

Before Justice Sir Pramada Charan Banerji and Mr. Justice Walsh.

1915
December, 10. LACHMI NARAIN PRASAD AND OTHERS (PLAINTIFFS) v. KISHAN KISHORE
CHAND AND OTHERS (DEFENDANTS).*

Hindu Law—Joint family property—Sale by father during minority of son—Suit by son for cancellation of sale—Limitation—Act No. XV of 1877 (Indian Limitation Act), schedule II, article 126.

A Hindu who at the time had a minor son sold certain joint property in 1881. The sale was pre-empted and part of the property was subsequently transferred by one of the pre-emptors. The vendor's son attained majority in 1895. More than three years after 1895 three sons were born to him and in 1913 the father and the sons sued for cancellation of the sale-deed of 1881.

Held, that the suit was barred by limitation, inasmuch as the title of the son of the original vendor became barred in 1898. The property ceased to be joint family property and the subsequently born grandsons were not in a position to dispute the sale.

THE facts of this case were as follows:—

One Bisheshar Prasad, father of the first plaintiff and grandfather of the other plaintiff, executed a sale-deed on the 28th of April, 1881, in favour of one Jhagga Ram. Rai Debi Saran Lal and Sarnam Singh brought a suit for pre-emption and under a deed of compromise, which related to the amount of consideration, got a decree for possession. In execution of that decree they got possession of the property in 1883. At the time of the sale Bisheshar Prasad had a son, Lachmi Narain Prasad, who was a minor, having been born in 1877. No suit was ever brought by Lachmi Narain Prasad to have the sale cancelled or to obtain possession. Subsequently three sons were born to Lachmi Narain Prasad, in the years 1904, 1906 and 1909, respectively. The present suit was brought by Lachmi Narain Prasad and his three minor sons on the 12th of September, 1913, against the representatives of Rai Debi Saran Lal and Sarnam Singh for cancellation of the sale-deed of the 28th of April, 1881, and for possession of the property. The material allegations in the plaint were as follows:—(1) The sale-deed, dated the 28th of April, 1881, was in reality altogether fictitious and without any consideration and was caused to be executed by Bisheshar Prasad aforesaid after fraud and deception had been practised upon him. It was not binding upon Bisheshar Prasad himself, nor can it be legally binding upon these plaintiffs; (2) during this interval, Rai Debi Saran Lal,

* First Appeal No. 161 of 1914, from a decree of Lal Gopal Mukerji, Additional Subordinate Judge of Gorakhpur, dated the 7th of February, 1914.

father of the defendants Nos. 1 and 2, and Sarnam Singh instituted a pre-emption suit relating to the sale-deed, dated the 28th of April, 1881, and alleged in the plaint that the sale consideration was only Rs. 844 and not Rs. 1,625. When Hazari Sahu and Jhagga Ram saw that their fraudulent and fictitious proceedings would be disclosed, they colluded with Rai Debi Saran Lal and Sarnam Singh and compromised the suit, although Bisheshar Prasad, father of plaintiff No. 1, had filed a defence and had not given his consent to the compromise; (3) the plaintiffs learnt of the fictitious and fraudulent proceedings taken in connection with the sale-deed of the 28th of April, 1881, on the 13th of September, 1910, when they were impleaded in the case of Meghnath Ghosh, bearing No. 579 of 1910, of the court of the city Munsif of Gorakhpur. Defendants Nos. 1, 2, 3 and 4 were also impleaded; (4) the sale-deed, dated the 28th of April, 1881, is altogether fictitious, fraudulent and without any consideration. If it is maintained, it will cause a great loss to the plaintiffs and be a source of disgrace to their family. For the ends of justice it should be cancelled. The defence, *inter alia*, was that the sons of Lachmi Narain Prasad not having been born at the time of the sale they are not competent to maintain the suit, and that the suit is barred by limitation. The court of first instance held that Lachmi Narain Prasad being incapable of giving his consent to the sale, the sale was invalid and could be impeached by after-born grandsons, i.e., the sons of Lachmi Narain Prasad. It further held that the suit was barred by limitation under article 126 of the Limitation Act and dismissed it. The plaintiffs appealed.

Munshi *Haribans Sahai*, for the appellants:—

The court below was wrong in applying article 126 of the Limitation Act. The suit being for the cancellation of the deed of sale on the ground of fraud, the article applicable was article 95 of the Limitation Act, and time began to run from the date when the fraud became known to the plaintiffs. The plaintiffs specifically alleged the nature of the fraud practised by Hazari Sahu on Bisheshar Prasad. The plaint said that they were in collusion with Hazari Sahu and Jhagga Ram, and, therefore, they entered into a compromise with them. The plaintiffs produced documentary evidence to substantiate their allegations of fraud, but the court

1915

LACHMI
NARAIN
PRASAD
v.
KISHAN
KISHORE
CHAND.

1915

LACHMI
NARAIN
PRASAD
v.
KISHAN
KISHORE
CHAND.

returned all those documents and so the material questions had not been tried. He relied on Kerr on Fraud, page 1, where fraud is defined and also on Pollock's Law of Fraud, page 17. He further submitted that even if it be assumed that the suit of Lachmi Narain Prasad was barred under article 126, the suit of the other plaintiffs who were still minors was not barred and ought to be tried on merits; *Ramkishore Kedarnath v. Jainarayan Ramrachhpal* (1). The minor plaintiffs acquired a right by birth to impeach the sale, which was an invalid sale; *Tulshi Ram v. Babu* (2).

