

## Bachchu Singh vs Harbans Singh on 15 October, 1951

**Equivalent citations: AIR1953ALL213, AIR 1953 ALLAHABAD 213**

### JUDGMENT

Beg, J.

1. This second appeal arises out of a suit for possession of four pies share in 'haqiat pukhtedari' in village Ahkori, pargana Gwarich, tahsil Tarabganj, on the allegation that this property was held by one Mst. Sukhrani in her capacity as a Hindu widow and that after the death of the said widow the property devolved upon the plaintiff-appellant Bachchu Singh as the nearest reversioner of the last male owner.
2. The main defence set up on behalf of the defendant-respondent Harbans Singh was that there was a settlement between the parties to the suit in the year 1932, according to which the plaintiff was entitled to only a half share in the property in suit.
3. The trial Court upheld the plea of the defendant-respondent and decreed the plaintiff's suit for possession to the extent of two pies share and dismissed it in respect of the remaining two pies share in the property in dispute.
4. The plaintiff went up in appeal and the lower appellate court upheld the judgment and decree of the trial court. The plaintiff has filed a second appeal in this Court and the main contention urged on, behalf of the appellant by his learned counsel is that the settlement in question is bad in law and cannot be given effect to. It would appear that the property in dispute originally belonged to two persons, Sheo Ratan Singh and Bhagwati Singh, who were the grandsons of Drigbijai Singh. The plaintiff Bachchu Singh and the defendant Harbans Singh are collaterals whose common ancestor Sital Singh was a brother of Drigbijai Singh the grandfather of Sheo Ratan Singh and Bhagwati Singh. In the year 1931 the widows of Sheo Ratan Singh and Bhagwati Singh were in possession of the property in dispute. At that time, there was a dispute between Bachchu Singh plaintiff-appellant and Harbans Singh defendant-respondent regarding the joint family property owned by them. By an agreement dated the 2-6-1930, they referred the dispute between them to an arbitration. This agreement to refer the dispute to arbitration recites that there had been a dispute between the parties regarding the joint family property and hence they were referring it to the arbitrators whose decision would be binding on them. On 23-6-1931, the arbitrators gave their award. On the 2-7-1931 the defendant-respondent applied for making this award rule of Court. On the 3-10-1932, the Court passed a decree in terms of the said award. In the said award, the parties to the present suit stated that they had nothing to do with the property of Sheo Ratan Singh and Bhagwati Singh at that time but after the death of the widows they would have an equal share in the said property. On this assumption, the award proceeded to distribute the joint family property between the plaintiff and the defendant. It may be taken that the adjustment of their rights and the division of their shares in

the joint family property was made on the basis of the parties' undertaking to claim only one-half share in the property of Sheo Ratan Singh and Bhagwati Singh, which was in the possession of the widows at that time.

5. The learned Counsel appearing for the plaintiff has strenuously argued that this agreement would be tantamount to an agreement to transfer the property and would, therefore, be bad in law, being a transfer of 'spes successions', under Section 6, Transfer of Property Act. After having heard him, I cannot see my way to agree with him on this point. It appears to me that the agreement in question is neither a transfer nor an agreement to transfer but is in the nature of a family settlement. The parties to the agreement are relations. The agreement for arbitration itself recites that there had been a dispute between the parties regarding the joint family property. The award adjusts the rights of the parties in the said property on certain assumptions and considerations. One of the considerations of the said award was that Bachchu Singh had undertaken to claim only two pies share in the property in dispute. It cannot by any means be described to be a transfer of 'spes successionis' or even an agreement to transfer the same. It was merely an item of consideration moving between the parties in the wider transaction of family settlement. All that such an agreement amounts to is that Bachchu Singh had undertaken not to do a certain thing in the event of a certain contingency. He having undertaken not to do it, took the advantage of his undertaking and got the family property divided on that basis. The result of it necessarily must have been that he would have been given a share in the joint family property larger in extent than might have been given to him if this undertaking had not been given by him. The question is whether having taken advantage of this promise at the stage of arbitration proceedings and having fully reaped its fruits by getting the division of the property made in his favour on that understanding and presumption, he can now be allowed to turn round and while pocketing the benefit that he got out of this transaction he can be permitted to deprive the opposite party of the corresponding benefit which he gets from a promise of this nature. The question is one of personal contract between the parties to do or not to do a certain thing and I can see no principle of law or equity which would stand in the way of Harbans Singh's setting up this promise by Bachchu Singh as a shield in a suit launched against him by the plaintiff Bachchu Singh claiming possession of the property. Bachchu Singh is really estopped from changing his position and setting up a claim in respect of the property which was clearly given up by him.

6. The learned counsel for the appellant has cited three cases in support of his contention. None of these cases in my opinion seems to help him. The first case, -- 'Thakurain Harnath Kuar v. Thakur Indar Bahadur Singh' AIR 1922 PC 403, was a case in which a decree was passed by the Court declaring that a certain person was the owner of the property. This person transferred the property to a third person who brought a suit on the basis of this transfer. There was in that case, therefore, clearly a transfer of 'spes successionis' and the facts of that case are not on all fours with the present case.

