

## APPELLATE CIVIL.

Before Mr. Justice Abdul Raouf and Mr. Justice Moti Sagar.

1922

DAS MAL AND ISHAR DASS (DEFENDANTS)

Dec. 21.

Appellants.

versus

RAM CHAND (PLAINTIFF)  
AND OTHERS (DEFENDANTS) } — Respondents.

Civil Appeal No. 2518 of 1919.

*Declaratory suit—by reversioners—whether competent when the widow in possession makes a will or a declaration that some one else is her reversionary heir.*

The widow of one P. D. executed a deed in which she stated that defendants Nos. 2 and 3 were her reversionary heirs and that she would refrain from alienating any of her husband's property (of which she had possession) if they would pay to her Rs. 400 cash to enable her to pay off certain debts of her husband and to perform his *kirya* ceremony and would agree to make a monthly payment of Rs. 13 for her maintenance. The plaintiff, P. D.'s sister's son, brought a suit for a declaration to the effect that the deed should not affect the rights of the plaintiff and his brother defendant No. 4. The question was whether the plaintiff could maintain the declaratory suit.

*Held*, that no declaratory suit is competent for setting aside a mere assertion (*Raja Nilmony Singh Deo Bahadur v. Kally Churn Bhattacharjee* (1)), nor merely on the ground that a widow has made a will.

*Jaipa. Kunwar v. Inder Bahadur Singh* (2), and *Umrao Kunwar v. Badri* (3), followed.

*Kalian Singh v. Sanwal Singh* (4), disapproved.

*Held consequentl*, that the present suit for a declaration could not be maintained.

*Second appeal from the decree of Khan Sahib Mirza Zafar Ali, District Judge, Attock, at Campbellpur, dated the 17th October 1919, reversing that of Lala Ram Chandra, Senior Subordinate Judge, Attock, at Campbellpur, dated the 16th July 1919, and decreeing the claim.*

M. S. BHAGAT, for Appellants.

SHEO NARAIN, for Respondents.

(1) (1874) 23 W. R. 150.

(2) (1904) I. L. R. 26 All. 238 (P. C.).

(3) (1915) I. L. R. 37 All. 422.

(4) (1894) I. L. R. 7 All. 163.

The judgment of the Court was delivered by—

1922

DAS MAL  
v.  
RAM CHAND.

ABDUL RAOOF J.—This second appeal has arisen out of a suit brought by one Ram Chand for a declaration to the effect that the deed, dated the 9th of April 1919, written by defendant No. 1 in favour of defendants Nos. 2 and 3 should not affect the rights of the plaintiff and defendant No. 4. The following facts will disclose the nature of the dispute between the parties:—One Prabh Dayal died leaving *Mussammatt* Chuni, defendant No. 1, his widow. She came into possession of certain immoveable property left by him. Das Mal and Ishar Das, defendants Nos. 2 and 3, served a notice on the lady calling upon her not to effect an alienation in respect of any of the properties left by Prabh Dayal, and stating that they were the next reversionary heirs of the said Prabh Dayal. Thereupon the deed of the 9th of April 1919 was executed by *Mussammatt* Chuni in which she stated that defendants Nos. 2 and 3 were her reversionary heirs and that she would refrain from alienating any of her husband's property if they would pay to her Rs. 400 cash to enable her to pay off certain debts of her husband and to perform his *kirya* ceremony, and would agree to make a monthly payment of Rs. 13 for her maintenance. The plaintiff and defendant No. 4 are admittedly Prabh Dayal's sister's sons.

The plaintiff questions the alleged relationship of defendants Nos. 2 and 3 to Prabh Dayal, deceased, and claims that he and his brother are the next reversionary heirs. The cause of action alleged by him was that by acknowledging defendants Nos. 2 and 3 to be the next reversionary heirs after her *Mussammatt* Chuni had denied the right of the plaintiff and his brother and further that by taking Rs. 400 cash and Rs. 13 *per mensem* for her maintenance and by agreeing not to alienate any portion of the property of Prabh Dayal in her possession, she had created a lien of the said property. The suit was resisted by the defendants mainly on the following grounds, namely, (1) that they were the agnates of the deceased Prabh Dayal and as such were his next reversionary heirs, and (2) that the plaintiff had no cause of action.

