1927

TEJ SINGH v. GHASI RAM.

suit for partition. He was admittedly a member of a joint Hindu family and had a share. In the circumstances his mere absence cannot make him a party not interested in the subject-matter of reference. The reference, therefore, without his concurrence was invalid and the award cannot be sustained. The matter must be taken up in revision, if not in appeal.

BY THE COURT.—We dismiss the appeal but, taking up the matter in revision, set aside the decree of the court below and remand the suit to it with the direction that the award should be put aside and the suit should be proceeded with in accordance with law. Costs here and hitherto will abide the result.

APPELLATE CIVIL.

Before Mr. Justice Boys and Mr. Justice Kendall.

SITA SARAN (DEFENDANT) *v.* JAGAT AND OTHERS (PLAINTIFFS) AND ANANTA AND OTHERS (DEFENDANTS).* 1927 *April, 8.*

Hindu law—Hindu widow—Alienations by widow—Right of suit by remote reversioners during lifetime of nearer reversioners.

If the nearest reversionary heir refuses, without sufficient cause, to institute proceedings, or if he has precluded himself by his own act or conduct from suing, or has colluded with the widow, or concurred in the act alleged to be wrongful, the next presumable reversioner would be entitled to sue. In such a case, upon a plaint stating the circumstances under which the more distant reversionary heir claims to sue, the court must exercise a judicial discretion in determining whether the remote reversioner is

* Second Appeal No. 89 of 1925, from a decree of D. C. Hunter, District Judge of Allahabad, dated the 9th of June, 1924, confirming a decree of Gauri Shankar Tewari, Subordinate Judge of Mirzapur, dated the 14th of May, 1923.

1927

SITA SARAN v. JAGAT.

entitled to sue, and would probably require the nearer reversioner to be made a party to the suit. *Rani Anand Kunwar* v. *The Court of Wards* (1), followed.

But where the plaintiffs sue as next reversioners, it is improper to read into the plaint an allegation that they are bringing the suit as distant reversioners because the nearer reversioners have either precluded themselves from bringing the suit or have refused to do so. *Meghu Rai* v. *Ram Khelawan* (2) and *Jhandu* v. *Tarif* (3), referred to.

THE facts of this case were as follows :—

This was a second appeal arising out of a suit brought by certain reversioners to the estate of one Sheo Sampat deceased for a declaration that a deed of gift executed by Musammat Khatrani, the widow of Sheo Sampat, in favour of her grandson, Godari (now deceased), and some mortgage-deeds based upon it, were void and ineffectual against the plaintiff.

It was found by the courts below that the property concerned was not joint family property but was the personal property of Sheo Sampat, who was separate from the plaintiffs. It was also found that the plaintiffs, who were the first cousins of Sheo Sampat, were not the nearest reversioners to him, because there intervened, at the time when the suit was filed, Musammat Umraoti, a daughter of Sheo Sampat, and her minor son Barhamdeo Pande. The decree given by the lower appellate court, which upheld the decision of the trial court, in favour of the plaintiffs, was challenged in second appeal only on the ground that the plaintiffs, as remoter reversioners, had no right to sue.

Munshi *Surendra Nath Varma*, for the appellant.

Dr. *Kailas Nath Katju*, for the respondents.

(1) (1880) I.L.R., 6 Calc., 764. (2) (1913) I.L.R., 35 All., 326
(3) (1914) I.L.R., 37 All., 45.

1927

SITA SARAN v. JAGAT.

THE judgement of the Court (BOYS and KENDALL, JJ.), after stating the facts as above, thus continued :—

The circumstances in which a remoter reversioner may sue for a declaration in the presence of a nearer reversioner have been described in the well-known decision of their Lordships of the Privy Council in the case of *Rani Anand Kunwar* v. *The Court of Wards* (1). After remarking that, as a general rule, a suit of this nature must be brought by the presumptive reversionary heirs, their Lordships go on to say :—

"They are also of opinion that such a suit may be brought by a more distant reversioner, if those nearer in succession are in collusion with the widow or have pre-succession are in collusion with the widow or have precluded themselves from interfering . . . The right to sue must, in their Lordships' opinion, be limited. If the nearest reversionary heir refuses, without sufficient cause, to institute proceedings, or if he has precluded himself by his own act or conduct from suing or has colluded with the widow, or concurred in the act alleged to be wrongful, the next presumable reversioner would be entitled to sue . . . In such a case, upon a plaint stating the circumstances under which the more distant reversionary heir claims to sue, the court must exercise a judicial discretion in determining whether the remote reversioner is entitled to sue, and would probably require the nearer reversioner to be made a party to the suit."

The trial court dealt with the question of the plaintiffs' right to sue, very summarily; and the lower appellate court, while holding that it had not been proved that the nearer reversioner had colluded with the widow or become precluded from suing, refused to interfere with the decree of the trial court on the ground that, if the suit were dismissed, the plaintiffs could then institute an exactly similar suit in the

(1) (1880) I.L.R., 6 Calc., 764.

