

APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Zafar Ali.

KHAIR MUHAMMAD AND ANOTHER (DEFENDANTS)

Appellants,

versus

UMAR DIN AND GHULAM MU-
HAMMAD (PLAINTIFFS) AND } Respondents.
JHANDU (DEFENDANT)

1924

May 26.

Civil Appeal No. 2112 of 1921.

Civil Procedure Code, Act V of 1908, section 11, Explanation VI—Alienation by sonless proprietor—First suit for declaration by certain reversioners dismissed—Second suit by other reversioners, not maintainable.

In the present suit the plaintiffs, as collaterals, sued *inter alia* to contest a sale of land by one J., made on the 24th October 1911, for Rs. 200, and the lower Courts granted them a decree declaring that it should only affect their reversionary rights to the extent of Rs. 90. Hukman, the vendee, filed a second appeal on the ground that the suit was barred by a previous suit for a similar declaration brought by four nearer collaterals about this very sale in which the present plaintiffs were co-defendants and which was dismissed.

Held, that the present suit was barred by the previous suit under section 11, Explanation VI of the Code of Civil Procedure.

Muhammad Din v. Fattah Muhammad (1), *Kesho Prasad Singh v. Sheo Pargash Ojha* (2), and *Venkatanarayana Pillai v. Subbammal* (3), followed.

Brojo Behari v. Kedar Nath (4), and *Somasundara v. Kulandaivelu* (5), distinguished.

Second appeal from the decree of Lieut-Col. J. Frizelle, Additional District Judge, Hoshiarpur, at

(1) 24 P. R. 1906.

(3) (1915) I. L. R. 38 Mad. 406 (P. C.).

(2) (1921) I. L. R. 44 All. 19 (F. B.). (4) (1896) I. L. R. 12 Cal. 580 (F. B.).

(5) (1904) I. L. R. 28 Mad. 457 (F. B.).

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Jullundur, dated the 19th May 1921, affirming that of Mirza Abdul Rab, Subordinate Judge, 1st Class, Hoshiarpur, dated the 6th November 1920.

FAKIR CHAND, for Appellants.

IQBAL CHAND CHOPRA, for Respondents.

The judgment of the Court was delivered by—

SCOTT-SMITH, J.—In the suit out of which the present second appeal arises Umar Din and Ghulam Muhammad, reversioners of Jhandu, sued for a declaration that two sales by him of ancestral land, dated 24th October and 1st July 1911, respectively, should not affect their reversionary rights. The Courts below dismissed the suit so far as it related to the sale of 1st July 1911. The other sale, dated 24th October 1911, was for Rs. 200 and the Courts granted the plaintiffs a decree declaring that it should take effect as a mortgage and should affect the plaintiffs' reversionary rights to the extent of Rs. 90 only.

Hukman, the vendee, filed a second appeal to this Court, and it is contended by his counsel that the suit was barred by section 11, Explanation 6, Civil Procedure Code. It appears that a previous suit was brought by four of the reversioners, Shah Fakir and others, for a similar declaration about this very sale. That suit was dismissed on the 28th July 1913. The present plaintiffs, who were at that time minors, were made defendants under the guardianship of their sister. The contention on behalf of the appellant is that in the previous suit the then plaintiffs litigated *bonâ fide* on account of the private right claimed in common with themselves and others, namely, defendants Nos. 3 to 28 in that suit, that the present plaintiffs were impleaded as defendants, and that therefore they, as being interested in the right claimed, must be deemed to have claimed under the persons then liti-

gating. In the case of *Muhammad Din v. Fatteh Muhammad* (1) it was held that a decree obtained in a case of this sort by a reversioner against an alienor or alienee enures for the benefit of whoever may be the person entitled to succeed when the inheritance falls in, provided that such heir is himself the descendant of the common ancestor of himself and the alienor who alienated the land. The present plaintiffs are the descendants of the same common ancestor as the alienor. In the case of *Kesho Prasad Singh v. Sheo Pargash Ojha* (2) a suit was brought by a reversioner to set aside an alienation made by a Hindu widow, and it was held that it was brought by him in a representative capacity, that is to say, as representing the whole body of reversioners for the protection of the estate and that a decree in such a suit is therefore binding not only between the reversioner who brought the suit and the transferee, but also as between the whole body of the reversioners on the one hand and the transferee or his representative in title on the other. The Judges pointed out that the reason for this is that the reversioner who sues represents the others and Explanation VI to section 11, Civil Procedure Code, comes into operation. In arriving at this decision the Court followed the principle enunciated by their Lordships of the Privy Council in *Venkatanarayana Pillai v. Subbammal* (3). We consider that this authority is clearly applicable to the present case.

A reference to the previous suit, moreover, shows that the plaintiffs there asked for a declaration that the sale should not affect the rights of the plaintiffs and defendants Nos. 3 to 28 reversioners of the vendor. This clearly shows that they were litigating *bonâ fide*

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(1) 24 P. R. 1906. (2) (1921) I. L. R. 44 All. 19 (F. B.).
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in a representative capacity on behalf of the whole body of reversioners. The fact that the then plaintiffs were more remote reversioners than the present plaintiffs does not appear to us to affect the case in any way. Counsel for the respondents referred us to *Brojo Behari v. Kedar Nath* (1) and *Somasundara v. Kulandaivelu* (2), but a perusal of those cases shows that they are not on all fours with the present one.

We accept the appeal and setting aside the order of the lower Court dismiss the plaintiffs' suit with costs.

A. R.

Appeal accepted.

(1) (1896) I. L. R. 12 Cal. 530 (F. B.).

(2) (1904) I. L. R. 28 Mad. 457 (F. B.).