Mahmud Fatima and Another Vs Parbati Kunwar and Others

Court: Allahabad High Court

Date of Decision: Jan. 4, 1907

Citation: (1907) ILR (All) 267

Hon'ble Judges: John Stanley, C.J; William Burkitt, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

John Stanley, C.J. and William Burkitt, J.
The facts of this case are shortly as follows: One Kazi Ahmad Husain who was the owner and in

possession of the entire village of Yasinnagar and also of a 10 biswa share in the village of Khardauli and of some bighas of resumed muafi land in

another village, died on the 2nd of August 1892, leaving his widow, the first defendant, and the defendants Husain Ahmad and Muhammad

Ahmad, two sons, and the plaintiffs, his two daughters, him surviving. After his death in satisfaction of a decree obtained by one Gandharp Singh 5

biswas of Yasinnagar and 5 biswas of Khardauli and a third of the muafi land were foreclosed and possession delivered over to the judgment-

creditor. Later on, namely, on the 18th of January 1899, a further share in the village of Yasinnagar was sold by the widow and two sons to the

defendants 6, 7 and 8 and another party, the ancestor of the defendant 5. Again, under a sale-deed, dated the 25th of July 1904, a 5 biswa share

in the village of Khardauli was transferred to the defendants 5 and 7. The suit out of which this appeal has arisen was instituted on the 12th of

September 1904, by the plaintiffs as two of the heirs of Ahmad Husain to recover from the defendants 14 out of 48 sihams of the property which

had passed into the hands of the judgment-creditor and transferees respectively under the decree and deeds of transfer to which we have referred.

2. The Court of first instance decreed the plaintiff"s claim and the lower appellate Court upheld the decision of the Court of first instance.

3. This appeal has been preferred on two grounds, the first being that the suit is bad for misjoinder of causes of action, and the second that an

application made for mutation of names during the life-time of Kazi Ahmad Husain on the 28th of June 1892 was admissible in evidence, and

clearly established that a gift of the whole village of Yasinnagar had been made by Kazi Ahmad Husain to his widow and two sons, and that

therefore the plaintiffs had no interest in this village.

4. We shall first deal with the last question. In proof of the alleged gift the defendants adduced in evidence a petition which was filed by Ahmad

Husain during his life. It rune as follows: ""I, Ahmad Husain, am zamindar of Yasinnagar, whole 20 biswas, and remain sick. So out of the said

zamindari I have given 5 biswas to each of my sons and 10 biswas to my wife Barkat Fatima and have made over possession to them. I pray that

mutation of names may take place."" In addition to this petition two witnesses were examined to prove the alleged gift. The learned District Judge

found after consideration of the evidence that Yasinnagar was not given as a gift to the plaintiffs brothers and mother. It was contended before him

that the petition for mutation of names to which we have referred really amounted to a deed of gift. This clearly was not so. It amounted at the most

to evidence of a gift. The learned District Judge dealt with it apparently as evidence of a gift only. He says that ""these mutations are often made for

the sake of convenience and are no evidence of exclusive possession."" Then dealing with the verbal gift which was set up by the appellants in his

Court he observes: ""The evidence in support of it is unreliable. The two witnesses who deposed to the gift were a Hindu and a Muhammadan of

low position. I refuse to put trust in their halting statements."" Mr. Agarwala on behalf of the appellants before us argued that the learned District

Judge was not justified in not giving full effect to the petition in question as amounting to satisfactory and conclusive evidence of the alleged gift. We

think that this contention goes too far. The petition is no doubt evidence of a gift, but it is not conclusive evidence. The parol evidence which was

given in support of the gift entirely broke clown in the opinion of the District Judge, and he, coming to the conclusion that the evidence was not

satisfactory, found that no gift in fact was proved. This is a finding of fact behind which we cannot go. The question is not one of law but one of

fact. In the case of Lachmann Lal Chowdhri v. Kanhaya Lal Mowar ILR(1894) Calc. 609; 22 I.A., 31 their Lordships of the Privy Council dealt

with a similar argument to that which has been presented to us. In that case it was contended that an adoption was proved by certain documents

which were adduced in evidence and their Lordships say (at page 617): ""There are thus concurrent findings against the appellant on this question,

which is a question of fact, and the determination of which depends on the evidence. It was argued for the appellant that as this evidence to an

important extent consists of writings, the ordinary rule that this Board will not disturb the judgment of both Courts on facts does not apply. Their