7. He next cited -- 'Annada Mohan Roy v. Gour Mohan Mullick', AIR 1923 PC 189, which was also a case of purchase of a right of expectancy or 'spes successions' and has hardly any relevancy to the present case.

8. Lastly he strongly relied on -- 'Mt. Har Naraini v. Sajjan Pal Singh', AIR 1940 PC 181, which lays down that a guardian cannot make any agreement regarding the reversionary interest of a minor. The law relating to the protection of interests of a minor by a guardian stands on a different footing altogether and is governed by different considerations and the observations made by their Lordships of the Privy Council in that context can have no application to the case of an agreement entered into as a part of a family settlement.

9. In -- 'Wazan Singh v. Ratan Singh', 24 Oudh Cas 151, a registered agreement was executed between a widow on one side and certain reversionary heirs on the other, by which the reversioners relinquished their claim to a certain share and agreed to divide the rest in proportion among themselves after the widow's death. It was held that the consideration for such an agreement was the settlement of the mutual claims between the reversioners 'inter se' and that such an agreement is valid and binding not as an assignment or re-linquishment of the rights in expectancy but as a settlement by which the parties defined their respective shares for the sake of avoiding future trouble and dispute.

10. The above case was followed in -- 'Chhatarpal Singh v. Sant Bakhsh Singh', 1938 Oudh WN 711, which laid down that a compromise between the members of the same family which is for the benefit of all the parties and meant to put a stop to further litigation is a family settlement and is binding as such. Section 6(a), Transfer of Property Act, has no application to a compromise amounting to a family arrangement.

11. In a similar case reported in -- 'Chahlu v. Parmal', 41 All 611, Walsh, J., in defining the scope of Section 5 and 6, Transfer of Property Act, observed thus:

"Reading Sections 5 and 6 together, it is clear that the latter section does no more than enumerate certain incorporeal, inchoate, or contingent rights which cannot be transferred by an act of conveyance from one person to another. The other rights enumerated in Section 6 show that this is so. The section is not one imposing a statutory prohibition against the formation of contracts relating to a certain specified subjects, as though, for example they were contrary to public policy and therefore forbidden. It merely enacts that a transfer or act of conveyance purporting to pass is ineffectual to pass any interest in these particular rights. The result is that they cannot be assigned either at law or to adopt the phraseology of English lawyers at equity by an act of transfer. And it follows that an imperfect act of transfer or an act purporting to transfer rights mentioned in the section confers no equitable interest upon the transferee such as was recognised by the Court of Equity. But this does not mean, and in my judgment could never have been intended to mean, that an arrangement or contract supported by good consideration and otherwise binding in equity upon the parties thereto will not be held binding in equity upon the parties to it merely because one of the results of it is to put one of the parties in the same position as if he had taken a transfer from the person entitled to an inheritance if a transfer could be actually effected."

While citing with approval -- 'Olati Pulliah Chetti v. Varadarajulu Chetti', 31 Mad 474, the same learned Judge made the following remarks:

"The case of -- 'Olati Pulliah Chetti v. Varadarajulu Chetti', where an alleged reversioner admitted the widow's absolute interest, without expressly relinquishing anything is a case much in point. It was there held that a compromise cannot be impeached by one of the parties to it on the sole ground that the party whose right is admitted by the compromise had in fact no such right; that a compromise for valuable consideration cannot be repudiated unless it is shown to be illegal or void; and that an admission does not affect a transfer or fall within Section 6(a) of the Transfer of Property Act as a transfer of a mere 'spes successionis'. As was said in an old English case, -- 'Underwood v. Lord Courtown', (1804) 2 Schedule & L.F. 41, "It only amounts to this, I give you so much for not seeking to disturb me."

12. In -- 'Nakched Chaudhari v. Sukhdeo Chaudhari', AIR 1930 All 430, following --'Chahlu v. Parmal', it was held that though the transfer of an interest by a reversioner is void, he may by becoming a party to a compromise and by taking the benefit thereunder be estopped from claiming as a reversioner. The same view of law was taken by another single Judge in a case reported in -- 'Ram Pratap v. Indrajit', AIR 1950 All 320, by a Bench of the Allahabad High Court in cases reported in -- 'Raghubir Datt v. Narain Datt', AIR 1930 An 498 (2) and -- 'Pohkar Singh v. Mt. Dulari Kunwar', AIR 1930 All 687, and by a Full Bench of the same court in a case reported in -- 'Uma Shankar v. Ram Charan', AIR 1939 All 689 (FB).

13. Having heard learned counsel for the parties at length, I have come to the conclusion that' the settlement arrived at between the plaintiff and the defendant is not hit by Section 6(a), Transfer of Property Act, and must be upheld as valid and good.

14. I see no force in this appeal, which is accordingly dismissed with costs.