

Munshi *Sukh Ram* and *Lala Lalta Prasad*, for the appellant.

Babu Barodha Prasad, for the respondent.

The judgment of the Court was delivered by

PEARSON J.—The bond in suit, in reference to the ruling of this Court in *Darshan Singh v. Hanwanta* (1) and other similar rulings in similar cases, undoubtedly required to be registered, and under s. 49 of Act VIII of 1871, cannot affect the property therein comprised being immoveable property. We disallow the pleas in appeal, and dismiss the appeal with costs.

Appeal dismissed.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Pearson.

GAURI DAT AND OTHERS (DEFENDANTS) *v.* GUR SAHAI (PLAINTIFF) AND RUKMIN KUAR AND ANOTHER (DEFENDANTS).*

Hindu Law—Alienation—Reversioner—Fraud.

S was entitled, under the Mitakshara law, to succeed, on the death of *M*, her mother, to the real estate of *N*, her father. Certain persons disputed *S*'s right of succession and claimed that they were entitled to succeed to *N*'s estate on *M*'s death, and complained that *M* was wasting the estate. The differences between such persons and *M* and *N* were referred by them to arbitration, and an award was made and filed in Court which, among other things, partitioned the estate between *S* and such persons. *G*, who claimed the right to succeed to the estate on *S*'s death, sued for the cancellation of the award on the ground that it was fraudulent and affected his reversionary interests. *Held*, relying on *Dowar v. Boonda* (1), that the suit was maintainable notwithstanding that *G* was not the next reversioner.

THIS was a suit for the cancellation of an award made on a reference to arbitration. The facts of the case were as follows: One Tek Chand, deceased, had by his first wife three sons, Dario Singh, Nand Lal, and Sidh Gopal, and by his second wife one son, Sheo Prasad. On the death of Tek Chand the four brothers separated, and a partition of the family estate took place. Dario Singh died leaving two sons, who died leaving each a son, the son

* First Appeal, No. 124 of 1877, from a decree of Babu Ram Kali Chaudhri, Subordinate Judge of Cawnpore, dated the 3rd September, 1877

(1) I. L. R. 1 All. 274.

1878

HARI DAT
v.
SAHAI.

of one being Gur Sahai, the plaintiff in the present suit, and of the other Raja Ram, a minor. Nand Lal died in September, 1863, leaving a widow, Rukmin Kuar, a defendant in the present suit, and a daughter, Sitala Kuar, also a defendant in the present suit, who had six daughters, one of whom had male issue. Sidh Gopal died leaving a daughter. Sheo Prasad died leaving six sons, of whom five, *viz.*, Har Dat, Gauri Dat, Ambika Dat, Din Dayal, and Sheo Dat, were defendants in the present suit. The sixth son Prag Dat died leaving two sons, Ram Dayal and Sankata Din, also defendants in the present suit. After the death of Nand Lal differences arose between the heirs of Sheo Prasad on the one side and Rukmin Kuar and Sitala Kuar on the other side with regard to the estate of Nand Lal. The heirs of Sheo Prasad asserted that they were the reversioners to such estate, and Rukmin Kuar was wasting it, while Sitala Kuar asserted that she was her father's heir, and entitled to succeed to the property on Rukmin Kuar's death. The parties, by an instrument in writing dated the 18th August, 1876, agreed to refer the differences between them to arbitration. In pursuance of this agreement an award was made which, after reciting that it was made in order to protect the property, to perpetuate the name of the ancestor, and to perform ceremonies for the spiritual benefit of the deceased (Nand Lal) disposed of all the estate of Nand Lal between the parties to the arbitration.

On an application made by Sitala Kuar, this award was ordered to be filed in Court by the Subordinate Judge. The heirs of Sheo Prasad subsequently obtained possession from the Court of the property awarded to them. The present suit was brought by Gur Sahai, a son of Dario Singh, and a grandson of Tek Chand, as a reversioner to the estate of Nand Lal, against Rukmin Kuar, Sitala Kuar, and the heirs of Sheo Prasad for cancellation of the award as being fraudulent and injurious to his rights as such reversioner.

