

(1878) 08 AHC CK 0005

Allahabad High Court

Case No: None

Gur Sahai

APPELLANT

Vs

Gauri Dat and Others
and Rukmin Kuar and
Another

RESPONDENT

Date of Decision: Aug. 22, 1878

Citation: (1880) ILR (All) 41

Hon'ble Judges: Robert Stuart, C.J; Pearson, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Robert Stuart, C.J.

The suit in which this appeal has arisen was instituted by the plaintiff Gur Sahai alone against Rukmin Kuar; her daughter Sitala Kuar, and other persons, descendants of Sheo Prasad, deceased, a male relative of Nand Lal, Rukmin Kuar's husband. During the pendency of this suit an arrangement appears to have been come to between the two ladies, defendants, and the plaintiff, to the effect that he would not in future make any claim in disturbance of, or in opposition to, the arbitration-award so far as it allotted property to Sitala Kuar, and that with that exception he, the plaintiff, should have a decree in his favour; and in looking into the record I find that such an arrangement or compromise, under the name of a petition of cognovit, was filed, and it bears the plaintiff's signature. The petition was sent for attestation to the Munsif of Fatehpur, who got it attested, and reported that the ladies expressed their consent; and there was thus an end to the dispute between them and the plaintiff. But the other defendants, the descendants of Sheo Prasad, being dissatisfied with the judgment of the Subordinate Judge, have preferred the present appeal, the form of which is thus explained, the respondents being not only the plaintiff but the two ladies with him.

2. The compromise between these parties, however, does not affect the legal questions raised by the appeal before us. It has been argued at great length on both sides, and numerous authorities have been referred to, but the case is a very simple one. The plaintiff seeks to set aside an arbitration-award made between the two ladies Rukmin Kuar and her daughter Sitala Kuar on the one side, and the defendants Ram Dayal and other descendants of the deceased Sheo Prasad on the other side, and the award disposed of the whole property in suit among these defendants themselves to the prejudice of the plaintiff and in disregard of his reversionary right. The Subordinate Judge has given the plaintiff a decree, holding that according to the law of Mitakshara he has the reversion to the estate after Sitala Kuar.

3. In support of the present appeal it was argued by the counsel for the appellants that the plaintiff had no such reversionary right as would enable him to maintain the suit, as his interest was too remote, and the learned Counsel referred to several authorities in support of that contention. But it is unnecessary for us to examine these, seeing that the appellants themselves in their written statement admit the reversionary right of the plaintiff, and that being so, the only question is whether he can as such reversioner maintain the present suit to have the award set aside. Undoubtedly he can.

4. The pleaders for the respondents refer to a Judgment of the Full Bench of this Court delivered on the 12th September 1866, in the case of Dowar Rai v. Boonda HCR NWP FBR 56 in support of the plaintiff's right to maintain his suit against the defendants, appellants, and so far as it goes that case clearly supports the plaintiff's right of suit. I was not a Judge of the Court when the Judgment of the Full Bench was delivered, but I have carefully considered it, and I fully concur in its ruling. But irrespective of it and on principle, the plaintiff, although not the immediate next reversioner, has clearly a right to protect such interest as he has in the estate, and for that purpose to maintain such a suit as the present, for his right of reversion is of such a nature, according to Hindu Law, that it cannot be defeated should he survive Sitala Kuar.

5. The Judgment of the Subordinate Judge is therefore right, and the present appeal is dismissed with costs.

Pearson, J.

6. The pleas set forth in the memorandum of appeal do not appear to have much weight. The award which the plaintiff sues to set aside has absolutely disposed of the property in suit in such a manner as to destroy his reversionary interest therein, which cannot be protected without or otherwise than by avoiding the award in toto. Nor can it be admitted that no other arrangement than that made by the arbitrators for the discharge of the debts due from the estate of Nand Lal or incurred for the benefit of his soul was possible.

7. These pleas were not indeed pressed upon us orally. The learned Counsel mainly urged that the plaintiff" not being the next reversioner is incompetent to bring this suit. It is true that Sitala Kuar is the next reversioner on the death of her mother Rukmin Kuar, the present incumbent. But the plaintiff alleges that these ladies have colluded with the defendants, appellants, in the matter of the award with the view of defrauding him. The suit is, therefore, maintainable under the authority of the Full Bench ruling of this Court in the case of Dowar Rai v. Boonda HCR NWP FBR 56. The learned Counsel impugns that ruling, but we are bound by it.

8. He further contended that Sitala Kuar would take her father"s estate after her mother"s death in full proprietary tenure, so as to be able to dispose of it absolutely, and that therefore the result of the arbitration to which she had consented was not obnoxious to objection on the part of the plaintiff. Were the contention sound, he would not be the reversioner after her, and would of course have no locus standi in this suit; but the contention is opposed to Hindu Law prevailing in these parts, and is indeed inconsistent with the pleading in the last paragraph of the written statement filed by the defendants (appellants here) in the Court below, wherein they admitted the plaintiff to be the next reversioner after the female defendants to a moiety at least of the property in suit. I would dismiss the appeal with costs.