

(1869) 05 CAL CK 0012

Calcutta High Court

Case No: Special Appeal No. 2345 of 1868

Nafar Das Roy and Surjanarayan
Roy

APPELLANT

Vs

Guru Prasad Roy and Others

RESPONDENT

Date of Decision: May 14, 1869

Judgement

Loch, J.

In this case we find that Bramamayi was a childless widow, and as such, not entitled to succeed to the property in question. But her father, Madhab Kishore, under a hibba dated the 8th Kartik 1247 (1840), transferred the property to her, to be enjoyed by her during her life; and on her death, to go to his brother's grandsons, Ram Charan and Ram Dyal. From the terms of the hibba, it appears that Bramamayi was put in possession of the property in the life time of her father; and among other terms of the hibba, she was to support him while he lived; and after his death, to perform his funeral ceremonies, &c., &c. It appears that Bramamayi was dispossessed in 1265 (1858), and died in 1269 (1862). On her death, the right to the property went under the terms of the hibba to Ram Charan, Ram Dayal having died in the meantime. Ram Charan, sold his rights and interests in the property to the plaintiff's husband in 1271 (1864) and he brought a suit to recover possession from the defendants, and obtained a decree on the 23rd March, 1865. The plaintiff now sues for mesne profits of this property from 1267 (1860) to 1272 (1865). The first Court gave a decree for mesne profits for a period subsequent to the death of Bramamayi, but declined to give a decree for mesne profits which became due during her life-time, holding that the mesne profits must be considered in the light of stridhan, to which her heirs only would be entitled. On appeal, the lower appellate Court held that, though Bramamayi neglected to recover the estate from the defendants, yet the wasilat, like any rent which accrued due had the estate remained with her, would have gone to Ram Charan under Madhab Kishor's hibba, and it therefore reversed the order of the first Court.

2. In special appeal it is urged that the lower appellate Court is wrong in giving this decree for wasilat to the plaintiff; and looking at the mode in which the property came to Bramamayi, and the manner in which she held it, we are disposed to think that this contention is good, and the heirs of Bramamayi are alone entitled to claim these mesne profits due for the period of Bramamayi's life, and we therefore set aside the order of the Judge with regard to mesne profits during the life-time of Bramamayi, and decree this appeal with costs.

Markby, J.

I am entirely of the same opinion. The only point that is urged before us is as to the right of the plaintiff in this suit to recover wasilat for the period during which the defendant was in wrongful possession in the life-time of Bramamayi. It is to be observed that neither Bramamayi nor Ram Charan from whom the plaintiffs purchased, claim any rights as heirs of Madhab Kishor. All the rights they held, which the plaintiffs claim as purchasers, were derived from the hibbanama. Therefore the question must be determined according to the construction put upon the hibbanama. Whether therefore if, under the ordinary law of inheritance, Bramamayi had succeeded to the estate of Madbab Kishor, and after Bramatnayi's death Ram Charan had succeeded to the estate as the heir of Madhab Kishor, the right to the rent which had accrued but was not collected in the life-time of Bramamayi, would have gone to Ram Charan with the estate, is altogether beside the question. The question before us is simply this, whether that would be so under the terms of the hibbanama. Now I must admit that it seems to me extremely probable that a Hindu, in disposing of his property, would, on such a matter as this, follow generally the ordinary rules of inheritance, and that he would be very likely to confer on Bramamayi only such rights as would be taken by a woman, as heiress, in the same position. But this, though probable, appears to me not to have been done. Upon the best consideration that I can give to the construction of the hibbanama, I am disposed to think that the property would go to Bramamayi absolutely during her life-time, with all the rents and profits that would arise out of it. Under this view of the case, I must hold that the accumulations made by Bramamayi out of the rents and profits of the estate during her life-time, must be considered in the light of stridhan, and as such would go to her heir, instead of the heir of Madhab Kishor; and the same, I think, would be the case with uncollected, as with collected rents. Therefore, the purchaser from Ram Charan would take no interest in those uncollected rents. Under this view of the case, I agree that the decree of the Judge for wasilat for the period during the life-time of Bramamayi, must be set aside, and his appeal be decreed with costs.