PRIVY COUNCIL.

P.C.*
1917

Oct. 19.

SAUDAGAR SINGH

v.

PARDIP NARAYAN SINGH

[ON APPEAL FROM THE HIGH COURT AT FORT WILLIAM IN BENGAL.]

Declaratory Decree—Execution by Hindu widow, in possession of her husband's estate, of deed purporting to confer absolute interest in property to one reversioner to the exclusion of others—Right of excluded reversioners to declaration that the deed is not binding on them—Specific Relief Act (I of 1877), s. 42, ill. (e).

Where a Hindu widow (defendant 1), in possession of her husband's estate, had executed a deed purporting to confer the absolute interest in the property on one of the reversioners (defendant 3) to the exclusion of others who claimed to be also reversionary heirs (plaintiffs) :—

Held, that under section 42, illustration (*e*) of the Specific Relief Act (I of 1877) the plaintiffs who as heirs ranked equally with defendant 3 were entitled to a declaration that the deed was not binding on them, notwithstanding that they may never get any title because events may preclude them from doing so, and though such a declaration involves a finding that the plaintiffs are reversionary heirs.

Janaki Ammal v. *Narayanasami Aiyer* (1) distinguished.

APPEAL 98 of 1916 from a judgment and decree (29th January 1914) of the High Court at Calcutta, which reversed a judgment and decree (16th February 1909) of the Court of the Subordinate Judge of Patna.

Defendant No. 3 was the appellant to His Majesty in Council.

* *Present* : LORD PARKER OF WADDINGTON, LORD WRENBURY, SIR JOHN EDGE, MR. AMEER ALI AND SIR LAWRENCE JENKINS.

(1) (1916) I. L. R. 39 Mad. 634 ; L. R. 43 I. A. 207.

The facts are sufficiently stated in the judgment of the High Court (H. L. STEPHEN and B. K. MULLICK JJ.) which was as follows :—

"The facts of the case are that four brothers, Mahipat, Saligram, Het Narayan and Drigpal were at one time joint owners of family property. Saligram died, and was succeeded by his son Deo Narayan, and the family property was then partitioned and the uncles and nephew became separate. Deo Narayan then died leaving a widow Jaibasi and a daughter, Sakalbati. The plaintiffs are the sons of Drigpal and claim to be at present the reversionary heirs of Deo Narayan after the deaths of his widow and daughter, together with Saudagar, the childless son of Mahipat. In 1906 Jaibasi and Sakalbati executed a deed of tamliknama in favour of Saudagar; and the defendants now ask for a declaration that the deed is void as against the plaintiffs. They originally asked for possession, on the ground, as we understand it, that Jaibasi and Sakalbati have divested themselves of a right to possession and had not conferred it on Saudagar; but in this Court the ground taken is that though they may have given Saudagar a right to possession during their lives, the plaintiffs have a right to a declaration that the deed is not operative as against them. The pleadings are so framed as to include this case, and the real point that has been argued before us is that such a declaration should not be made in this case.

"Before considering this point, however, we must notice a defence on the fact that was raised in the Court below, and that has been raised again here, though it has not been much pressed. This is that Mahipat, the father of Saudagar, and Saligram, the father of Deo Narayan, were the sons of one mother, and that Het Narayan and Drigpal were the sons of another mother, and that consequently Saudagar is the reversionary heir to Deo Narayan to the exclusion of the plaintiffs. The lower Court has not decided this issue because he has held that the plaintiffs have no cause of action, but he has expressed an opinion that the four brothers were brothers of the whole blood. On considering the evidence in the case, we have no hesitation in adopting the same view, and we hold that the brothers were all borne by the same mother.

"This brings us to the real point at issue, as to which the plaintiffs' contention is that a reversioner on a limited estate is entitled to a declaration that a deed is invalid if its invalidity depends on facts which may be obscured by lapse of time, and that the invalidity or otherwise of the tamliknama depends on the question—whether the brothers were sons of the same mother or not, which can be more easily settled now than later. He relies on the decision of Phear J., in *Behary Lall Mohurwar* v. *Madho*

1917

SAUDAGAR SINGH v. PARDIP NARAYAN SINGH.

Lall Shirgyawal (1), and on Illustration (*e*) of section 42 of the Specific Relief Act as authority for this proposition. The respondent on the other hand contends that while the proposition of law put forward by the appellant is unimpeachable, it does not apply to the facts of the present case; for what the plaintiffs seek is a decleration that they are now reversionary heirs by reason of being related to the defendants' branch of the family by whole and not by half blood, and the Court will not make a declaration to establish heirship before the succession in regard to which it is claimed has opened out, a proposition for the truth of which he refers us to *Kattama Natchiar* v. *Dorasinga Tevar* (2), if authority be needed. Neither side disputes the law as propounded by the other: and the simple question we have to decide is what is the declaration that is sought for in this case. As to this we have no doubt that the plaintiffs are asking among other things to have the tamliknama declared inoperative as against themselves, and the fact that such a declaration must be founded on reasons that would support a declaration that they are heirs to Deo Narayan, were it open to us to make such a declaration, cannot shut him out of his right to a declaration as to the validity of the document in question. This fact has been overlooked by the Court below where the case was argued with much greater complexity of issues than we have had to deal with. The appeal is accordingly allowed, the judgment and decree of the lower Court are set aside, the suit is decreed in favour of the plaintiffs, and it is declared that the deed in question is inoperative against them.

