

(1939) 03 AHC CK 0007

Allahabad High Court

Case No: None

Anant Bahadur Singh and Others

APPELLANT

Vs

Tirathraj and Another

RESPONDENT

Date of Decision: March 10, 1939**Citation:** AIR 1939 All 526 : (1939) 9 AWR 411**Hon'ble Judges:** Iqbal Ahmad, J**Bench:** Division Bench**Final Decision:** Allowed

Judgement

Iqbal Ahmad, J.

The dispute in the suit out of which the present appeal arises was with respect to properties that belonged to one Jukhai who died about 35 or 40 years ago leaving his widow Mt. Shakunta alias Kulwanta. Jukhai owned the following three items of property at the time of his death: (1) Some zamindari or Sankalap property in village Thanapur. (2) Some zamindari or Sankalap property in village Kasgaon. (3) One house and a well. All these properties were situated in the district of Allahabad and after the death of Jukhai the name of Shakunta was mutated in the revenue papers as regards the zamindari or the Sankalap property. It is common ground that Shakunta became the mistress of one Jawahir Singh and gave birth to at least three illegitimate children who were arrayed as defendants 2 to 4 in the suit. Riving rise to the present appeal, Shankuta having been impleaded as defendant 1. The suit was filed by two brothers named Tirathraj and Ram Subhag and it has been found by the Courts below that they were the nearest reversioners of Jukhai. It appears that some years ago the names of defendants 2 to 4 were mutated in the khewat along with Mt. Shakunta's name as against the Thanapur property. The plaintiffs' case was that the entry of the names of defendants 2 to 4 in the revenue papers was at the instance of Shakunta and that this amounted to an unauthorized alienation of the property by Shakunta in favour of her sons. The plaintiffs further alleged that properties specified above as items 2 and 3 were transferred by Shakunta to

defendants 5 to 8 and the transfer of those items of properties was not binding on the plaintiffs. On these allegations the plaintiffs prayed for a declaration that the proceedings taken by Shakunta in connexion with the mutation of names in favour of defendants 2 to 4 and the transfers made by her in favour of defendants 5 to 8 were null and void and unenforceable against the plaintiffs after the death of Shakunta. The cause of action for the suit was alleged to have accrued in July 1924 when, according to the allegations in the plaint, mutation of names was effected in favour of defendants 2 to 4, and in 1926 when the transfers were alleged to have been made in favour of defendants 5 to 8.

2. The trial Court held that the allegation of the plaintiffs as regards the transfer of items 2 and 3 in favour of defendants 5 to 8 was entirely unfounded and in view of this finding the claim against those defendants was dismissed. The decree of the trial Court as regards defendants 5 to 8 has become final and I am no longer concerned with those defendants in the present appeal. The suit was contested by Shakunta and by defendants 2 to 4 *inter alia* on the ground that it was barred by limitation. The other pleas raised in defence are immaterial for the purposes of the present appeal. At the trial, the plaintiffs maintained that the suit was governed by Article 125 of Schedule 1, Limitation Act. Article 125 applies to a suit by a Hindu reversioner for a declaration that alienation made by a Hindu widow will be void after her death or after her remarriage and provides a period of 12 years for the institution of the suit from the date of the alienation. The defendants challenged the applicability of the Article to the suit on the ground that the mutation of their names in the revenue papers did not constitute an "alienation" within the meaning of the Article. Further, they maintained that the mutation in their favour was effected more than 12 years before the date of the suit, and, as such, the suit was time-barred. Both these contentions of the defendants were given effect to by the learned Munsif and the plaintiffs' suit was dismissed. The plaintiffs, viz. Tirathraj and Ram Subhag, filed an appeal in the lower Appellate Court and during the pendency of the appeal in that Court one of the plaintiffs, viz. Tirathraj, died and no steps were taken to bring upon the record his legal representatives. The appeal was heard by the lower Appellate Court in ignorance of the fact of Tirathraj's death and was allowed and the plaintiffs' suit was decreed.

