(1869) 06 CAL CK 0043

Calcutta High Court

Case No: None

Raicharan Pal		APPELLANT
	Vs	
Pyari Mani Dasi and Another		RESPONDENT

Date of Decision: June 10, 1869

Judgement

Phear, J.

The first named defendant Pyari Mani is the widow of one Khettramohan Pal who died in Baisakh 1213 or 1244. Since that time she has been in enjoyment of her deceased husband''s property for the estate of a Hindu widow. She has mortgaged a portion of that property to the second defendant, who has since brought a suit against her to obtain a sale of the property under the terms of the mortgage deed, and in that suit a consent decree has been made. Iswar Chandra Pal is the next heir of Khettramohan now alive, that is, he stands in this position, that if Pyari Mani were to die now, Khettramohan''s property would devolve upon him by inheritance. The plaintiff Raicharan Pal is a person to whom Iswar Chandra has granted his interest in that portion of Khettramohan''s property, which is the subject of the mortgage to Laknath. In this character he comes into Court, on behalf of the ultimate heir of Khettramohan, to ask to have it declared that the mortgage and consent decree are transactions void as against the heirs of Khettramohan. The first question before me is whether Raicharan in this character is entitled to bring this suit. Mr. Graham urged that this matter was decided by the judgment of the High Court, in Raicharan Pal v. Pyarimani Dasi Mar. R. 622. That suit was brought by this present plaintiff against Pyari Mani and other persons to set aside certain dealings of Pyari Mani with other portions of Khettramohan''s property, and a Division Bench of this Court then held that Raicharan was entitled to bring that suit notwithstanding the objection that be was only Iswar Chandra''s assignee. Now I do not think that that decision necessarily governs this case. There was fraud and collusion between Pyari Mani and Iswar against Raicharan, which gave him personally a right to a remedy of some sort, but whether that were so or not I cannot bring myself to agree with the reasoning of the Division Bench in that case, and the decision is not binding on me

in such a sense that I am obliged to follow it. It appears to me that pending the existence of the widow''s interest, the assignee of a Hindu presumptive heir has no interest in the property of the deceased person of whom the assignor is the heir. He has only a personal right under his contract against his vendor, a right which be would be able no doubt to enforce against the vendor whenever the latter should come into enjoyment of the property by the death of the widow. It may be doubted whether he could enforce that contract against his vendor''s sons, supposing the vendor died before the property fell in, and his issue took it after his death, for they would take not as heirs to their father but as heirs of the original proprietor. It is not necessary however that I should express any definite opinion on this point. While the widow is alive, she has, to use English terms, the whole estate of inheritance in her. It is now distinctly determined by a number of decisions on both sides of the Court that she has the whole inheritance, only that she is limited in her powers of alienating it. In this view Raicharan is in all respects a stranger to the property, and will remain so till the time comes when he can claim the benefit of his contract with Iswar Chandra. Therefore the principle laid down in Brojo Kishori Dasi v. Srinath Bose 9 W. R. 464, applies to this case, and Raicharan has no right to bring the suit simply as assignee of Iswar Chandra. But then it is said that be is also the next heir after Iswar Chandra, and Iswar Chandra for some reason or other not coming forward to defend the estate for the benefit of the heirs, the person standing presumptively next in succession to him is entitled to do so. Now I think that proposition cannot be maintained except perhaps in certain very limited cases. The two decisions which have been referred to, Gogun Chandra Sen v. Joyadurga S.D.A. (1859), 620, Naikram Lal v. Surujbuns Sahi B.D.A. (1859), 891, seem to establish this conclusion very decisively. Fraud on the part of the presumptive heir, that is to say fraud on his part against the ultimate heirs, (though I don''t know well how that could be manifested) or incapacity, might for this purpose, put the presumptive heir out of the way, and give the next heir the character of representative of the ultimate heirs. But in this case there is nothing whatever to raise a suspicion of fraud on the part of Iswar Chandra, nothing to show he is incapable to act as protector of the estate if so disposed. So far as the facts are before me, he seems to live no farther off than Benares and to be in communication with the members of the family here. There appears to be no reason why Raicharan should assume his office in relation to the estate. My conclusion, therefore, is that Raicharan''s suit must be dismissed, on the ground that he had no right to bring it. However I feel it right, under the circumstances of this case, in the exercise of the large discretion reposed in this Court, not to give costs to the defendants. I am quite convinced that Pyari Mani founded her defence on a deliberate forgery. The evidence given to support the alienation on the ground of necessity broke down entirely. In my mind there was no hope of establishing the defendant''s case in this respect by the evidence brought forward : nothing which would show that the widow was entitled to alienate, was in any degree made out, and I have no doubt Pyari Mani was well aware of this weakness, and that for the purpose of evading this difficulty, she or her adherents

got that remarkable document fabricated. The document could hardly be said to have been proved by her evidence even if her case had disclosed no element of suspicion, but the fact that this document is brought forward now for the first time, after a lapse of thirty years, is one which it seems to me is impossible to be explained consistently with its genuineness. If it had really existed, it would, I am convinced, have been brought forward and filed in the very first of the many suits, which, during a long series of years, have been brought by or against Pyari Mani in reference to this property. The excuse suggested to account for this not having been done, is a very lame one. It is true that according to the terms of the document she would not obtain the absolute power of disposing of the property until she became fifty years of age, but still even this contingent right would have given her such moral strength in her position that she would assuredly not have failed to get the document upon the Nathi at the earliest opportunity. Or if they are so nice in regard to the reception of evidence in the Mofussil Courts as to lead this lady and her advisers to think it would have been useless to file this document it is certain that at least its existence would have been disclosed in the depositions of herself or some of her servants who have so often given evidence in cases of this kind. And further when I come to look closely at this document, it appears to me to present that peculiar condition of surface which is commonly seen in new deeds so prepared in this country as to bear the appearance of age. In short, I have no hesitation in saying that I believe the document to be a forgery deliberately made for the purpose of bolstering up the case of the defendants; and I shall not allow the persons who rely on such a defence as this to have their costs, considering that the plaint is dismissed not on the merits, but on the peculiar ground which has been fatal to the plaintiff''s case. The suit is therefore dismissed, each party paying their own costs.