

**APPELLATE CIVIL.***Before Mr. Justice Bevan-Petman.***VIR SINGH (PLAINTIFF) Appellant,***versus***HARNAM SINGH AND OTHERS (DEFENDANTS)  
Respondents.**

1918

June 4.

Civil Appeal No. 3096 of 1918.

*Admission—effect of—Declaratory suit to safeguard plaintiff's rights as a reversioner—Specific Relief Act, I of 1877, section 42.*

*Held*, that what a party admits to be true may reasonably be presumed to be so, and until the presumption is rebutted the fact admitted must be taken to be established.

*Chandar Kunwar v. Chaudhri Narpat Singh (1) and Lal Shah v. Hira Lal (2)*, referred to.

*Held also*, that a brother may sue for a declaration that his brother (a lunatic) is entitled to a share in a mortgage acquired by the two defendants in their own names (one of them being the manager of the lunatic) where the plaintiff is entitled to succeed on the death of the lunatic as one of his heirs.

*Second appeal from the decree of P. J. Rust, Esquire, District Judge Ferozepore, dated the 21st August 1918, affirming that of Sheikh Abdul Qadir, Munsif, 1st Class, Ferozepore, dated the 2nd April 1918, dismissing the claim.*

DURGA DAS, for Appellant.

BRIJ LAL, for Respondents.

BEVAN-PETMAN, J.—The facts necessary to be stated for the purposes of this second appeal are that one Faujdar Singh had three sons, Vir Singh (plaintiff), Punjab Singh, the father of Harnam Singh and Viriam Singh (defendants) and Dana, a lunatic. Harnam Singh was appointed the Manager of the estate of his uncle Dana, the lunatic. Faujdar Singh left property and Dana succeeded to one-third, whilst Harnam Singh and Viriam Singh succeeded to one-third jointly through their father Punjab Singh. Harnam Singh and Viriam

(1) (1906) I. L. R. 29 All. 184 P. C.

(2) 106 P. R. 1917, p. 418.

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Singh advanced money on a mortgage in their own names and Vir Singh instituted a suit in which he prayed for a declaration that Dana, his brother, was entitled to a half share in the mortgage rights in the mortgage so entered into on the ground that the money was advanced out of the income of the ancestral property held jointly by the defendants and their uncle Dana, and he further alleged that his reversionary rights to this property of Dana, a childless lunatic, was affected prejudicially. Incidentally the accounts of Harnam Singh were attacked. The defendants denied the claim and asserted that the money was their own and they were solely entitled to the rights under the said mortgage. The defendants also pleaded that the plaintiff had no *locus standi*. The first Court held that plaintiff could maintain the suit if it could be shown that Dana had a share in the mortgage rights, but that plaintiff had failed to prove this condition and that a previous admission of Harnam Singh was insufficient because it was not supported by evidence and did not amount to an estoppel. The Court, therefore, dismissed the suit. The lower Appellate Court, which had already expressed an opinion on the matter in the course of the lunacy proceedings, suggested that the appeal should be transferred and, stating that no further evidence had been produced since his previous decision, dismissed the appeal on the ground that the plaintiff had failed to prove that Dana had any share in the mortgage. I find, however, that neither in the previous proceedings nor in the appeal did the Lower Appellate Court consider the effect of the admission of Harnam Singh which is an essential point in the case.

For the respondents a preliminary objection is raised that the appellant has no *locus standi* to maintain the suit because under section 42 of the Specific Relief Act a plaintiff is entitled to sue for a declaration in respect of his own title, or right and not that of a third party as in this case, that such right must relate to a present subsisting right and that a plaintiff is not entitled to ask for an opinion as to title. For the appellant it is contended that any friend of a lunatic can sue when the estate of the latter is being shown less than it is by the manager of the estate and

that, in the present case, the plaintiff is suing in his own interests as a reversioner.

On the merits the appellant contends that the lower Appellate Court has ignored a previous admission of Harnam Singh to the effect that Dana had a half share in the mortgage, and that it should not have been presumed that the money was solely that of the defendants in view of the fact that the defendants and Dana lived together and that their property was managed jointly, that the income of Dana was equal to that of the two defendants jointly and that Harnam Singh was not showing what had become of Dana's income. It is further pointed out that Dana had practically no expenses whilst the defendants had families to support.

In my opinion the first Court did not realise the effect of an admission and the judgment of the District Judge is vitiated by his having totally ignored the admission. Their lordships of the Privy Council in *Chandra Kunwar v. Chaudhri Narpal Singh and others* (1) have explained the effect of an admission as being that what a party himself admits to be true may reasonably be presumed to be so and, until the presumption was rebutted, the fact admitted must be taken to be established.

The judgment in *Lal Shah and others v. Hira Lal and others* (2) is to the same effect. I hold, therefore, that the burden of proof, at least so far as Harnam Singh is concerned, was on him to prove that the income from Dana's share of the property had not been advanced on the mortgage to the extent of half as previously admitted by him. He has totally failed to prove this. Though this admission is not evidence against Viriam Singh, it is clear that he has all along been taking a minor part in the transactions of the family and such evidence as exists must be received and judged in the light of Harnam Singh's admission. I hold therefore that Dana has a half share in the mortgage.

The contention that any person can institute a suit to vindicate the rights of a lunatic has not

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been argued. In the present case the plaintiff is asking for a declaration to safeguard his own rights as a reversioner to Dana. His right is a subsisting present one. The test is the present capacity of the plaintiff to take possession if the possession were to become vacant by the death of Dana and he certainly would be entitled to immediate possession of his share.

For the above reasons I accept the appeal, set aside the decree of the lower Appellate Court and grant the appellant the relief claimed with costs throughout.

*Appeal accepted.*

### APPELLATE CIVIL.

*Before Mr. Justice Bevan-Petman.*

JAWAND SINGH AND OTHERS (DEFENDANTS)

*Appellants,*

*versus*

MUHAMMAD DIN AND OTHERS (PLAINTIFFS)

*Respondents.*

Civil Appeal No. 2936 of 1918.

*Specific Relief Act, I of 1877, section 55,—injunction—suit by Muhammadans to prevent the Hindu defendants from interfering with the calling of the azan at a mosque by blowing conches, &c.—Nuisance, explained.*

In a village occupied by about 600 Hindus and a little over 100 Muhammadans there are 2 mosques—One just outside the *abadi* unconnected with the present case and one inside the *abadi* erected about 200 years ago. This had fallen out of repair and was repaired within recent years and was then used as a school and for other semi-religious purposes, but more recently was used for prayers. The Hindus objected to the calling out of the *azan*, and when it was called out and at the time of subsequent prayer the Hindus blew conches, beat drums and created noises and disturbances. The Muhammadans then brought the present suit for an injunction to restrain the Hindus from interfering with the calling out of the *azan* and praying in the mosque. It was found as a fact that the object of the defendants in blowing conches was to stop the calling of the *azan*.

*Held*, that the Muhammadans had an inherent right to call out the *azan* from the mosque.