

LETTERS PATENT APPEAL.

Before Shadi Lal C. J. and Broadway J.

ABDULLAH SHAH AND OTHERS (PLAINTIFFS)

Appellants

versus

MST. ZAINAB BIBI AND ANOTHER (DEFENDANTS)

Respondents.

Letters Patent Appeal No. 140 of 1926.

Civil Procedure Code, Act V of 1908, Order XXII, Rule 4—Abatement—Suit by reversioner to contest alienation of ancestral land—death of plaintiff—whether suit can be continued by persons claiming as heirs of the deceased but not descended from same common ancestor.

K.S. sued for a declaration that the alienation by his deceased uncle, of ancestral land, should not affect his reversionary rights; but died during the pendency of the suit, whereupon his collaterals applied to be brought on the record as his legal representatives.

Held, that the alienation could be impeached only by a person who, like *K.S.*, proved the land to be ancestral *qua* him. In the absence of proof by *K.S.*'s collaterals that the land descended from an ancestor, common to them and the testator, they were not entitled to challenge the transfer.

And, that as they had no *locus standi* to impugn the transaction in suit, they were not entitled to continue the suit as legal representatives of the deceased plaintiff; for the continuance of a suit depends, not on the qualifications of the person claiming to be the representative of the deceased, but on the nature of the suit. The test is whether the collaterals could have joined as plaintiffs in the action brought by *K.S.*; if so, they would be entitled to continue the suit begun by him, but not otherwise.

Ramdin v. Raj Rani (1), and *Venkatanarayana Pillai v. Subbammal* (2), followed.

(1) (1912) 17 I. C. 101. (2) (1915) I. L. R. 38 Mad. 406 (P. C.).

Appeal under clause 10 of the Letters Patent from the judgment of Harrison J., dated the 16th March 1926

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IFTIKHAR ALL, for Appellants.

GHULAM MOHY-UD-DIN, for Respondents.

The judgment of the Court was delivered by—

SHADI LAL C. J.—On the 27th November, 1921, SHADI LAL C.J. one Abdullah Shah made a will by which he devised the whole of his land to his daughter, *Mussammat Zainab Bibi*. After his death, his brother's son, Kasim Shah, brought the present suit impeaching the transfer, but he died during the pendency of the suit. His collaterals, thereupon, made an application asking the Court to bring them as his legal representatives on the record.

Now, it is common ground that the alienation of the land can be impeached only by the person who proves the property to be ancestral *qua* him. As regards Kasim Shah, the land was undoubtedly ancestral and he had a right to contest the testamentary disposition made by his uncle; but the collaterals of Kasim Shah who desire to be impleaded as his legal representatives, have not succeeded in proving that the land descended from an ancestor common to them and the testator; and it is obvious that they were not entitled to challenge the transfer.

The question arises whether they can continue the suit brought by Kasim Shah. The continuance of a suit depends, not on the qualifications of the person claiming to be the representative of the deceased, but on the nature of the suit. As pointed out in *Ramdin v. Raj Rani* (1), a man may die leaving "an heir to

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his estate who may yet have no right to continue a pending suit * * * *. On the other hand, the legal representative of a deceased person entitled to carry on a pending suit may not be his heir, e.g. the case of an executor or a creditor who has obtained Letters of Administration." The right of Kasim Shah to impeach the alienation made by his uncle does not survive, because Kasim Shah's collaterals were not entitled to bring an action to impugn the transfer. As laid down by their Lordships of the Privy Council in *Venkatanarayana Pillai v. Subbammal* (1), the test is whether the collaterals could have been joined as plaintiffs in the action brought by Kasim Shah. If they could, then, on the death of the latter, they would be entitled to continue the suit begun by him. But they had no *locus standi* to impugn the transaction, and they are not consequently entitled to continue the suit.

The appeal, therefore, fails and is dismissed with costs.

N. F. E.

Appeal dismissed.

(1) (1915) I. L. R. 38 Mad. 406 (P. C.).