

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

BARATI LAL (DEFENDANT) v. SALIK RAM (PLAINTIFF).*

Act No. IV of 1882 (*Transfer of Property Act*), section 6—*Compromise of claim to possession of property of deceased person—Such compromise not a transfer of reversionary rights.*

B claimed adversely to M the property left by M's deceased father. The claim was compromised, and B, for a consideration of Rs. 5,000 and some immovable property, withdrew his claim and recognized the title of M as absolute owner. M died, and the property passed to her husband K, who sold part of it to S.

Held, on suit by S to recover possession of the property so purchased, that the compromise by B of his claim against M was not obnoxious to the prohibition contained in section 6 of the *Transfer of Property Act, 1882*, as being a sale of reversionary rights. *Mohammad Hashmat Ali v. Kaniz Fatima* (1) referred to.

THIS was a suit for possession of a house. The defendant appellant, Barati Lal, was the nephew of one Bhagga Lal and reversionary heir to his estate. The house in dispute belonged in equal shares to Mihin Lal and to Bhagga Lal. Mihin Lal was separate from Bhagga Lal and the father of the defendant. Mihin Lal's property devolved upon Musammat Shamo, who was the daughter of Mihin Lal's daughter's son. The plaintiff, Salik Ram, purchased half of the house from Musammat Shamo. As regards the other half, the plaintiff's case was that Bhagga Lal was separate from the defendant and on his death he left him surviving Musammat Maha Dei, his widow, Musammat Sahodra, the widow of his predeceased son, and Musammat Mohan Dei, his daughter. Upon his death Musammat Maha Dei and Sahodra were recorded in respect of all his property. Musammat Sahodra survived Musammat Maha Dei, and on her death Barati Lal made an application to the Revenue Court for mutation of names as heir to Musammat Sahodra. Musammat Mohan Dei contested the application, and as the result thereof the parties came to terms. A deed called "*dastbirdari*" was executed on the 24th of February, 1911, whereby Barati Lal, stating himself to be the reversionary heir to Bhagga Lal, and Mohan Dei to be his daughter

* Second Appeal No. 1402 of 1914, from a decree of Soti Raghuvansa Lal, District Judge of Shahjahanpur, dated the 21st of September, 1914, modifying a decree of Guru Prasad Dube, Subordinate Judge of Shahjahanpur, dated the 8th of January, 1914.

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and owner of the property, stated as follows :—“ *Yih ikrar karta hun ki jumla jaedad mutruka mamluka Lala Bhagga Lal magbuza se koi wasta aur talluq mera nahin hai aur Musammamat Mohan Dei malik mutlag jumla jaedad manqula wa ghair manqula hakiat zamindari waghaira, jiske Mohtmin Musammamat Mohan Dei wo Lala Khunni Lal hain* ”

It was also provided that Musammamat Mohan Dei and Lala Khunni Lal were entitled to transfer the properties in any way they liked. It was further stated that having received Rs. 5,000 in cash and some immovable property Bihari Lal was relinquishing all rights in the other property in favour of Mohan Dei and her husband Khunni Lal. In the end it was said that Barati Lal would get his application for entry of name then pending in the Revenue Court rejected and he would have the name of Mohan Dei recorded as against the zamindari property. After Mohan Dei's death Khunni Lal sold the remaining half of the house in dispute to the plaintiff on the 27th of July, 1913. The defendant Barati Lal himself had purchased from Khunni Lal some zamindari and shops on the 10th of April, 1912. The properties purchased by the defendant had also been acquired by Khunni Lal under the “*dastbardari*” of the 24th of May, 1911. The plaintiff's case was that about a month before the suit defendant had taken unlawful possession of the whole house and some movable property which plaintiff had in the house. The plaintiff had asked defendant to restore possession, and on refusal, he (plaintiff) commenced the present action. The defence, among other things, is that neither Musammamat Shamo nor Khunni Lal had any proprietary right to the house ; that defendant was the reversionary heir to Bhagga Lal's property and Mohan Dei had a Hindu widow's estate therein, and that the suit was time-barred. The court of first instance held that the plaintiff's purchase of half of the house from Musammamat Shamo was valid and decreed the suit to that extent. As regards the other moiety it was held that the “*dastbardari*” of the 24th of May, 1911, was in the nature of a transfer of reversionary rights and under section 6 (a) of the Transfer of Property Act such a transfer was invalid. Consequently neither Mohan Dei nor Khunni Lal had acquired any interest in that portion of the house which the plaintiff could

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validly buy. The suit was accordingly dismissed in respect of that portion. Both parties appealed to the District Judge. He dismissed the appeal by the defendant. In regard to the appeal by the plaintiff he held that the defendant was estopped from denying the plaintiff's title and that the "*dastbardari*" was a "family arrangement" which was binding on the defendant. He accordingly reversed the decree of the court of first instance. The defendant appealed to the High Court.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the appellant:—

The lower appellate court is wrong in holding that the "*dastbardari*" was in the nature of a family arrangement. The document does not purport to settle any *doubtful rights*. The parties knew what their rights were, and what the document really purports to effect is that the defendant for consideration parted with his reversionary rights which, according to law, he cannot do. Section 6 (a) of the Transfer of Property Act, and the cases of *Sham Sundar Lal v. Achhan Kunwar* (1), *Nund Kishore Lal v. Kanee Ram Tewary* (2) and *Hargawan Magan v. Baij Nath Das* (3) were also referred to. As to the question of estoppel the lower appellate court did not find that the defendant made any representation to the plaintiff whereby he was misled into acting as he did. Plaintiff might be expected to have read the "*dastbardari*" and he ought to have read it. The "*dastbardari*" was invalid, and the mere fact that the defendant prior to the plaintiff's purchase had himself acquired property from Khunni Lal was not a representation to the plaintiff which would estop the defendant. The case of *Sarat Chunder Dey v. Gopal Chunder Laha* (4) was also referred.