On this appeal,

Sir H. Erle Richards, K.C., and *A. M. Dunne, K.C.*, for the appellant, contended that such a declaration as the High Court had given the plaintiffs should never have been made; it was not supported by the practice prevailing in India. Reference was made to *Janaki Ammal* v. *Narayanasami Aiyer* (3), which was relied upon as governing the present case. The plaintiffs had no cause of action in this suit; they had not established any right as reversioners, and were not entitled to a declaration which would imply that they have the status of reversionary heirs. Mayne's Hindu law, 8th ed., paragraphs 647, 648, 651 was

(1) (1874) 13 B. L. R. 222; 21 W. R. 430.
(2) (1875) 15 B. L. R. 83; L. R. 2 I. A. 169.
(3) (1916) I. L. R. 39 Mad. 634; L. R. 43 I. A. 207.

referred to. The decree of the Subordinate Judge was right, and should be restored.

DeGruyther, K.C., and *J. M. Parikh*, for the respondents 1 and 2, were not called upon.

The judgment of their Lordships was delivered by

LORD PARKER OF WADDINGTON. Their Lordships do not consider it necessary to call upon counsel for the respondents in this appeal.

Oct. 19.

The question is a very short one. It appears that the High Court from which the appeal has been brought has made a certain declaration. There is absolutely no ground for saying that that declaration is in any way erroneous, nor has counsel for the appellant suggested any error. The point is simply whether, under the practice prevalent in India, such a declaration ought to have been made. In order to show that no declaration ought to have been made, reference has been made to various cases, and in particular to the case of *Janaki Ammal v. Narayanasami Aiyer* (1). The point of that case is this : There was a Hindu widow entitled to an estate, and a suit was brought by a person, presumptively entitled as heir after her death, to prevent waste. It was held that there was no waste at all, and the question arose whether, under those circumstances, it was proper to give the persons presumptively entitled a declaration of their title as presumptive, or as sometimes called reversionary, heirs, and it was held by this Board that no such declaration ought to be made. It is said that this case is analogous to that, and that no declaration ought to have been made. On the other hand, if section 42 of the Specific Relief Act, 1877, is referred to, it will be seen that one of the illustrations given is this

(1) (1916) I. L. R. 39 Mad. 634 ; L. R. 43 I. A 207.

1917

SAUDAGAR SINGH v. PARDIP NARAYAN SINGH.

"The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her, may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond on the widow's lifetime."

It appears to their Lordships to be clear on this section that where any deed is executed, the result of which may be to prejudice the interests of the reversionary heirs, those heirs, though still reversionary and though they may never get any title because events may preclude them from doing so, may have a declaration as to the effect of the deed. The declaration here is simply confined to that. It is a declaration that a certain deed which was executed by the Hindu widow in possession, and purporting to confer the absolute estate in the property on one of the reversionary heirs, is not binding on the other reversionary heirs. It was intended that this deed should operate to confer the whole interest on the grantee, on the footing that the other reversionary heirs, being of the half blood only, could not come in in competition with the grantee, and the real question in the suit, as far as their Lordships can make out, was simply whether the claimants were claimants of the half blood or of the whole blood, and it was decided by both Courts that they were not of the half blood, but of the whole blood.

Under these circumtances, it appears to their Lordships that this is an exact illustration of that which section 42 of the Specific Relief Act was meant to provide for. It is quite true that it involves a finding that the plaintiffs in this case are reversionary heirs, but that must always be the case where a declaration is made following the illustration (*e*) of

the section, because it is only in virtue of the persons claiming the declaration being reversionary heirs, and therefore presumptively entitled, that the declaration is made.

Under these circumstances, their Lordships can see no possible ground for interfering with the decree of the High Court, and the appeal therefore should be dismissed with costs. Their Lordships will tender their humble advice to His Majesty accordingly.

Appeal dismissed.

Solicitors for the appellant: *T. L. Wilson & Co.*
Solicitors for the respondent: *Edward Dalgado.*

J. V. W.

APPELLATE CIVIL.

Before Mookerjee and Walmsley JJ.

SHIB CHANDRA BANERJEE

v.

SURENDRA CHANDRA MANDAL.*

1917

May 3.

Chaukidari Chakaran Lands—Effect of transfer—Village Chaukidari Act (Beng. VI of 1870), s. 51.

Where certain chaukidari chakaran lands forming part of a revenue-paying estate, being abandoned by the chaukidars, were appropriated by the zemindar who settled the same with the defendants as tenants, and thereafter the lands were resumed under the provisions of the Village Chaukidari Act, 1870, and subsequently transferred to the zemindar who granted an under-tenure to the plaintiff,

* Appeal from Appellate Decree, No. 112 of 1915, against the decree of Asutosh Ghose, Subordinate Judge of Burdwan, dated Nov. 18, 1914, reversing the decree of Peary Mohan Chatterjee, Munsif of Katwa, dated Dec. 3, 1913.