(1917) 03 AHC CK 0020

Allahabad High Court

Case No: None

Nand Ram	APPELLANT
Vs	
Jiwa Ram and Another	RESPONDENT

Date of Decision: March 3, 1917

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 144

Citation: AIR 1917 All 117 : 41 Ind. Cas. 23

Hon'ble Judges: Rafique, J; Piggott, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. This appeal arises out of execution proceedings. It appears that one Gobardhan Das died leaving him surviving two widows, Musammat Rupo and Musammat Singhari. On the 19th of August 1900, Musammat Singhari made a waqf of half the property of her deceased husband in favour of a temple of Gangaji in Aligarh district. Subsequent to the death of Musammat Singbari, the other widow Musammat Rupo adopted one Jiwa Ram, alleging that she had permission from her husband to do so. On the 21st August 1909, she and Jiwa Ram sued for possession of the waqf property questioning the validity of the waqf. Nand Ram, who was appointed by the deed of waqf as mutawalli and was in possession of the waqf property, contested the suit. He denied the alleged adoption of Jiwa Ram. The Subordinate Judge, who tried the suit, held that the adoption of Jiwa Ram was not proved and that the waqf was invalid. He decreed the claim of Musammat Rupo for possession of the waqf property. In execution of that decree Musammat Rupo obtained possession of the waqf property against Nand Ram on the 4th of May 1910. Nand Ram preferred an appeal to the High Court and the case was remanded for re-trial on the merits on the 4th of July 1911. On the 12th of February 1912, by consent of parties the case was referred to, arbitration and the arbitrators gave an award on the 18th February 1912. On the 21st March 1912, the learned Subordinate Judge passed a decree in terms of the award. The decree which followed the award was to the effect that Jiwa

Ram was the adopted son of Musammat Rupo and that two parcels of property of Gobardhan Das dedicated by his widow Musammat Singhari were properly dedicated and were waqf property. Nand Ram applied for and obtained possession of the said two parcels of property on the 20th of April 1913. Subsequent to his obtaining possession, he applied to the Court of the Subordinate Judge of Aligarh for the recovery of mesne profits for the period of his dispossession, viz., from the 4th of May 1910 up to the 20th April 1913. Both Musammat Rupo and Jiwa Ram filed objections contesting the amount of mesne profits" as also the method of assessment. The Court of first instance disallowed the objections and directed an enquiry as to the amount of mesne profits against both. Musammat Rupo and Jiwa Ram went up in appeal to the Court of the District Judge, and for the first time in that Court a fresh objection was raised on behalf of Jiwa Ram. It was urged that he had never obtained possession through Court and that legal possession always remained with Musammat Rupo and consequently he was not liable under seotion 144 of the CPC for any mesne profits due to Nand Ram. On behalf of Musammat Rupo it was urged that the award settled all disputes between the parties and that the right of Nand Ram to get mesne profits for the period Musammat Rupo was in possession was not decided, by the arbitrators in favour of Nand Ram. The award taken as a whole should be construed to mean that all that Nand Ram was entitled to was to get possession of two parcels of property mentioned therein as waqf property and no more. The learned District Judge accepted the argument on behalf of Jiwa Ram and released him from all liability. He rejected the objection of Musammat Rupo and directed that enquiry as to mesne profits should be made against her only. Nand Ram has come up in second appeal to this Court and contends that Jiwa Ham should also have been made liable for the mesne profits due to him. For the respondents the argument before the District Judge is repeated, and it is said that Jiwa Ram not being a decree-holder Section 144 does not apply to him. The other-argument which affects the liability of Musammat Rupo on the basis of the award is also urged. The objection on behalf of Musammat, Rupo need not be considered, as she has not appealed against the order of the learned District Judge. The only point, therefore, before as is whether Jiwa Ram is liable for the claim of Nand Ram to mesne profits, We think that his objection is so far correct that he cannot be made liable for the period prior to the date of the decree on the award, as he was not a decree holder before that date, but the decree of the 21st March 1912 made him a joint decree-holder with Musammat Rupo and from that date his liability begins. We, therefore, modify the order of the lower Appellate Court and direct that enquiry into the amount of mesne profits due to Nand Ram be made as against Musammat Rupo from the 4th of May 1910 and as against Musammat Rupo and Jiwa Ram from the 21st March 1912. Proportionate costs should be allowed to the parties throughout, including in this Court fees on the higher scale.