3. The first point that has been raised on behalf of the defendants, appellants in the present appeal is that the omission to bring upon the record the legal representatives of Tirathraj in the lower Appellate Court had the effect of causing an abatement of the whole appeal. In my judgment there is no force in this contention. As already stated both Tirathraj and Ram Subhag were the nearest reversioners of Jukhai and each of them therefore had individually the right to assail the unauthorized alienations made by Shakunta. The right that Tirathraj and Ram Subhag wanted to enforce by means of the suit was not a joint right shared by them in common. It was a right vested in each of them in their capacity as the nearest reversioners of Jukhai. The omission to bring upon the record the legal

representatives of Tirathraj could not therefore adversely affect the right of Ram Subhag to prosecute the appeal in the lower Appellate Court. Apart from this there is another answer to the contention raised by the defendants. The legal representatives of Tirathraj could not in the presence of Ram Subhag be the reversioners of Jukhai as, on Tirathraj's death, Ram Subhag remained the sole nearest reversioner of Jukhai. The right of Tirathraj to institute the suit or to prosecute the appeal in the lower Appellate Court could not therefore survive to his legal representatives. It follows that on Tirathraj's death his right to the relief prayed for by him in the suit came to an end and did not survive. Ram Subhag was therefore solely entitled to prosecute the appeal in the lower Appellate Court. The view that I take is in consonance with the provisions of Order 22, Rule 2, Civil P.C., and with the Pull Bench decision of this Court in [Mahadeo Singh and Others Vs. Talib Ali and Others](#).

4. The lower Appellate Court held that the entry of the names of defendants 2 to 4 as against Thanapur property and their possession over the same constituted an "alienation" by Shakunta within the meaning of Article 125, Limitation Act. It further held that mutation was effected in favour of defendants 2 to 4 and possession of Thanapur property was secured by them within 12 years of the date of the suit. On these findings the lower Appellate Court held that the plaintiffs were entitled to the declaration prayed for by them and accordingly granted a decree in terms of the relief prayed for in the plaint. The view of the lower Appellate Court that the entry of the names of the defendants in the revenue papers followed by their possession of the disputed property constituted an alienation of that property receives support from the decisions of this Court in Sheo Singh v. Jeoni (1897) 19 All. 524 and Ram Sarup v. Ramdei (1907) 29 All. 239. It was held in these cases that in order to constitute an alienation within the meaning of Article 125 it is not necessary that the widow or the female concerned should transfer the property by means of a written instrument. It is sufficient if she does some act which has the effect of transferring the estate from her to a third person. The word "alienation" in Article 125 has not been used in the restricted sense of a transfer by means of a written document. The Article applies to all cases in which the widow has directly or indirectly parted with her proprietary right in the estate and passed the same to some third person. In the present case the effect of the entry of the names of defendants 2 to 4 in the revenue papers was to entitle them to secure possession of Thanapur property and as a matter of fact they on their own showing have been in possession of that property. There was therefore an "alienation" of the estate by Shakunta in favour of defendants 2 to 4. On the questions as to when the alienation took place the lower Appellate Court has found that the defendants' names were mutated within 12 years of the date of the suit. This finding is a finding on a question of fact and must be accepted by me in second appeal. It follows that the decision of the lower Appellate Court is correct. The decree passed by that Court however requires modification in one respect. It has already been stated that the plaintiffs failed to

prove that Shakunta made any alienation of items 2 and 3 of the properties in dispute. That being so the decree in the plaintiffs" favour must be confined only to Thanapur property and the plaintiffs" claim as regards items 2 and 3 of the properties in dispute must fail. To this extent the decree of the lower Appellate Court is modified. In other respects the appeal is dismissed. As the appeal substantially fails I direct the defendants-appellants to pay the costs incurred by the plaintiffs-respondents in all the Courts. Leave to appeal under the Letters Patent is granted.