

## **Pirthi Pal vs Mt. Kalpoo And Anr. on 28 October, 1950**

**Equivalent citations: AIR1952ALL190, AIR 1952 ALLAHABAD 190**

### **JUDGMENT**

Chandiramani, J.

1. This is a plaintiff's second appeal against the appellate decree of Shri G. C. Sinha, Civil Judge, Sultanpur, dated 29.11.1945.
2. The plaintiff Pirthi Pal sued for recovery of possession of certain zamindari property which belonged to two brothers, Karia and Jagmohan, sons of Nanku. Jagmohan died more than 20 years before the date of suit and apparently after his death the name of Mt. Patraji, who was his widow, was mutated in the village papers. At that time both Karia and his wife Mt. Ramraji were in Burma. Karia returned after his brother's death. When Karia himself died, the name of his widow, Mt. Ramraji, was mutated to his share. When she died in June 1943, Mt. Patraji obtained mutation in her favour in respect of that share also.
3. The plaintiff then filed the present suit saying that both Jagmohan and Karia formed a joint Hindu family, that on Jagmohan's death the name of Mt. Patraji was entered to his share by way of consolation, that in fact Karia remained in possession of the whole property, that on his death his widow Mt. Bamraji succeeded him and after her death he is entitled to the property as the nearest heir to Karia.
4. Mt. Patraji denied that the plaintiff was the nearest heir. She set up Sobhaman, defendant 2, as the nearest heir, being the son of a sister of Karia. She alleged that the two brothers had separated and Karia on his receipt of Rs. 400 had given up all interest in the property and that in any case she had been in adverse possession for more than 12 years.
5. The trial Court held that Jagmohan died in a state of jointness with his brother Karia, that Karia had not relinquished his share in 'the property, that there was no adverse possession, that Sobhaman is not the son of the sister of Karia, that the plaintiff is the nearest reversioner of Karia and accordingly the suit was decreed.
6. On appeal the lower appellate Court held that Jagmohan died in a state of jointness with Karia, that there was no surrender of his interest by Karia, but Mt. Patraji was in adverse possession of half share of the property after the death of her husband Jagmohan since more than 20 years and so the plaintiff's claim with respect to that half was dismissed.
7. In this second appeal the only dispute relates to this half share, claim in respect of which has been dismissed by the lower appellate Court. It is argued that the possession of Mt. Patraji was not

adverse as she came into possession as a Hindu widow after her husband's death. There is no force in this contention. The case in the trial Court was that mutation took place in her favour for consolation, but the lower appellate Court has disbelieved it. There is no evidence that Mt. Patraji's name was entered merely because she was the widow of Jagmohan. It has been pointed Out in Pirithi Pal v. Suraj Kunwar, 1940 Oudh W. N. 719 at p. 733, that there is no presumption that mutation in the name of a Hindu widow is by way of consolation. When the family was joint at the time of death of Jagmohan his widow was entitled only to maintenance and her possession was clearly unlawful at its inception.

8. The appellant relied on Chandra Bali v. Bhagwan Prasad, 1944 ALL. L. J. 344, where it has been held that in determining the nature of a widow's possession the true test has always been furnished by the character in which she steps into possession. Applying this test, it is clear that in the present case Mt. Patraji did not get possession as the widow of Jagmohan. The principle laid down, therefore, does not help the appellant. Sham Koer v. Dah Koer, 29 Ind. App. 182, was a case in which on the death of a member of a joint Hindu family governed by the Mitakshara law his property went into the possession of his widow and his predeceased son's widow. He had left no issue. It was held that neither his widow nor his son's widow would be entitled to anything more than maintenance out of his estate and their possession of the deceased's property would be adverse to the reversionary heirs unless it was the result of an arrangement and the reversionary heirs would be barred at the expiration of 12 years from the date of the widow's taking possession. This authority clearly helps the respondents and the possession of Mt. Patraji over her husband's share was clearly adverse and as she remained in such possession for over 12 years before the date of suit, she perfected her title and the plaintiff could not recover that possession. The decision of the lower appellate Court was thus correct.

9. The appeal fails and is hereby dismissed, with costs.