

1911

BENI MADHO
v.
BHAGWAN
PRASAD.

remit or suspend the revenue. The defendants, land-holders, are therefore entitled to the benefit of the remission granted by Government. In this view the courts below were right, and this appeal must fail. We accordingly dismiss it with costs.

Appeal dismissed.

1911

April, 13.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

BILASO (DEFENDANT) v. MUNNI LAL AND ANOTHER (PLAINTIFFS) AND ISHRI PRASAD (DEFENDANT)*

Will—Construction of document—Bequest to take effect after death of testator and his wife—Legatee surviving testator but predeceasing wife—Vested or contingent interest.

One S executed a will whereby he gave all his property after the death of himself and his wife M to his daughter B and his nephew D. D survived the testator but predeceased M. *Held* that D took a vested interest in the property which was transmissible to his sons. *Bhagabati Barmanya v. Kali Charan Singh* (1) followed.

THE facts of this case are as follows:—

One Sewa Ram, being the owner of certain property, executed a will whereby he gave all his property, after the death of himself and his wife Musammat Mendu, to his daughter Bilaso and his nephew Duli Chand. Duli Chand survived the testator, but predeceased Musammat Mendu. The present suit was brought by the heirs of Duli Chand to recover his share of the property of Sewa Ram from Musammat Bilaso. The court of first instance (Subordinate Judge of Bareilly) decreed the claim, and this decree was on appeal confirmed by the Additional District Judge. The defendant Bilaso appealed to the High Court.

The Hon'ble Pandit *Sundar Lal* and Maulvi *Ghulam Mujtaba*, for the appellant.

Dr. *Satish Chandra Banerji* and Dr. *Tej Bahadur Sapra*, for the respondents.

STANLEY, C. J. and BANERJI, J.—The sole question raised in this appeal depends upon the true construction of the will of one Sewa Ram. Sewa Ram being the owner of certain property,

* Second Appeal No. 1000 of 1910 from a decree of B. M. Nanavutty, Additional Judge of Bareilly, dated the 23rd of June, 1910, confirming a decree of Srish Chandra Basu, Subordinate Judge of Bareilly, dated the 7th of March 1910.

executed his will on the 4th of April, 1881, and thereby gave all his property, after the death of himself and his wife Musammât Mendu, to his daughter Bilaso and his nephew Duli Chand. Duli Chand survived the testator, but predeceased Musammât Mendu. The contention in the appeal is that Duli Chand did not take a vested interest in the property disposed of by the will, but merely a contingent interest, and that he having died before his aunt, his sons are not entitled to succeed to the property. We think that the courts below were right in holding that Duli Chand took a vested interest in the property which was transmissible to his heirs. The point was the subject of decision by their Lordships of the Privy Council in the case of *Bhagabati Barmanya v. Kali Charan Singh* (1). In that case a will provided that the testator's mother and his wife were to succeed to his property for life, and on their death the sons of his sisters G and A, "that is to say, their sons who are now in existence as also those who may be born hereafter, shall in equal shares hold the said properties in possession and enjoyment by right of inheritance." It was held that the nephews were intended to take vested and transmissible interests on the death of the testator, though their possession and enjoyment was postponed. This decision appears to us to govern the present case. The appeal is therefore devoid of force. We dismiss it with costs.

Appeal dismissed.

(1) (1911) I. L. R., 38 Calc., 468 ; S A. L. J., 433.

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