Raghuraj Singh vs Babu Singh And Anr. on 11 January, 1952

Equivalent citations: AIR1952ALL875, AIR 1952 ALLAHABAD 875

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Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. The plaintiff-appellant filed a suit for possession of a share of the property left by one Bhoop Singh who died in the year 1882. Bhoop Singh had a son Megh Singh and also left a widow Srimati Janki Kunwar. Mutation was effected in the village papers half and half in the names of Janki Kunwar and Megh Singh. Megh Singh died in 1901 and his eight-annas share in the property was mutated in favour of his widow, Srimati Lal Kunwar, and his son, Rustam, half and half. On Rustam's death in 1903 Lal Kunwar's name was recorded on that four-annas share also, with the result that Janki Kunwar's name remained recorded over eight-annas share and Lal Kunwar's name over the remaining eight-annas.

In 1910 Janki Kunwar died leaving a daughter and a daughter's son, who are defendants to this suit. They claimed mutation over the eight-annas share which had been entered in the name of Janki Kunwar, and Lal Kunwar objected and claimed that the entire property had come to her by inheritance. Lal Kunwar's objection was dismissed, but she filed an appeal. During the pendency of the appeal on 23-6-1910, the parties entered into a compromise by which the defendants were given a one-third share in the property and the remaining two-thirds was mutated in the name of Lal Kunwar. On 20-9-1930, Lal Kunwar surrendered the entire inheritance to the plaintiff, Eaghuraj Singh, her daughter's son. Lal Kunwar died in 1941, and on 3-10-1942, Eaghuraj Singh filed a suit for recovery of the one-third share that the defendants had got under the compromise dated 23-6-1910.

2. The defendants raised the plea that the suit was barred by limitation as the plaintiff could have filed a suit for possession after the surrender in his favour on 20-9-1930.

3. The learned single Judge came to the conclusion that the plaintiff's cause of action for a suit for possession having accrued on 20-9-1930, the suit was barred by limitation.

4. Mr. Ambika Prasad, learned counsel for the appellant, has urged that the defendants were entitled to remain in possession of the property till 1941 when Lal Kunwar died and the plaintiff's cause of action, therefore, arose on Lal Kunwar's death in 1941, and as such the suit was not barred by

limitation. Learned counsel has relied on the judgment of Boys J. and certain observations in the judgment of Sulaiman J. in Lachmi Chand v. Lachoo, 49 ALL. 334. He has ,'also relied on the judgment of this Court in Gopal Das v. Sri Thakurji, A. I. R. 1936 ALL. 422. In both these cases it was held that when a widow had made a transfer of her life-estate, even though the transfer may not be binding on the reversioners on her actual death, if she has surrendered the estate, the reversioner could get the property subject to the transfer made by the widow and could, therefore, claim possession only on the termination of the life-estate, that is, on her death Boys J. in Lachmi Chand's case, 49 ALL. 334 observed that the doctrine of surrender having been imported into Hindu Law by judicial decision, he was entitled, in the absence of authority to the contrary, to import the complementary rule, essential to the prevention of fraud, that the widow could not by making a surrender defeat rights created by herself and creation of which was within her authority, and the reversioner could not claim on the basis of the surrender to defeat such rights. Sulaiman J. clearly pointed out the fallacy behind this reasoning. He quoted observations of Lord Morris in Behari Lal v. Madho Lall, 19 Cal. 236 to the following effect :

> "It may be accepted that, according to Hindu law, the widow can accelerate the estate of the heir by conveying absolutely and destroying her life-estate,"

and again the observations of Lord Dunedin in Rangaswami v. Nachiappa, 42 Mad. 523 (P.C.).

> "It is settled by long practice and confirmed by decision that a Hindu widow can renounce in favour of the nearest reversions, if there be only one, or of all the reversioners nearest in degree, if more than one at the moment. That is to say, she can, so to speak, by voluntary act operate her own death,"

and, again, that :

> "It is the effacement of the widow--an effacement which in other circumstances is effected by actual death or by civil death which opens the estate of the deceased husband to his next heirs at that date."