Lordships cannot accept this view. The question is not one of construction of one or more deeds, which would be a question of law, but is a

question as to the effect to be given to decrees, leases and other documents as evidence of the fact of adoption and. of its consequences."" So here

the question is not a question of construction of the petition relied upon, but it is a question as to the effect to be given to that petition as evidence

of the fact sought to be proved by it, namely, whether or not a gift of the village in question was made by the deceased in his lifetime. We,

therefore, hold that upon this ground of appeal we are concluded by the finding of fact of the lower appellate Court.

5. The next question is whether or not the claim of the plaintiffs is multifarious. Both the lower Courts have held that it was not so. The claim, it is to

be observed, is for the recovery from parties in possession, said to be wrongfully, of the plaintiffs'' shares of property of their father to which they

lay claim as two of his heirs. The contention is that inasmuch as the property passed out of the hands of members of the family at different times

under two transfers and a decree, suits ought to have been brought against the defendants separately in respect of the property of which each had

possession. We are of opinion that this contention is untenable. We have been referred to the case of Ganeshi Lal v. Khairati Singh ILR (1894)

All. 279 as an authority for the proposition. But in our opinion that case is clearly distinguishable from the present. We think that in this case the

plaintiffs had one cause of action only, namely, the right on the death of their father to recover their shares of his property, and that that cause of

action accrued to them upon their father''s death. If the authorities on the question of multifariousness are conflicting, two decisions of the Calcutta

High Court commend themselves to us: one is in the case of Ishun Chunder Hazra v. Rameshwar Mondol ILR (1897) Cal 831; and the other in

the case of Nundo Kumar Nasher v. Banomali Gayan ILR (1902) Cal 871-In the first of these cases it was held by O''Kinealy and Hill, JJ., that in

a suit for ejectment against several defendants, who set up various titles to different parts of the land claimed, there is only one cause of action, not

several distinct and separate causes of action. That was a suit by reversioners to recover the estate of one Brahmamayi Debi from several persons

who were in possession of her property under defendant titles. The Court held that ""the cause of action, namely, what the plaintiffs were bound to

prove in order to succeed, was that they were the reversioners of Brahmamayi Debi in regard to this property and that the claim was not barred by

limitation. The defendants then could raise any answer they thought fit to get rid of the claim; but the cause of action was one."" In the other case,

which was a suit brought by the plaintiff in ejectment, claiming under a lease, in which he made his landlord a defendant to the suit on the allegation

that the plaintiff having obtained a lease of the land from the landlord, and having obtained possession, was forcibly dispossessed by the defendants

in collusion with the landlord, the defence of the defendants mainly was that the suit was bad for multifariousness inasmuch as they were severally in

possession of distinct and definite portions of the land, under different demises, and that there was no community of interest between them. In

delivering their judgment Hill and Brett, JJ., say: ""The cause of action of a plaintiff suing in ejectment cannot, so far as we can perceive, be affected

by the title under which the defendant professes to hold possession. It matters not to the plaintiff how the defendant may explain the fact that he is

in possession or seek to defend his possession. What concerns the plaintiff is that another is wrongfully in possession of what belongs to him and

that fact gives him his cause of action, If this is so where there is but one person in possession, can there be a difference when the land is in the

possession of more than one?. We think not. It appears to us, go far as the plaintiff"s cause of action is concerned, that it is a matter of indifference

to him upon what grounds the different persons in possession may seek to justify the wrongful detention of what is his. What he is entitled to claim

is the recovery of possession of his land as a whole, and not in fragments, and we think that all persons who oppose him in the enforcement of that

right are concerned in his cause of action and ought accordingly to be made parties to a suit in which he seeks to give effect to it."" we agree with

the learned Judges in this expression of their view of the law. We may also refer with approval to two decisions in this High Court in which the

question of multifariousness was considered. The one is that of Indar Kuar v. Gur Prasad ILR (1888) All. 33 and the other the case of Mazhar All

Khan v. Sajjad Husain Khan ILR (1902) All. 358.

6. For these reasons the appeal fails and is dismissed with costs.