The Hon'ble Munshi *Gokul Prasad* (with him Babu *Sarat Chandra Chauahri*), for the respondent:—

The question of estoppel does not arise, for the "*dastbardari*" is clearly in the nature of a family arrangement. It appears from the document itself that after the death of Sahodra, the defendant filed an application in the Revenue Court to get his name entered in respect of the property of Bhagga Lal as heir of Sahodra. He was opposed by Mohan Dei, and her

(1) (1898) I. L. R., 21 All., 71 (80).

(3) (1909) I. L. R., 32 All., 88.

(2) (1902) I. L. R., 29 Calc., 355.

(4) (1892) I. L. R., 20 Calc., 296.

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husband. There was thus a dispute in which each party put forward his respective right. Defendant claimed to be the owner and not a reversioner. In this condition of things the "*dastbardari*" was executed; and it is submitted that it is "based on the assumption that there was an antecedent title of some kind in the parties, and the agreement acknowledges and defines what that title is." He referred to *Khunni Lal v. Gobind Krishna Narain* (1). The "*dastbardari*" effects no sale. Defendant merely agrees for consideration not to claim the property in the event of his becoming entitled thereto after the demise of Mohan Dei. There is nothing illegal in such a transaction and it is in no sense a transfer; *Mohammad Hashmat Ali v. Kaniz Fatima* (2).

The Hon'ble Dr. *Tej Bahadur Sapru*, replied.

BANERJI and WALSH, JJ.:—This appeal arises out of a suit in which the plaintiff respondent claimed possession of a house purchased by him from two persons, namely, Musammat Shamo and Khunni Lal. He purchased half the house from Musammat Shamo and the other half from Khunni Lal on different dates. There is no dispute in this appeal in respect to the half share purchased from Musammat Shamo. As regards the half share purchased from Khunni Lal the facts are these:—The share in question belonged to Bhagga Lal and after his death was apparently in the possession of his daughter-in-law, the widow of a predeceased son. Upon her death the appellant Barati Lal made an application in the Revenue Court for the entry of his name as the heir of Bhagga Lal and the owner of his property. This application was resisted by Musammat Mohan Dei, the daughter of Bhagga Lal, who asserted that her father was separate and that she was entitled to succeed to the property. The dispute resulted in the execution of a document on the 24th of May, 1911, by Barati Lal, which purported to be a deed of relinquishment. By that document Barati Lal, for a consideration of Rs. 5,000 and on receipt of certain immovable property, abandoned all his claim to the estate of Bhagga Lal and recognized the title of Musammat Mohan Dei as absolute owner. Musammat Mohan Dei being dead, the property passed to her husband Khunni Lal, who sold it to the plaintiff. Barati Lal's contention was that the transaction

(1) (1911) I. L. R., 38 All., 356.

(2) (1915) 13 A. L. J., 110.

of the 24th of May, 1911, was a sale by him of his reversionary rights and was therefore invalid under the provisions of section 6 of the Transfer of Property Act. This contention found favour in the court of first instance, but was overruled by the lower appellate court, which decreed the claim of the plaintiff. In our opinion the decision of the lower appellate court is correct. The learned judge held that the transaction of the 24th of May, 1911, was in fact and substance a settlement of disputed claims. We agree with this view. There was a claim put forward by Barati Lal to the property of Bhagga Lal as the person entitled to it upon the death of Bhagga Lal's daughter-in-law. That claim was denied by Musammat Mohan Dei. One party approached the other and upon receipt of consideration from Musammat Mohan Dei, Barati Lal abandoned his claim to the property. This was not a mere transfer of reversionary rights within the meaning of section 6 of the Transfer of Property Act. The case is very similar to that of *Mohammad Hashmat Ali v. Kaniz Fatima* (1). In this view the appeal must fail and it is unnecessary to consider the question of estoppel which was argued with great ability on behalf of the appellant. We dismiss the appeal with costs.

Appeal dismissed.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr.
Justice Muhammad Rafiq.*

JADUBANSI KUNWAR AND OTHERS (PLAINTIFFS) v. MAHPAL SINGH
AND OTHERS (DEFENDANTS).*

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December, 2.

Hindu law—Daughter's estate—Suit by unmarried daughter for possession of her father's property—Death of plaintiff—Right of married daughters to continue the litigation.

A separated Hindu died leaving him surviving a widow and four daughters, three married and one unmarried. After the death of her mother, the unmarried daughter sued to recover possession of her father's estate, naming her three married sisters as *pro forma* defendants. The plaintiff, however, died during the pendency of the suit. The three married daughters were then on their application transferred from the array of defendants to that of plaintiffs. Nevertheless the suit was dismissed upon the ground that it had abated by reason of the death of the original plaintiff.

Held that the suit should not have been dismissed. The original plaintiff represented the estate, and her sisters were entitled to continue the litigation

* First Appeal No. 100 of 1914, from a decree of Muhammad Husain, Subordinate Judge of Ghazipur, dated the 20th of December, 1913.

(1) (1915) 13 A. L. J., 110.