On the 7th June, 1877, the plaintiff and the defendants Rukmin Kuar and Sitala Kuar filed an agreement in Court, in which these defendants agreed that a decree should be made against them in

the plaintiff's favour, the plaintiff on his part agreeing that, in respect of a certain portion of the property awarded to Sitala Kuar, he would not at any time seek to disturb her possession. It was also stated in this agreement that "the plaintiff is the nearest heir to the estate of the deceased Nand Lal, the husband of petitioner Rukmin Kuar." On the 24th July, 1877, the heirs of Sheo Prasad filed a written statement in which (amongst other things) they urged that the plaintiff was not the next reversioner after Rukmin Kuar, and consequently no cause of action had accrued in his favour.

The Subordinate Judge fixed two issues for trial, *viz.* (i) "Whether the plaintiff is the next reversioner after Rukmin Kuar: if not has he any cause of action?" and (ii) "Whether the plaintiff is entitled to set aside the arbitration-award in dispute?" On the first issue the Subordinate Judge held that, as Sitala Kuar, the heir to the estate of Nand Lal had no sons, and as the parents and brothers of Nand Lal were dead, the plaintiff was, under the Mitakshara law, a reversioner to the estate of Nand Lal on Sitala Kuar's death; and that, as the plaintiff's right as such reversioner was affected by the award, and Sitala Kuar, the heir to the estate, raised no objection to the plaintiff's suit, the plaintiff had a cause of action. On the second issue the Judge held that the plaintiff was entitled to have the award cancelled, as it plainly affected his reversionary rights, and he accordingly gave the plaintiff a decree cancelling the award.

The heirs of Sheo Prasad appealed to the High Court, contending in their memorandum of appeal that the award was valid for the lives of Rukmin Kuar and Sitala Kuar and as between them, and that as the arrangements effected under the award were intended to save the estate from the consequences of a debt incurred for the benefit of the soul of Nand Lal, such arrangements were legal and ought to stand good.

Mr. Conlan and Maulvi Obeidul Rahman, for the appellants.

Pandit Ajudhia Nath for Gauri Dat, respondent, and Pandits Bishambhar Nath and Nand Lal for Rukmin Kuar and Sitala Kuar, respondents.

1878
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 AURI DAT
 v.
 UR SAHAI.

Mr. *Conlan* contended that the plaintiff could not maintain the suit not being the next reversioner to the estate. He referred to *Dabee v. Saradaprosaud Mookerjee* cited in Norton's Leading Cases on the Hindu Law of Inheritance, ed. by Scharlieb, part ii, p. 628 and following pages; and to the Tagore Law Lectures, 1870, pp. 201, 202.

Pandit *Bishambar Nath* relied on *Dowar v. Boonda* (1) and *Ammur Singh v. Murdun Singh* (2).

The following judgments were delivered by the Court :

STUART, C. J.—The suit in which this appeal has arisen was instituted by the plaintiff Gur Sahai alone against Rukmin Kuar; her daughter Sitala Kuar, and other persons, descendants of Sheo Prasad, deceased, a male relative of Nand Lal, Rukmin Kuar's husband. During the pendency of this suit an arrangement appears to have been come to between the two ladies, defendants, and the plaintiff, to the effect that he would not in future make any claim in disturbance of, or in opposition to, the arbitration-award so far as it allotted property to Sitala Kuar, and that with that exception he, the plaintiff, should have a decree in his favour; and in looking into the record I find that such an arrangement or compromise, under the name of a petition of cognovit, was filed, and it bears the plaintiff's signature. The petition was sent for attestation to the Munsif of Fatehpur, who got it attested, and reported that the ladies expressed their consent; and there was thus an end to the dispute between them and the plaintiff. But the other defendants, the descendants of Sheo Prasad, being dissatisfied with the judgment of the Subordinate Judge, have preferred the present appeal, the form of which is thus explained, the respondents being not only the plaintiff but the two ladies with him.

The compromise between these parties, however, does not affect the legal questions raised by the appeal before us. It has been argued at great length on both sides, and numerous authorities have been referred to, but the case is a very simple one. The plaintiff seeks to set aside an arbitration-award made between the two ladies Rukmin Kuar and her daughter Sitala Kuar on the one side, and

(1) H. C. R., N.-W. P., F. B. Rulings, 56.

