

Ram Manorath Singh and Others Vs Dilraji Kunwari**None**

Court: Allahabad High Court**Date of Decision:** Dec. 16, 1913**Citation:** AIR 1914 All 169 : (1914) ILR (All) 146**Hon'ble Judges:** Tudball, J; Ryves, J**Bench:** Division Bench**Final Decision:** Allowed

Judgement

Tudball and Ryves, JJ.

The plaintiffs appellants brought a suit in the court below for a declaration in the following circumstances. The

defendant, Musammat Dilraji Kunwari, is the widow of one Sohrat Singh. The plaintiffs' case is that Babu Sohrat Singh and they themselves were

members of a joint Hindu family; that Sohrat Singh died while he was joint; that his widow Dilraji Kunwari applied for mutation of names in her

own favour in respect of that property which stood in the name of Sohrat Singh; that her application was contested; that the parties came to a

compromise, dated the 19th of May, 1905, which was duly registered, under which Dilraji Kunwari's name was recorded in the place of that of

her husband's, and that on an application for partition having been made by a co-sharer in one of the villages Musammat Dilraji Kunwari also

applied for partition of the share which stood in her name. The plaintiffs objected to her application on the ground that she was not entitled to

partition, and the Revenue Court referred them to the Civil Court to obtain a declaration on the point. Hence the present suit. In paragraphs 2, 3, 4

and 5 of their plaint the plaintiffs, while setting out the above facts, also alleged that they were in actual possession of the share and that the

defendant was not in possession of it, although they relied on the document of the 19th of May, 1905, mentioned above, in which it was set forth

that she was to remain in possession. However, in their relief they asked for a declaration that Babu Sohrat Singh died while living jointly with

themselves; that the defendant did not get possession of the property as the heir of her husband nor was she in possession as such, and that her

name was recorded in the khewat in accordance with the agreement of the 19th of May, 1905, and that she had no right to obtain a partition. The

case for the defendant was that Sohrat Singh was separate from the plaintiffs; that he was owner of the property which stood in his name, and that

the defendant was in possession as the widow of a separated Hindu; that the plaintiffs were not in possession at all, and that no suit for a

declaration could be made in view of the provisions of Section 42 of the Specific Relief Act. The court below went solely into the question of the actual

possession. It was found in favour of the defendant and held that she was in possession, and that the suit, therefore, failed by reason of the terms of

Section 42 of the Specific Relief Act. The memorandum of appeal contains two grounds; (1) that the plaintiffs have proved that they are in

possession of the property in suit; (2) that the suit is not barred by Section 42 of Act I of 1877. Dr. Sundar Lal on behalf of his clients does not

press the first ground of appeal and admits that it may be taken for granted that the defendant is in actual possession of the property in suit. But he

still maintains that the suit is not barred by Section 42 of the Specific Relief Act, for this reason that the real dispute between the parties is one as to

the nature of the possession of the widow; because this suit has arisen out of partition proceedings and the sole object of the plaintiffs is to have it

declared that the widow was in possession of the property, not as heir of a separated Hindu; but as a widow of a deceased member of a joint

Hindu family in lieu of maintenance, and as such she was not entitled to obtain partition of the property. In our opinion, the possession of the

defendant being clearly admitted, the real dispute between the parties is as to the nature of the possession of the lady. The lower court has not

gone into the merits of the case. The plaintiffs no doubt have merely themselves to thank for the decision arrived at by the court below, because,

although they took their stand on the compromise, dated the 19th of May, 1905, which distinctly awarded possession to the lady, they thought it

advisable to state that she was not in possession. In these circumstances it is clear that the court below must go into the merits of the case, as the

suit is not barred by the provisions of Section 42 of the Specific Relief Act. The plaintiffs are not at present entitled to possession and are not

bound to sue for possession. We, therefore, allow the appeal, set aside the decree of the court below, and remand the case to that court with

directions to re-admit it on its original number in the file and proceed to hear and decide it according to law. The costs of this appeal will abide the

result