The Hon'ble Munshi *Gokul Prasad* (with him The Hon'ble Dr. *Sundar Lal* and Munshi *Jang Bahadur Lal*), for the respondents :—

The minor plaintiffs have got no right to question the validity of the sale-deed. At the time of the sale-deed Lachmi Narain Prasad was a minor and he could not give his consent, and so the sale-deed was invalid, unless supported by legal necessity. He, however, attained majority in the year 1895 and within three years of that date he could have impeached the sale. Article 126 of the old Limitation Act of 1877 applied to this case, and his remedy became barred in 1898. Section 28 of the Limitation Act provides that on the determination of the period of limitation for any suit the right to such property was extinguished. So in this case in 1898, the right of Lachmi Narain Prasad to this property was extinguished and the property ceased to be family property and the subsequent birth of sons to Lachmi Narain Prasad will not revive that right. There was another aspect of the case. The sale would have been valid from the very beginning if Lachmi Narain Prasad had given his consent or ratified it. As he did not bring a suit to impeach the sale within the time allowed, he should be deemed to have ratified the sale, and the sale became absolute and the property went out of the family; *Tulshi Ram v. Babu* (2). He relied on Mayne's Hindu Law, 8th edition, pages 460 and 461. As to the questions of fraud, general allegations of

(1) (1913) L. L. R., 40 Cal., 966.

(2) (1911) L. L. R., 33 All., 654.

fraud were not enough; *Gunga Narain Gupta v. Titulcrum Chowdhry* (1). In the plaint no foundation for a case of fraud was laid, and so the learned Subordinate Judge was justified in not trying that question. He also relied on order 6, rule 4, of the Code, of Civil Procedure.

Munshi *Haribans Sahai*, in reply, submitted that so far as the minor plaintiffs were concerned the property still belonged to the family, and it never ceased to be the family property. Section 28 of the Limitation Act had no application.

BANERJI and WALSH, JJ. :—This appeal arises out of a suit for possession of certain immovable property and for cancellation of a sale-deed executed in respect of it on the 28th of April, 1881. The property belonged to one Bisheshar Prasad and his son Lachmi Narain Prasad, the first plaintiff, at the date of the sale. The sale-deed was executed by Bisheshar Prasad in favour of one Jhagga Ram. A suit for pre-emption in respect of the sale was brought by Debi Saran and Sarnam Singh, who are now represented by the defendants of the first party, and they obtained a decree on the 27th of June, 1882. The defendants, second and third parties, are transferees from Sarnam Singh and his successors in interest. The plaintiffs, other than Lachmi Narain Prasad, are the sons of the latter and grandsons of Bisheshar Prasad. They brought the present suit on the allegation that one Hazari Sahu perpetrated a fraud on Bisheshar Prasad, who was of weak intellect, and obtained from him, first a mortgage and then the sale-deed referred to above, that the sale was a fraudulent and collusive transaction, and that it was not binding on the plaintiffs. The court below has dismissed the suit on two grounds. First, that the claim is time-barred, and secondly, that there were no assignments of fraud in the plaint and a mere general allegation that the sale was fraudulent and collusive was not sufficient to disclose a cause of action. The plaintiffs have preferred this appeal. In our judgement, if the suit be deemed to be a suit to set aside an alienation of joint family property, it is clearly time-barred as against Lachmi Narain Prasad. Lachmi Narain Prasad was a minor at the date of the sale, but he attained majority in 1895. He could, therefore, have brought a suit to set aside the alienation

1915

LACHMI
NARAIN
PRASAD
2.
KISHAN
KISHORE
CHAND.

1915

LACHMI
NARAIN
PRASAD
v.
KISHAN
KISHORE
CHAND.

and to recover the property till 1898. As he did not do so, his right became extinct and the property, so far as he was concerned, became the property of the purchasers and ceased to be joint family property. The other plaintiffs, his sons, were all born subsequently to that year. It is true that it has been held that if at the date of the alienation by a member of a joint Hindu family, there is some member of that family in existence who could have questioned the alienation and did not assent to it, other persons subsequently born were entitled to question the validity of the alienation, although they did not exist at the date of it. That was held in the case to which reference is made in the judgement of the court below, but the present case presents different features. The only person who could contest the alienation made by Bisheswar Prasad was Lachmi Narain Prasad. His right to do so became extinct in 1898. If the alienation was invalid, he could have brought a suit to set it aside some time before the expiry of 1898, and he could have recovered possession of the property. As he did not do so, his right to dispute the alienation and to recover the property sold came to an end in 1898 and the property ceased to be the property of the joint family and passed absolutely to the purchasers in that year. The minor plaintiffs who were born subsequently did not acquire any interest in the property, as it had, at the date of their birth, ceased to be joint ancestral property in which they might have acquired a right by birth. In this view the minor plaintiffs are not entitled to maintain the present suit, and the claim of Lachmi Narain Prasad, if we treat it as one to set aside the alienation, is time-barred. It is manifest that the plaintiffs felt this difficulty and they accordingly put forward their claim on the ground of fraud. It has been repeatedly held, and this is also provided in the Code of Civil Procedure, that in a suit brought on the ground of fraud the plaintiffs are bound to make clear and definite assignments of the alleged fraud. As pointed out by the court below, no such assignment was made in the plaint in this case. On these grounds we are of opinion that the suit was bound to fail and has been rightly dismissed. We accordingly dismiss the appeal with one set of costs to the respondents who have appeared in this appeal.

Appeal dismissed.