(2) H. C. R., N.-W. P., 1870, p. 31.

the defendants Ram Dayal and other descendants of the deceased Sheo Prasad on the other side, and the award disposed of the whole property in suit among these defendants themselves to the prejudice of the plaintiff and in disregard of his reversionary right. The Subordinate Judge has given the plaintiff a decree, holding that according to the law of Mitakshara he has the reversion to the estate after Sitala Kuar.

1878

 GAURI D.
 v. S.
 GGR SAH.

In support of the present appeal it was argued by the counsel for the appellants that the plaintiff had no such reversionary right as would enable him to maintain the suit, as his interest was too remote, and the learned counsel referred to several authorities in support of that contention. But it is unnecessary for us to examine these, seeing that the appellants themselves in their written statement admit the reversionary right of the plaintiff, and that being so, the only question is whether he can as such reversioner maintain the present suit to have the award set aside. Undoubtedly he can.

The pleaders for the respondents refer to a judgment of the Full Bench of this Court delivered on the 12th September, 1866, in the case of *Dowar Rai v. Boonda* (1) in support of the plaintiff's right to maintain his suit against the defendants, appellants, and so far as it goes that case clearly supports the plaintiff's right of suit. I was not a Judge of the Court when the judgment of the Full Bench was delivered, but I have carefully considered it, and I fully concur in its ruling. But irrespective of it and on principle the plaintiff, although not the immediate next reversioner, has clearly a right to protect such interest as he has in the estate, and for that purpose to maintain such a suit as the present, for his right of reversion is of such a nature, according to Hindu law, that it cannot be defeated should he survive Sitala Kuar.

The judgment of the Subordinate Judge is therefore right, and the present appeal is dismissed with costs.

PEARSON, J.—The pleas set forth in the memorandum of appeal do not appear to have much weight. The award which the plaintiff sues to set aside has absolutely disposed of the property in suit in such a manner as to destroy his reversionary interest therein, which cannot be protected without or otherwise than by avoiding

(1) H. C. R., N.-W. P., F. B. Rulings, 56.

1878

MAURI DAT
v.
DUR SAHAL.

the award *in toto*. Nor can it be admitted that no other arrangement than that made by the arbitrators for the discharge of the debts due from the estate of Nand Lal or incurred for the benefit of his soul was possible.

These pleas were not indeed pressed upon us orally. The learned counsel mainly urged that the plaintiff not being the next reversioner is incompetent to bring this suit. It is true that Sitala Kuar is the next reversioner on the death of her mother Rukmin Kuar, the present incumbent. But the plaintiff alleges that these ladies have colluded with the defendants, appellants, in the matter of the award with the view of defrauding him. The suit is therefore maintainable under the authority of the Full Bench ruling of this Court in the case of *Dowar Rai v. Boonda* (1). The learned counsel impugns that ruling, but we are bound by it.

He further contended that Sitala Kuar would take her father's estate after her mother's death in full proprietary tenure, so as to be able to dispose of it absolutely, and that therefore the result of the arbitration to which she had consented was not obnoxious to objection on the part of the plaintiff. Were the contention sound, he would not be the reversioner after her, and would of course have no *locus standi* in this suit; but the contention is opposed to Hindu law prevailing in these parts, and is indeed inconsistent with the pleading in the last paragraph of the written statement filed by the defendants (appellants here) in the Court below, wherein they admitted the plaintiff to be the next reversioner after the female defendants to a moiety at least of the property in suit. I would dismiss the appeal with costs.

Appeal dismissed.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.

RAM GHULAM (DEFENDANT) v. CHOTEY LAL (PLAINTIFF).*

Contract of Sale—Suit to enforce Registration of Conveyance—Act III of 1877 (Registration Act), ss. 36, 75, 77.

Held, where a person had agreed to sell another certain immoveable property, and had conveyed the same to him by a deed of sale which under the Registration

* Second Appeal, No. 113 of 1878, from a decree of R. F. Saunders, Esq., Judge of Farukhabad, dated the 2nd January, 1878, reversing a decree of Maulvi Muhammad Abdul Basit Khan, Munsif of Chibramau, dated the 10th December, 1877.

(1) H. C. R., N.-W. P., F. B. Rulings, 56.

1878

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