Sant Rai vs Mt. Ratoo And Ors. on 23 November, 1950

Equivalent citations: AIR1952ALL335, AIR 1952 ALLAHABAD 335

JUDGMENT

Bind Basni Prasad, J.

1. This is a plaintiff's appeal arising out of a suit for the possession of certain zamindari property, It is the common ground of the parties that the property originally belonged to one Bam Pratap Rai. His father, Manorath Rai, died in 1874 and shortly after Ram Pratap Rai also died leaving a widow Smt. Daulata and the mother, 8m. Amrita. He bad no issue. On 30-4-1906. Sm. Amrita along with one Deoki Rai, who was the nest reversioner, execrated a deed of gift in favour of Sm. Rato Kunwar, defendant 1. Rato Kunwar is the daughter of Deoki Rai. In 1908, the plaintiff's brother, Mahipal Bai, for self and as the guardian of the plaintiff brought Suit No. 445 of 1908 for a declaration that the deed of gift was ineffectual as against their interest. The auifi was dismissed.

2. The plaintiff has now attained majority. Deoki Rai, 8m. Amrita and Daulta are all dead. The plaintiff is now the nest revereioner. The sait from which this appeal arises was instituted is September, 1943, and, inter alia, it was contended in it that the decree in Suit No. 445 of 1908 was not binding upon him, because he was then a minor and his guardian was guilty of gross negligence in conducting that case. Various pleas were taken in defence.

3. The trial Court held that the transfer in question embodied two transactions viz., a surrender by a Hindu widow of her intereat in the property to the nearest reversioner, Deoki Rai, and a gift by the latter to his daughter, that the suit was barred by limitation and res judicata and that there was no negligence on the part of the guardian. Learned Civil Judge in appeal has affirmed these findings and has upheld the decree of the trial Court dismissing the suit. The plaintiff comes in appeal to this Court.

4. The main point for consideration in this appeal is whether or not the plaintiff's guardian, Mahipal Bai, was guilty of gross negligence in conducting Suit No. 445 of 1908 If it was so, then, of course the plaintiff is not bound by that decree,

5. The contention on behalf of the appellant is that, having regard to the Full Bench case of Ramphal Rai v. Tula Kuari, 6 ALL. 116 (F.B.) the trial Court should have decreed the suit and it was the duty of the guardian to have preferred an appeal from the decree of the trial Court when it decided otherwise. In that case it was held:

> "A gift by a Hindu widow, who has succeeded to the separate estate of her deceased husband, of such estate, is not valid and does not create a title which cannot be impeached by the remoter reversioner, because it has been made with the consent of

> the next reveraioner."

This Full Bench case came in for consideration before their Lordships of the Judicial Committee in Bajrangi v. Manokarnika, 5 ALL. L. J. 1 (F.B.) and it was held:

> "A Hindu widow, governed by the law of Mitakahara, can alienate her husband's property without legal necessity on obtaining the consent of the whole body of persons constituting the nest reversion and it is not necessary for her to obtain the consent of all his kindred who can reasonably regarded as having an interest in questioning the transaction."

Their Lordships considered the case law on the subject and observed:

> "The principle being thus admitted by the High Courts in India, the question of the quantum of consent necessary only remains. The High Court of Allahabad, indeed, does not recognize the validity of surrenders in favour, or alienations with the consent, of presumptive reversioners, so as to defeat the title of the actual reversioner at the time of the widow's death. But this restriction is at variance with the principle itself, and is not in accordance with the practice in other parts of India in which the Mitakshara law prevails. Their Lordships have not been referred to any cases in the province of Oudh in which this reatriotion has been acted upon; and though they would ba unwilling to extend the widow's power of alieaation beyond its present, limits, they cannot adopt the further limitation which the Allahabad High Court has sought to establish. They agree with the High Court of Calcutta Radha Shyam v. Joy Bam, 17 Cal. 896 that ordinarily the consent of the whole body of persons constituting the next reversion should be obtained though there may be oases in which special circumstances may render the strict enforcement of this rule impossible."

