

passing of the Code, would have the benefit of the proviso to s. 230, and would thus be entitled to a further period of full three years for the purposes of execution, a decree which, on that date, was eleven years, eleven months, and twenty-nine days old, would be allowed only one day for execution. I have put the matter in this strong light because such, indeed, is the effect of the ruling which I am now considering. How the learned Chief Justice distinguished the case before him from the Full Bench ruling of this Court is a matter upon which his judgment is totally silent, and, speaking for myself, I am wholly unable to see any distinction. And this is all I wish to say upon what I have enumerated as the fifth point of the learned Chief Justice's judgment.

But I must add that I have regarded it as my duty to consider the ruling in *Tufail Ahmad v. Sadhu Saran Singh* (1), not only out of the deference which is due by this Court to its late learned Chief Justice, but also because, if I had felt disposed to follow that ruling, I should have asked my learned brother Oldfield to allow this case to go before the Full Bench. But, for the reasons which I have already stated, I respectfully decline to regard the ruling either as sound law in itself or as consistent with the Full Bench ruling which we are bound to follow. My order then is the same as that of my brother Oldfield.

Appeal dismissed.

Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Mahmood.

SACHIT AND ANOTHER (DEFENDANTS) v. BUDHUA KUAR (PLAINTIFF)*

Hindu widow—Decree against widow—Fraud—Reversioner.

Upon the death of *R*, a Hindu, who was separate from his brother *S*, his widow *G* became life-tenant of his estate, and his daughter *B* became entitled to succeed after *G*'s death. In 1882, a suit was brought by *S* and *G* against *V*, to recover the value of a branch of a mango tree wrongfully taken by the defendant, and for maintenance of possession over the grove in which the tree was situate. The suit was dismissed, and it was decided that *R* was not the owner of the grove, nor was *G* the owner. In 1885 *B* brought a suit against *G*, *S*, *V* and *A*, to whom *V* had sold some of the trees, claiming a declaration of her right and possession of the grove, upon the allegation that the proceedings of 1882 were carried on in

* Second Appeal No. 1598 of 1885, from a decree of Rai Raghunath Sahai, Subordinate Judge of Azamgarh, dated the 20th June, 1885, reversing a decree of Munshi Sheo Sahai, Second Munsif of the city of Gorakhpur, dated the 11th January, 1885.

(1) Weekly Notes, 1885, p. 193.

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collusion between S and G on the one hand and V on the other, for the purpose of improperly preventing her from asserting her rights.

Held that if the suit of 1882 was a genuine suit and was properly contested by the then plaintiffs, though S might have been improperly joined as plaintiff, any decision then passed against G would be binding upon the present plaintiff, and stop her again litigating questions which were then decided.

Held also that if the plaintiff's specific allegation of fraud and collusion in the proceedings of 1882 were established, and even if the decree of 1882 did dispose of the question now sought to be reopened, the decision in that suit would not be binding on the plaintiff under the circumstances.

Held also that if it should turn out that there was fraud and collusion in the proceedings of 1882, and an attempt to interfere with the plaintiff's right as reversioner to the grove on the death of her mother, she would be entitled in the present suit to claim not only a declaration of her right, but also to have the grove reduced into the possession of the life-tenant; and that such relief could be given upon this form of plaint.

Katama Natchiar's Case (1), *Adi Deo Narain Singh v. Dukharan Singh* (2), and *Sant Kumar v. Deo Saran* (3), referred to.

THE plaintiff in this case was the daughter of one Ramphal Pande, deceased, and his wife Gulabi Kuar. She alleged in her plaint that her father always lived separately from his brother Salik Ram; that he died about seven years before the institution of the suit, and on his death Gulabi Kuar came into possession of his property; that Ramphal owned and possessed a certain grove of mango trees with which Salik Ram and one Sachit had no concern, that the plaintiff's mother and Salik Ram, having colluded with Sachit, brought a suit against the latter for the grove and caused a decision to be passed against themselves, in default of prosecution, on the strength of which Sachit had wrongfully taken possession of the grove in July, 1882; that Sachit had sold some trees to one Ramphal Kuar; that the plaintiff was heir to Ramphal Pande and, as Gulabi Kuar was not in possession of the grove, was entitled to possession thereof; and that her cause of action arose in June, 1883, when she became aware of what had happened. On these allegations she claimed a declaration of her right and possession of the grove, making Gulabi Kuar, Salik Ram, Sachit and Ramphal Kuar defendants to the suit.

The defendants Sachit and Ramphal Kuar defended the suit on the ground that the grove belonged to Sachit and not to Ram-

(1) 9 Moo. I. A. 543.

(2) I. L. R., 5 All. 532.

(3) *Ante*, p. 365.

phal Pande, and on the ground that the question whether it belonged to Sachit or Ramphal Pande had become *res judicata* by reason of the decision passed against the plaintiff's mother in the suit referred to in the plaint.

It appeared that that suit was brought by Gulabi Kuar and Salik Ram against Sachit, and the claim was to recover the value of a branch of a mangoe tree wrongfully taken by Sachit and for maintenance of possession over the grove. That suit was dismissed by the Court of first instance on the 8th February, 1882, and the decree was affirmed by the appellate Court on the 8th July, 1882. It was decided in that suit that the plaintiff's father was not the owner of the grove, nor was Gulabi Kuar the owner.

