
(1910) 01 AHC CK 0019

Allahabad High Court

Case No: None

Gajadhar Rai and
Others

APPELLANT

Vs

Ramlakhan Rai and
Others

RESPONDENT

Date of Decision: Jan. 13, 1910

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 23, 43

Citation: 5 Ind. Cas. 273

Hon'ble Judges: Tudball, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

Tudball, J.

This appeal arises out of a suit to recover possession of property which formerly belonged to one Gangadan.

2. Gangadan was one of the two sons of Salig Ram, Sheo Lal being the other. Gangadan had a son named Khushal Ram, who died in his father's life-time, leaving a widow. Musammat Ishri, him surviving. The other son of Salig Ram, namely, Sheo Lal, had a son named Narain Das and his wife was one Musammat Amri, a defendant in the suit. Gangadan died in the year 1882 or 1883 leaving his daughter-in-law Musammat Ishri him surviving, who upon his death entered into possession of his property and continued in, possession until the year 1899 when she died. It has been found by the Court below, and there is no controversy as to this, that Musammat Ishri acquired an absolute title to the property of Gangadan by adverse possession. The plaintiffs claiming to be the nearest reversionary heirs of Musammat Ishri instituted the suit out of which this appeal has arisen for recovery of possession of the property. The Court below has dismissed their claim on three grounds. First of all the Court held that the suit was barred by limitation, it

not having been brought within 12 years from the death of Gangadan. The learned Subordinate Judge was of opinion that the plaintiff's claim was as reversionary heirs of Gangadan for the recovery of his property but upon a perusal of the plaint it will be seen that their claim was not based on their heirship to Gangadan but on their heirship to Mnsammat Ishri. In the third paragraph of their plaint the plaintiffs say that they are the heirs and next reversioners of Musmmmat Ishri and are entitled to the possession, of the property in dispute. Musammat Ishri having acquired title by adverse possession it passed upon her death to her heirs, whoever they may be, as her stridhin. She died in 1899 and the present suit was instituted on the 8th of May 1906, that is, within the period of 12 years. The learned Subordinate Judge thinks that property acquired" by a female by adverse possession is not her stridhan but this is contrary to the views expressed by their Lordships of the Privy Council in the case of Brij Indar Bahadur Singh v. Rani Janki Koer and also contrary to the decision in Mohin Chander Sanyal v. Kashi Kant Sanyal 2 C.W.N. 161 (see also the decision of this Bench in the case of Balwant Singh v. Musammat Ram Dei Second Appeal No. 414 of 1905, decided on the 7th of December 1906, which has not been reported. It is clear upon the authorities that property so acquired by a female is her stridhan and as such stridhan passes to her heirs.

3. Then the learned Subordinate Judge was of opinion that the suit was barred by Section 43 of the former CPC for these reasons. Musammat Amri, the widow of Narain Das, entered into possession of her husband's property upon his death. She made a gift of portion of it to one Gopal Sahai. Whereupon the plaintiffs claiming to be the reversionary heirs of Narain Das instituted a suit to have this gift in favour of Gopal Sahai set aside as against them. The gift was set aside on the ground that Musammat Amri had only a widow's life-estate and was not entitled to dispose of the property of Narain Das beyond her life-estate. The Court below WSR of opinion that the plaintiff in that suit ought to have claimed the property which they seek to recover in this suit but in this the learned Subordinate Judge is clearly in error. The claim in the former suit to have the deed of gift set aside was based on a distinct cause of action. It was not incumbent on the plaintiffs in it to join a claim to recover the property owned by Musammat Ishri.

4. The preliminary grounds, therefore, upon which the Court below dismissed the suit are untenable, and it will be necessary, therefore, to remand the suit to that Court for trial upon the merits. We accordingly allow the appeal, set aside the decree of the Court below and we remand the suit to that Court under the provisions of Order 41, Rule 23 of the CPC with directions that it be re-admitted in the file of pending suits and be disposed of according to law. The appellants will have the costs of this appeal in any event including fees in this Court on the higher scale. All other costs will abide the event.