The learned Judge, if we may say so with respect, correctly pointed out that the reversioner in whose favour the surrender takes place is not really in the position of a grantee or transferee from the widow, but succeeds to the estate in his own right as the immediate heir, his succession having been accelerated by the act of the widow, and also that the reversioner does not derive title from the widow but derives title from the last male owner though his inchoate right has become matured on account of the widow's act. The learned Judge, after making these observations, went on to say as follows :

> "I find great difficulty in discovering any true basis for holding that though the reversioner in whose favour the surrender has taken place has succeeded to the estate of the last male owner and derives title from him, he is nevertheless estopped from challenging alienations made by the Hindu widow during her life time as if he were a grantee from her."

Having made these observations, however, the learned Judge ultimately agreed with Boys J. that it would not work any hardship if the reversioner in whose favour the property had been surrendered were to take the property subject to the transfers made by the widow so as to allow the transfers to remain valid for her life-time It will be thus clear that Sulaiman J. did not base his judgment on any principles of law which, if we may say so with respect, had been clearly enunciated by him in the earlier part of his judgment but merely on grounds of what he considered to be just and proper. So far as we can see, the hardship pointed out by Boys J. could be easily met by accepting the ordinary rule of law that if a transaction had been entered into with an object to defraud any party, the fraud thus practised would vitiate the transaction, and where, therefore, the widow and the nearest reversioner had colluded together to enter into a form of surrender for the purpose of defeating the transferees rights, it may be possible to hold that the surrender was not valid.

It is not, however, necessary to go into this question any further or to consider whether this case and the case of Gopal Das v. Sri Thakurji, A. I.R. 1936 ALL. 422 were correctly decided as the case before us is not a case of a transfer made by the widow of her life-estate. Here the widow had taken up the position that Janki Kunwar had no right to the eight-annas share which was mutated in her name and neither she nor her daughter and her daughter's son could claim the property as against herself. The Courts had decided against her and in the compromise she had to agree, therefore, to let them remain in possession of one-third of the property and get back two-thirds. It was never suggested that the surrender made by her twenty years afterwards of the entire inheritance was a fraudulent transaction entered into with the object of defeating or going behind the compromise of 1910. It was the plaintiff's case that Lal Kunwar had executed a valid surrender in her favour, and, to borrow the words of Lord Dunedin, the widow had completely effaced herself and met with a civil death, so that the property came to the plaintiff not as her heir or as her transferee but in his own right as the daughter's son of the last male owner, Megh Singh. In the circumstances there can be no doubt that he had a right to claim possession of this property on 20-9-1930, and he need not have waited till the death of Lal Kunwar in 1941.

5. We may mention that the view expressed by us is not only supported by the observations made by Sulaiman J., which we have already quoted, but also by a decision of the Calcutta High Court in Ram Krishna v. Kousalya Mani, A. I. R. 1935 Cal. 689. In that case D. N. Mitter, J. held:

> "For the reasons we have given we think the logical consequence of the doctrine of surrender which means a self-effacement of the widow and amounts to a civil death and complete extinguishment of the title of the widow in her husband's estate is that all prior alienations in excess of her powers are liable to be challenged immediately on her civil death just as they could be impeached after she had died. In some instance this may possibly work out an injustice, but those who deal with limited owner take a certain amount of risk."

6. Learned counsel for the appellant has relied on Article 141, Limitation Act and has urged that it is only on the death of Lal Kunwar that the period of limitation of twelve years began to run against the plaintiff and he was therefore, entitled to bring a suit within twelve years of the date of death. The description, however, in the first part of the Article as to the nature of the suit under that article

is as follows:

> "Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female".
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> If the word "death" in the first column includes civil death, then the cause of action arose on the date of surrender, and the suit had to be filed within twelve years of that date. If the word "death" in the first column means only physical death, then the right to possession of the plaintiff, on the view expressed by us, did not arise in 1941 when she died and the Article will not, therefore, apply.

7. The suit having been filed on 3-10-1942, that is, more than twelve years after the date of the surrender, it was clearly time-barred. The appeal has no force and is, therefore, dismissed with costs.