
(1871) 06 CAL CK 0002

Calcutta High Court

Case No: Special Appeal No. 290 of 1871

Mahipat Sing

APPELLANT

Vs

Mussamat Suraj Bansi
Kunwar

RESPONDENT

Date of Decision: June 6, 1871

Final Decision: Allowed

Judgement

Bayley, J.

In this case we think that the first and the second grounds of special appeal must prevail. The facts are briefly these:--The plaintiff comes in as the reversioner of the widow of one Nando Lal, the son of Sheoburn Lal. He sued for the declaration of his title by setting aside a kobala dated the 25th March 1867 from one Mussamat Champa Kunwar, daughter of Ritburn Sing, and others, propounded by the defendant. The plaintiff does not sue for confirmation of possession, on the contrary his allegation is that his possession is undisturbed. It is also a fact that the widow of Nando Lal, the tenant-for-life, is in possession. The suit is not brought to set aside any alienation made by her, or any direct act of waste or injury to the property, which might affect the rights of the plaintiff as the widow's reversioner. What is pressed upon us by the respondent is that, although the name of Ritburn was used as that of the recorded proprietor of the property and his widow executed to the defendants the deed which is set up, still the real proprietor was Sheoburn, the father of Nando Lal, whose widow is the tenant-for-life; in other words, that the act of Ritburn's widow must be deemed no legal act, as the property was not Ritburn's at all; but Sheoburn's only. Now a Full Bench in the case of Nabin Chandra Chuckerbutty v. Iswar Chandra Chuckerbutty Case No. 460 of 1867; April 29th, 1868, and the late Chief Justice in the case of Mussamut Pranputtee Koer v. Lalla Futteh Bahadoor Singh 2 Hay's Rep., 608, have held that a reversioner ought to sue not upon some contingent and uncertain right which may never accrue to him, but upon some positive right; and further that was a case of an alleged improper alienation by the widow herself. In the present case, however, it is not pretended that there was any such alienation or any waste by the widow affecting the plaintiff as her reversioner. The mere execution of a

deed or the registration of it as between strangers without any ulterior act directed against the plaintiff or his possession, or against the widow and her possession, can in no way give the plaintiff a cause of action at this stage. It would be contrary to all judicial rules to express any further opinion in the case, as we are asked to do, at the present stage of the litigation, and as the case at present stands before us. It must be left to the plaintiff when any real cause of action or reversionary right accrues to him to take such steps as he is then advised. As the case stands at present, we think the judgment of the lower Appellate Court must be reversed, and the plaintiff's suit dismissed as brought without any existing cause of action, and with all costs.