The Court of first instance held that the plaintiff's suit was barred by the decision in the former suit. On appeal by the plaintiff the lower appellate Court held that the suit was not barred by that decision, on the ground apparently that the same had not been fairly obtained against Gulabi Kuar the plaintiff's mother; and, finding that the grove belonged to Ramphal Pande, gave the plaintiff a decree declaring her right, but refusing to give possession on the ground that the plaintiff's mother was still alive.

The defendants Sachit and Ramphal Kuar appealed to the High Court on the ground (i) that the suit was barred by s. 13 of the Civil Procedure Code; (ii) that the plaintiff was bound by the acts of her mother and could not question the same; and (iii) that the plaintiff's claim for a declaratory decree while her mother was alive was not maintainable, and the decree given her was bad.

Mr. J. E. Howard and Lala Latta Prasad, for the appellants.

Shah Asad Ali, for the respondent.

STRAIGHT, Offg. C. J. — This is an appeal preferred by the defendant Sachit under the following circumstances:—The suit was brought by the plaintiff-respondent to recover possession of a grove from the defendant by a declaration of the plaintiff's title as reversioner, on the allegation that Sachit had made a sale of certain trees to the second defendant Ramphal Kuar. The plaintiff was the daughter of one Ramphal Pande, who died seven years ago, leaving a widow, Gulabi Kuar, a brother, Salik, and a daughter,

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who is the plaintiff in this case. Ramphal was separate from his brother Salik, and his estate therefore was inherited, first, by his widow Gulabi Kuar, who became life-tenant, and the plaintiff is entitled to succeed to the estate upon her mother's death. In 1882 a suit was brought by Salik and Gulabi Kuar against Sachit for declaration of right and possession of the grove to which the present suit relates, and, apparently after contest, the suit was decreed in favour of Sachit, and the claim of Salik and Gulabi Kuar was dismissed. If that was a genuine suit and was properly contested by the then plaintiffs, though Salik may have been improperly joined as plaintiff, still any decision then passed against Gulabi Kuar would be binding upon the present plaintiff, and estop her again litigating questions which were then decided. The authority for this view is the case of *Katama Natchiar* (1), and the portion of the judgment in that case to which I more particularly refer, will be found at page 608 of the report. The same principle was also recognized by myself in *Adi Deo Narain Singh v. Dukharan Singh* (2). The plaintiff now comes into Court impeaching a transfer of certain trees by Sachit to the other defendant, Musammat Ramphal Kuar, and is met by Sachit with the plea that the question of proprietary title to the grove has already been determined by the suit of 1882 against Gulabi Kuar, the decision of which is binding upon the plaintiff and she cannot re-open it now. The Munsif was of opinion that this plea was good. The Subordinate Judge took a contrary view. But it appears to me that in doing so he has stated very inadequate grounds for his conclusions, and has also lost sight of the real nature of the plaintiff's claim and the language of the plaint. He has apparently not noticed the most essential point in the plaint, namely, that the plaintiff alleges that the proceedings of 1882 were fraudulent and collusive, and were got up between Salik and Gulabi on the one hand and Sachit on the other, and carried on for the purpose of improperly preventing the plaintiff from asserting her rights. This is a specific allegation of fraud and collusion; and if it is established, and even if the decree of 1882 did dispose of the question now sought to be re-opened, the decision in that suit would not be binding on the present plaintiff under the circumstan-

(1) 9 Moo. I. A., 543.

(2) I. L. R., 5 All. 532.

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ces I have mentioned. This being so, it appears to me that the Judge has not tried the two main issues, which must be clearly determined before it is possible for us to dispose of this appeal. Before remanding these issues to the lower Court under s. 566 of the Civil Procedure Code, I may observe that, in my opinion, the principle which I enunciated in the case of *Adi Deo Narain Singh v. Dukharan Singh* (1) should be applied to the present claim; and if it should turn out that there was fraud and collusion in the proceedings of 1882, and an attempt to interfere with the plaintiff's right as reversioner to the grove on the death of her mother, she will be entitled in this suit to claim, not only a declaration of her right, but also to have the grove reduced into the possession of the life-tenant. It appears to me that we are competent to give such relief upon this form of plaint. I would therefore remand the following issues for determination by the lower appellate Court under s. 566 of the Code:—

1. Did the suit of 1882 finally determine the question of the proprietary title to the grove now in suit between Gulabi Kuar and the present defendant Sachit?

2. Was such suit a genuine and *bona fide* proceeding, contested and litigated honestly from beginning to end?

The findings, when recorded, will be returned to this Court, with ten days allowed for objections from a date to be fixed by the Registrar.

MAHMOOD, J.—I am of the same opinion. It appears to me that the case cannot be disposed of finally without ascertaining the two points which the learned Chief Justice has just formulated. The main point would be the conduct of Gulabi Kuar in the litigation of 1882; and whether her action was induced by collusion or other fraudulent motives, or by undue influence, the result would be the same. As regards the rule applicable to cases of this kind, I may refer to the judgment in *Sant Kumar v. Deo Saran* (2) in which the ruling of the Privy Council, to which the learned Chief Justice has referred, was applied. I also agree with what the learned Chief Justice has said in reference to the nature of the plaint in this case.

Issues remitted.

(1) I. L. R., 5 All. 532.

(2) *Ante*, p. 365.