1911
January 26.

Before Mr. Justice Richards and Mr. Justice Tudball.

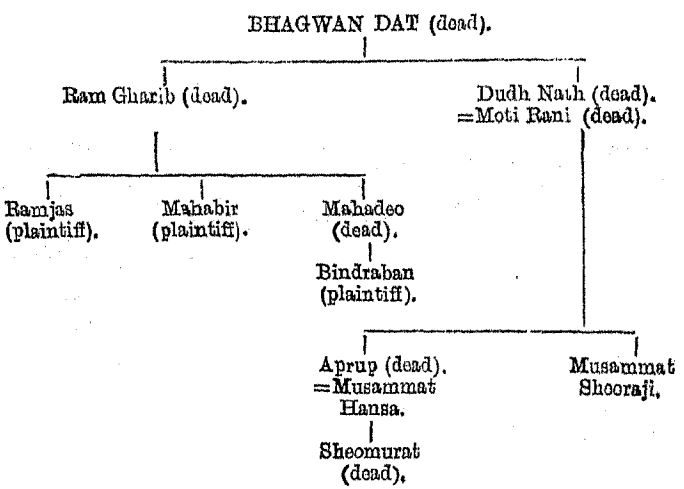
SHEORAJI (DEFENDANT), *v.* RAMJAS PANDE AND OTHERS (PLAINTIFFS.)*

Act No. I of 1877 (*Specific Relief Act*), *section* 42—*Hindu law—Reversioner—Suit for declaration of title—Cause of action—Will made by Hindu widow in possession—Limitation.*

D, a separated Hindu, and his son A died in 1891 on the same day, the father dying first. A's son, S M, died a week later, leaving his mother H and his grandmother M. The property was then recorded in the names of M and H; but M got possession, and in 1908 executed a will in favour of her daughter S. The reversioners of D brought a suit in 1908 for a declaration that the will would have no effect on their reversionary right. S set up her right to the property, ignoring that of H. *Held* that even during the lifetime of H, the plaintiffs were entitled to institute a suit for a declaration only under the provisions of section 42, Specific Relief Act.

Held further that the suit was not barred by limitation. Mutation of names in M's favour was more or less an equivocal act and might possibly have given a cause of action, but when in 1908 M specifically declared that the heir to the property was S and S herself asserted her title, the plaintiffs acquired a cause of action sufficient to entitle them to sue.

THE parties to this case were related in the manner shown in the subjoined pedigree:—



Dudh Nath, who was separated from his brother Ram Gharib, died in 1891, and his son Aprup died later on the same day. Sheomurat the grandson died a week later. After the death of Sheomurat the names of Moti Rani and Hansa were recorded

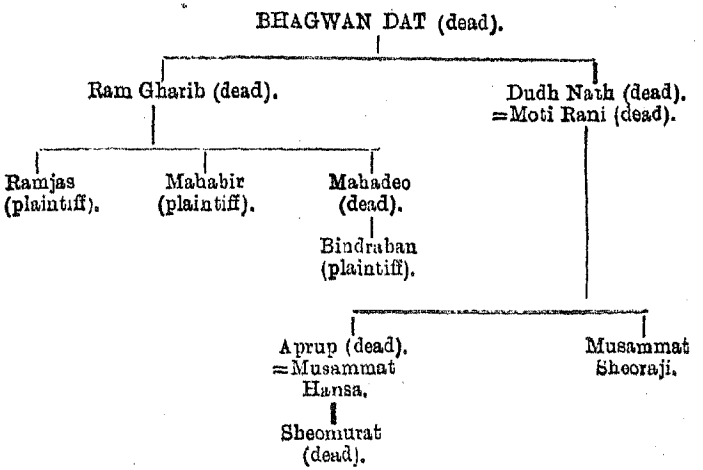
* Second Appeal No. 1009 of 1910, from a decree F. D. Simpson, District Judge of Gorakhpur, dated the 20th of June, 1910, confirming a decree of Gokul Prasad, Subordinate Judge of Gorakhpur, dated the 18th of May, 1909.

in respect of the property of Dudh Nath. In 1908 Moti Rani made a will, in which she declared that Sheoraji was the heir to the whole property in dispute. The surviving members of the other branch of the family of Bhagwan Dat thereupon brought the present suit asking for a declaration that the will of Moti Rani did not affect the succession to the property after the death of Hansa. The Court of first instance (Subordinate Judge of Gorakhpur) decreed the claim and this decree was affirmed in appeal by the District Judge. Sheoraji then appealed to the High Court, the main ground of appeal being that the plaintiffs could not sue for a declaration so long as Musammat Hansa was alive.