1927

SITA SARAN v. JAGAT.

name of the minor Barhamdeo as his next friends and would then be entitled to succeed. It has been urged in appeal that this was not a proper ground for allowing the plaintiffs' suit.

We may say, in the first place, that no very determined effort has been made to show that the nearer reversioners had colluded with the widow (Musammat Khatrani) or had become precluded from suing in any of the ways enumerated in the decision of the Privy Council referred to above. The plaintiffs had claimed, in the first place, that Sheo Sampat had been a member of a joint Hindu family with them and that they were entitled to possession of the property. They had also claimed that, if the court should find that Sheo Sampat had been separate at the time of his death, they were entitled to the declaration on the ground that they were reversionary heirs according to the pedigree which they then appended. It seems to us to be a matter of importance that, when they filed the plaint, they omitted all mention of Musammat Umraoti and of her minor son Barhamdeo Pande. In other words, the pedigree with the original plaint disclosed the plaintiffs as the nearest reversioners to Sheo Sampat, and it was only after the written statement had been filed by the husband of Musammat Sumetra, who had executed one of the mortgage-deeds impugned in the plaint, and by some other transferees, that the court ordered the nearer reversioners to be impleaded and the pedigree to be amended. Musammat Umraoti filed a written statement in which she admitted that the plaintiffs and Sheo Sampat were members of one joint Hindu family; that is to say, so far from colluding with Musammat Khatrani she supported that part of the plaintiffs' suit; and as regards the alternative plea that the plaintiffs were reversioners

and could avoid the transfer based on the deed of gift executed by the widow, she professed indifference. The plaintiffs are precluded, however, not only by Musammat Umraoti, whose interest in the estate would be a limited one, but by her minor son, Barhamdeo Pande. There is nothing to show that his interests have been effectively represented at all. The argument that has been pressed on behalf of the plaintiffs respondents is that a decree in favour of the plaintiffs must also be for the benefit of the minor, because the minor is interested to the same extent as the plaintiffs in setting aside the transfers made on the basis of the widow's deed of gift.

This argument is a plausible one, and it may be that if the appeal is allowed the plaintiffs will then be in a position to file an exactly similar suit as next friend of the minor, Barhamdeo Pande. We are, however, by no means convinced that the interests of the plaintiffs and of the minor are identical. There is no sufficient explanation of the fact that the plaintiffs omitted all mention of Musammat Umraoti and Barhamdeo Pande in their original plaint and that they impliedly, at any rate, claimed themselves to be the nearest reversioners to Sheo Sampat. It is quite inconceivable that they did so either from ignorance or inadvertence. It is, moreover, mentioned in the written statement of Musammat Umraoti that the plaintiffs succeeded in obtaining a deed of relinquishment in their favour from Musammat Khatrani. If the plaintiffs really held such a deed of relinquishment, it is difficult to tell how far it would affect the interests of Barhamdeo Pande. Presumably it would only have the effect of transferring the limited interests of the widow; but, in the absence of evidence, it is of course impossible to decide what its effect would be. We have the authority of a Bench of this Court

1927

SITA SARAN v. JAGAT.

for holding that, where the plaintiffs sue as next reversioners, it is improper to read into the plaint an allegation that they are bringing the suit as distant reversioners because the nearer reversioners have either precluded themselves from bringing the suit or have refused to do so. See *Meghu Rai* v. *Ram Khelawan* (1). In a decision of the Privy Council, *Jhandu* v. *Tarif* (2), the plaintiff failed, in somewhat similar circumstances, because he had not proved that a nearer reversioner was excluded. For the purposes of the present suit it is enough to say that the authority of the leading case quoted above does not support the plaintiffs' title to sue, and that the circumstances disclosed to us do not justify us in going beyond that authority.

The result is that we allow the appeal and order that the plaintiffs' suit be dismissed with costs throughout.

Appeal allowed.

Before Mr. Justice Mukerji and Mr. Justice Ashworth.

1927
April, 6.

BHAWANI AND OTHERS (PLAINTIFFS) *v.* MANGALI SINGH (DEFENDANT).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), sections* 20, 21, 24 *and* 25—*Occupancy holding—Transfer—Sub-lease.*

Plaintiffs, who were occupancy tenants, were in debt to their landlord both in respect of arrears of rent of their holding and otherwise. They, therefore, executed a document granting to the defendant a right to hold their occupancy holding for five years in consideration of his undertaking to pay the arrears of rent and also the future rent as it became due. The defendant did not pay according to his

* Second Appeal No. 67 of 1925, from a decree of Hanuman Prasad Verma, Second Subordinate Judge of Moradabad, dated the 27th of September, 1924, confirming a decree of Padma Datt Pande, Munsif of Chandausi, dated the 22nd of January, 1924.

(1) (1913) I.L.R., 35 All., 326. (2) (1914) I.L.R., 37 All., 45.