

APPELLATE CIVIL.

Before Mr. Justice Tek Chand and Mr. Justice Bhide.

MUSSAMMAT SHARIFAN BIBI (PLAINTIFF)

Appellant

versus

Mst. AISHAN BIBI AND OTHERS (DEFENDANTS)

Respondents.

1928

Feb. 8.

Civil Appeal No. 1149 of 1924.

Colonization of Government Lands (Punjab) Act V of 1912, section 20—daughter versus collaterals—Suit by plaintiff to have it declared that plaintiff will have a right to succeed after the death of her widowed mother—Spes successionis—Succession—right of married daughter under the Act.

W. D., father of plaintiff and his two brothers were granted one square of land each in the Lyallpur colony. After his brothers' death squares allotted to them were granted to W. D. by Government, who subsequently acquired occupancy rights in respect of the three squares. After his death the land left by him was mutated in the name of his widow. She wanted to make a gift of the whole land in favour of her daughter, the plaintiff, and applied for sanction, but the application was resisted by the defendants-collaterals of W. D. on the ground that they were entitled to succeed to the property after the death of W. D.'s widow. Plaintiff sued for a declaration that she, and not the collaterals, was entitled to succeed.

Held, that the suit was not maintainable, firstly, because it was a suit for a declaration not with respect to an existing right but with respect to *spes successionis*, and secondly, because assuming W. D. to have died after Act V of 1912 came into force, as alleged by plaintiff, succession would be governed by section 20 of the Act, and under that section plaintiff, being a married daughter, would not have a right of succession at all.

Lalu v. Fazal Din (1), and *Janaki Ammal v. Narayanasami Aiyer* (2), referred to.

(1) (1923) I. L. R. 4 Lah. 106. (2) (1916) I. L. R. 39 Mad. 634, 637 (P.C.).

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Ms.

SHARIFAN BIBI

v.

Ms.

AISHAN BIBI.

First appeal from the decree of Lala Jaswant Rai, Taneja, Senior Subordinate Judge, Lyallpur, dated the 12th January 1924, declaring that the plaintiff is entitled to 2/9th of the 3 squares, etc.

NIJAZ MUHAMMAD, for Appellant.

GHULAM MOHY-UD-DIN, for Respondents.

The judgment of the Court was delivered by—

BHIDE J.—The facts alleged by the plaintiff in the plaint were briefly as follows:—Wali Dad, father of the plaintiff and his two brothers, named Khera and Faujdar, were granted one square of land each in the Lyallpur colony in the early days of the Settlement. Shortly afterwards, Khera and Faujdar died and the squares allotted to them were granted by Government to Wali Dad. Wali Dad subsequently acquired occupancy rights in respect of the three squares. About 11 or 12 years before the suit Wali Dad died and the land left by him was mutated in the name of his widow *Mussammat Aishan Bibi*, defendant No. 1. *Mussammat Aishan Bibi* subsequently wanted to make a gift of the whole land in favour of her daughter, the plaintiff, and applied for sanction, but the application was resisted by defendants 2 to 4, who are collaterals of Wali Dad, on the ground that they were entitled to succeed to the property of Wali Dad on the death of *Mussammat Aishan Bibi*. Sanction was accordingly refused and thereafter the plaintiff instituted the present suit for a declaration that she and not the defendants were entitled to succeed to the property left by Wali Dad on the death of defendant No. 1. Defendants 2 to 4 resisted the suit on various grounds, pleading *inter alia* that two out of the squares belonged to Khera and Faujdar and were inherited by Wali Dad. The learned Senior Subordinate Judge

held that the plaintiff was not entitled to succeed to the squares inherited by Wali Dad from his brothers and granted the declaration prayed for in respect of the remaining land only. From this decision the plaintiff has appealed.

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It seems to us that the present appeal must fail both on account of the form in which the relief was asked for as also on the merits. The plaintiff merely sued for a declaration that she was entitled to succeed to the property in suit after the death of defendant No. 1. This was in effect a suit for a declaration not with respect to an existing right but with respect to a *spes successionis*. It is well settled that a suit of this kind is not maintainable,—*vide Lalu v. Fazal Din* (1) and *Janaki Ammal v. Narayanasami Aiyer* (2). The learned counsel for the appellant himself conceded this point, but wanted permission to amend the plaint. He was, however, unable to state definitely in what other form relief could be asked on the allegations as stated in the plaint. It seems to us that the suit is bound to fail on those allegations. According to the plaint it was Wali Dad who acquired occupancy rights in the whole of the land in suit. It is vaguely stated in the plaint that Wali Dad died 11 or 12 years before the suit. The suit was instituted on the 14th November 1923. It would thus appear that Wali Dad must have died some time about 1911 or 1912. It was stated by counsel for the appellant that Wali Dad actually died after Act V of 1912 came into force. Assuming this to be correct, succession would be governed by section 20 of that Act. Under that section the plaintiff, being a married daughter, does not appear to have any right of succession at all. It was

(1) (1923) I. L. R. 4 Lah. 106. (2) (1916) I. L. R. 39 Mad. 634, 637 (P.O.).

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suggested by the learned counsel for the appellant that the plaintiff *could* be nominated as the successor of Wali Dad by the Collector under clause (e) of section 20; but it is obvious that the plaintiff cannot claim any declaration at present on the mere possibility of such nomination being made in the future.

There is neither any appeal nor cross-objections on behalf of the respondents and in the circumstances the decree of the lower Court cannot be varied; but it seems to us perfectly clear that the plaintiff's claim in appeal must fail.

We accordingly dismiss the appeal with costs.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Ffordde and Mr. Justice Agha Haidar.

SANWAL DAS (PLAINTIFF) Appellant

versus

KURE MAL AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 2509 of 1923.

1927

Nov. 15.

Hindu Law—Presumption of jointness—where there was a nucleus of property—and independently of such nucleus—Indian Contract Act, IX of 1872, section 16—Undue influence—essential elements—onus probandi.

The plaintiff, a Hindu, claimed a declaration that a deed of partition executed by himself and his only surviving relative was void under section 16 of the Contract Act, and that the property mentioned therein was his own separate property, having descended as such from his father. The plaintiff produced no evidence to prove when and under what circumstances his father separated from the rest of the family, but relied upon some documents as shewing that his father acquired property in his own name. On the other hand, there were other documents shewing that plaintiff's