Munshi *Haribans Sahai*, for the appellant.

The respondent was not summoned.

RICHARDS and TUDBALL JJ., :—The following pedigree will show the relationship of the parties:—



The plaintiffs are the sons and grandson of Ram Gharib. The defendants are Musammat Sheoraji and Musammat Hansa. The court below finds that Ram Gharib and Dudh Nath were separate, that Dudh Nath died in the year 1891, that his son died next on the same day and that his grandson, Sheomurat, died a week after. These findings of fact are binding on us in second appeal. After the death of Dudh Nath, Aprup and Sheomurat, the names of Moti Rani and Musammat Hansa were recorded. In the year 1908, Moti Rani purported to make a

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will declaring that Sheoraji was heir to the whole property in dispute. The plaintiffs then sued, amongst other things, for a declaration that the will did not affect their reversionary rights. Primarily the plaintiffs claimed actual possession on the ground that the family was joint, but this has been found against the plaintiffs. The main question which has been urged in the present appeal is as follows. It is said that, on the findings of the court below, Musammat Hansa is entitled to possession of the property according to Hindu Law for her lifetime. Neither Moti Rani nor Musammat Sheoraji have any title whatsoever, and accordingly Mr. *Haribans Sahai*, while admitting that plaintiffs would be the heirs on the assumption that Musammat Hansa was now dead, argues they cannot bring a suit for a declaration of title against Sheoraji in respect of anything that she has done or put forward in respect of the property, so long as Musammat Hansa lives. Section 42 of the Specific Relief Act is as follows:—

"Any person entitled to any legal character or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right; and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any other relief."

The defendant, Musammat Sheoraji, who is appellant here, in her written statement expressly alleged that Moti Rani was entitled to the property as heir to her husband, Dudh Nath, who was the last male owner. She claimed that on the death of Moti Rani she had become entitled to the property by right of succession to her father, and that the plaintiffs had no interest whatsoever in the property. This contention necessarily includes a denial of Musammat Hansa's right to possession as the mother of Sheomurat. In our opinion the case, unless there is good authority, is just one of those cases in which a suit for declaration of title is not only permissible but also desirable. It may be that Musammat Hansa may live for a very long time. At her death it would probably be extremely difficult to produce the evidence which was available when the present suit was instituted. There can be no doubt on the facts as found by the court below and on the allegation in the written statement of the appellant herself that she was a person who was denying or at least was

interested in denying the title of the plaintiffs as reversioners. A passage from Mr. Mayne's Hindu Law (7th edition, page 874) is quoted in support of the appellant's contention. The passage is as follows:—

"But the mere fact that strangers are affecting to deal with the property as their own without actual dispossession of the intermediate estate . . . gives no right of action against them either for a declaration of title or otherwise."

It is argued that although the plaintiffs might have brought a suit against Musammat Hansa, they have no right to bring the suit against Musammat Sheoraji. In the present case, as we have pointed out, the court finds that Moti Rani was in possession after the death of Sheomurat. Having regard to the fact that the father and the son died on the same day and the grandson died within a week, the probabilities are that the finding is correct. The life estate of Musammat Hansa has been ignored by Musammat Moti Rani, and it is quite clear that it was being ignored by the appellant Sheoraji. She does not suggest from the beginning to the end of the written statement that Musammat Hansa had any right or title whatever to the property. Under these circumstances we are clearly of opinion that the plaintiffs were entitled to institute a suit under the provisions of section 42 of the Specific Relief Act.

The only other point that is raised before us is that the suit is barred by limitation. It is said that when Moti Rani obtained mutation of names and entered into possession the plaintiffs' right to bring the suit so far as it is a suit under section 42 of the Specific Relief Act arose, and as this was done in 1891, the suit is barred by limitation. In our opinion this plea cannot prevail. Mutation of names was more or less an equivocal act. It might possibly have given cause of action, but we consider that when in the year 1908 it was specifically declared by Moti Rani that the heir to the property was Sheoraji and when we also find that Musammat Sheoraji herself asserted this very title, the plaintiffs acquired a cause of action sufficient to entitle them to sue in 1908. In our opinion the appeal fails on both the grounds. We accordingly dismiss it.

Appeal dismissed.