

(1909) 07 AHC CK 0026

Allahabad High Court

Case No: None

Harpal Singh

APPELLANT

Vs

Bishan Singh

RESPONDENT

Date of Decision: July 14, 1909

Citation: 3 Ind. Cas. 907

Hon'ble Judges: Richards, J; Banerji, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal arises out of an application for the execution of decree obtained by the respondent against one Thakur Sheopal Singh on the 12th of October, 1898. The decree was a simple money-decree. Sheopal Singh died on the 27th of July, 1899. The present application was made by the decree-holder for execution against the appellant Harpal Singh and for sale of certain immovable property now in the possession of Harpal Singh. During the life-time of Sheopal Singh there was some litigation in regard to this estate between him and Musammat Sonao Kunwar. A compromise was effected between them and a decree was passed in accordance with the " compromise. Sheopal Singh predeceased Musammat Sonao Kunwar. After the death of Sonao Kunwar a suit was brought by Sheopal Singh's widow against Harpal Singh, the present appellant, for possession of the estate to which the compromise related. In that suit it was held by this Court that notwithstanding the compromise the estate was an impartible estate and that Harpal Singh succeeded to it as such, it having devolved on him according to the rule of primogeniture governing impartible estates. The judgment of this Court is reported in Harpal Singh v. Lekhray Kunwar 30 A. 400 : 5 A.L.J. 425 : A.W.N. (1908) 165. Harpal Singh is admittedly in possession of the estate by right of its having devolved on him under the rule of primogeniture applicable to impartible estates. The decree in this case being a simple decree for money and no attachment having taken place in the life-time of Sheopal Singh, the question to be determined is whether after his death

the property now in the hands of Harpal Singh is liable for the debt incurred by Sheopal Singh. Ordinarily in the case of a simple decree for money it can only be realised after the death of the deceased judgment-debtor from the assets left by him. Therefore, what we have to consider is whether the property in the hands of Harpal Singh, who is not a son or grandson, or any male lineal descendant of the deceased can be regarded as the assets of the deceased so as to entitle the decree-holder to proceed against it in execution. We are of opinion that the decision of the Court below that it is liable to attachment and that the property passed to Harpal Singh burdened with the debt due by Sheopal Singh is erroneous. It was held by their Lordships of the Privy Council in *Jogendro Bhupati Hurrochundra Mahapatra v. Nityanand Man Singh* 18 C. 151 : 17 I.A. 128 that for determining who is the heir to an impartible estate, the same rules apply which also govern the succession to partible estates, though the estate can be held by only one member of the family at a time. In the course of their judgment their Lordships observe: "On these facts the question which has been urged before their Lordships arises namely whether according to the rules of Hindu law having regard to the fact, which was admitted, that the law of the Mitakshara is applicable, the plaintiff is entitled by right of survivorship to succeed to the raj upon the death of his half brother Nand Kishore." Their Lordships held that "in considering who is to succeed on the death of the Raja, the rules which govern the succession to a partible estate are to be looked at, and, therefore, the question in this case is what would be the right of succession supposing instead of being an impartible estate it were a partible one? At the conclusion of their judgment their Lordships say: "Their Lordships are of opinion in the present case that the plaintiff was entitled to succeed to the raj by virtue of survivorship." It is thus clear that their Lordships hold that in determining the rule of succession to an impartible estate, the right of succession would devolve in the same way as if the impartible estate were a partible one, save that it would remain in the hands of only one person according to the rule of primogeniture. All the other incidents are the same as in a partible estate. Therefore, the succession to the estate would be by right of survivorship, and not as heir or legal representative of the deceased, holding his assets. The same view was held by the Calcutta High Court in *Kali Krishna Sarkar v. Raghunath Deb* 31 C. 224. The learned Counsel for the respondent relies on the case of *Ram Dass Marwari v. Tekait Braja Behari Singh* 6 C.W.N. 879 decided by the same Court in which an opposite view appears to have been held. That case was distinctly dissented from in the case of *Kali Krishna Sarkar v. Raghunath Deb* 31 C. 224 and having regard to the decision of their Lordships of the Privy Council, to which we have referred, we are unable to agree with it. In this view the decree-holder is not entitled to proceed against the property in question and to execute the decree as against the appellant. We allow the appeal, set aside the decree of the Court below and dismiss the application of the decree-holder as against the appellant with costs here and in the Court below.