1922

—  
 DAS MAL  
 v.  
 RAM CHAND.

The trial Court on the evidence held that defendants Nos. 2 and 3 had failed to prove their relationship to Prabh Dayal, deceased, but dismissed the suit of the plaintiff, holding that he had not succeeded in establishing a cause of action for the suit, and further that he had not made out a case for the grant of a declaratory decree in his favour. Reliance was placed on the case of *Kotian Singh and another (defendants) v. Sanwal Singh (plaintiff)* (1), but the Court held that that case was distinguishable and refused to act upon the rule laid down there. It remarked in the judgment that—

“There is no alienation, there is no denial even of whatever right the plaintiff may have by virtue of his relationship with the widow’s husband and all that the deed purports to do is to lay down an arrangement by which the defendants will satisfy the widow’s necessities in consideration of her abstaining from alienating it . . . . . As it stands it does not charge the property at all and if subsequently the defendants are found to be strangers it does not appear to me that they would be entitled even to an equitable lien for having posed in a position to which they are not entitled.”

The suit having been dismissed the plaintiff preferred an appeal to the Lower Appellate Court. The latter Court has taken a different view from that expressed by the trial Court and has decreed the claim of the plaintiff. Hence this second appeal by defendants Nos. 2 and 3.

The sole question on which the decision of this appeal depends is whether the plaintiff can maintain this declaratory suit on the basis of the agreement, dated the 9th of April 1919. In the case of *Rajah Nilmoney Singh Deo Bahadoor v. Kally Churn Bhutta-charjee* (2), it was laid down by Their Lordships of the Privy Council that a declaratory suit for the setting aside of a mere assertion could not lie. Now, in this case we entirely agree with the trial Court that under the deed executed by *Mussammat Chuni* no alienation of any portion of the property was effected, nor was any lien created on it. No doubt there is an assertion in the document recognizing defendants Nos. 2 and 3 to be the next reversionary heirs of Prabh Dayal and inferentially denying the plaintiff’s right of succession.

(1) (1884) I. L. R. 7 All. 168.

(2) (1874) 23 W. R. 150.

If the plaintiff and his brother have a right to succeed after the death of the widow that right will remain intact and even if there is an inferential denial of their right they cannot come to Court and claim a decree with the object of setting aside the assertion made by *Mussammatt Chuni*. There are numerous cases reported in various law reports in which it has been held that a reversioner is not entitled to institute a declaratory suit if the widow in possession makes a will in favour of either the alleged reversioners or a third party; for example see the case of *Jaipal Kunwar and another (defendants) v. Indar Bahadur Singh (plaintiff)* (1), a Privy Council decision, in which the rule laid down by Their Lordships is thus stated in the head-note :—

“The execution of a will by a limited owner, such as a Hindu widow, affords, as a general rule, no sufficient reason for granting a declaratory decree.”

The Lower Appellate Court has relied on the case reported in *Kalian Singh v. Sanwal Singh* (2) to which we have above referred; but the Allahabad High Court appears to have changed its view as it is reported to have held in the case of *Umrao Kunwar and another (defendant) v. Badri (Plaintiff)*, and *Niadar (defendant)* (3), that a mere execution of a will did not afford a sufficient reason for granting a declaratory decree.

Many other cases can be cited in support of this proposition, but it is not necessary to cite and discuss the various rulings relied upon by Mr. M. S. Bhagat, for *Pandit Sheo Narain* has frankly admitted the correctness of the rule laid down in the authorities referred to above. All that he has argued in support of the judgment of the Lower Appellate Court is that the deed of the 9th April 1919 did create a lien on the property of Prabh Dayal in the possession of his widow and that, therefore, the plaintiff was entitled to maintain the suit. After reading the deed carefully we are not prepared to agree with him. We think that the view taken by the trial Court was correct.

We accordingly accept the appeal and, setting aside the decree of the Lower Appellate Court, restore that of the Court of first instance with costs.

A. N. C.

Appeal accepted.

(1) (1904) I. L. R. 26 All. 288 (P. C.). (2) (1884) I. L. R. 7 All. 163.

(3) (1915) I. L. R. 37 All. 422.

1922

Das MAL  
v.  
RAM CHAND.