It was on this decision of their Lordships of the Judicial Committee that the trial Court relied in dismissing Suit No. 445 of 1908.

6. Learned counsel has referred us to Bakhtawar v. Bhagwana, 32 ALL. 176 in which the above mentioned decision of their Lordships of the Judicial Committee was considered. It was held there:

> "A gift by a Hindu widow, who succeeded to the separate estate of her deceased husband of such estate, is not valid and does not create a title which cannot be impeached by the remoter reversioner because it has been made with the consent of the next reversioner,"

They distinguished the case of Bajrangi v. Manokarnika, 5 ALL L. J. 1 (F.B.) on the ground that it was a case of sale without legal necessity and not a oase of gift. The same view was taken in Tukaram Vithu v. Yesu Maruti, 55 Bom. 46 in which it was held:

> "Under Hinrtu law a gift by a widow of the whole or part of an estate in favour of a stranger is nob validated by the consent of the next raversioner as against the eventual reversioners or the adopted son."

The case of Bajrangi v. Manokaranika 5 ALL. L. J. 1 (F. B.) was distinguished It is to be remembered however, that the decision in Bakhtawar v. Bhagwan, 82 ALL. 176 was given in 1910 and that in Tukaram Vithu v. Yesu Maruti, 55 Bom. 46 in 1930 after the decision of the trial Court in Suit No. 445 of 1908. The point was not so clear at that time as it is now. The real question is whether the plaintiff's guardian can be held to be guilty of gross negligence in not having preferred an appeal. There is the case of Daiva Ammal v. Selvaram muja Nayakar, A.I.R. (23) 1936 Mad. 479 in which their Lordships considered whether or nob the failure on the part of a guardian to file an appeal amounts to gross negligence. After relating the circumstances of the case their Lordships observed:

> "We must take it that an appeal was not filed because the guardian judged from the circumstances that the appeal if filed would not be successful. Can a guardian who after defending the suit bona fide and conducting it to the beat of his ability elect to abide by the decision given by the Court without preferring an appeal against it holding it to be correct and that an appeal would be useless, be said to have acted negligently in not preferring the appeal? No express decisions of any High Court bearing on the point have been brought to our notice. In the circumstances we cannot consider the failure to prefer an appeal as negligence on the part of the guardian in defending Original Suit No. 55 of 1922, assuming that that conduct can rightly be taken into consideration in deciding whether the guardian had properly defended the suit."

7. The plaintiff's guardian was his own brother who was as much interested in the success of the suit as the plaintiff is. There is no suggestion that in the course of suit No. 445 of 1908 the guardian acted negligently. There is no finding of collusion against him. He is said to have acted negligently only after the decision of that case by the trial Court by not preferring an appeal. Having regard to the state of law as it was in 1908, it cannot be said that the guardian acted negligently. What is negligence? Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate such conduct and which a prudent or reasonable man would not do The standard by which it is determined whether or not a person is guilty of negligence is the conduct of a prudent man in the particular situation. We are not prepared to hold that Mahipal Singh judged from this standard, was guilty of any negligence, much less gross negligence. The plaintiff is bound by the decree in Suit No. 445 of 1908. He is barred by res judioata in the present suit.

8. There is another aspect of the case. Even if suit No. 445 of 1908 had been brought by the plaintiff's brother alone and the plaintiff had been no party to it he would have been bound by that Decree, having regard to Expln. VI to Section 11, Civil P. C. which runs as follows:

> "Where persons litigate bond fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right

> shall, for the purpose of this section, be deemed to claim under the persons so litigating."

In Kuar Mata Prasad v. Kuar Nageshar Sahai, 1926 24 ALL L. J. l, their Lordships of the Judicial Committee held "Though Hindu reveraionera do not derive title from each other and possess individually a spes successonis, bat the spes is common to them all; and so is the danger by the widow's act against the interests of the reversioners. And the result of a suit to set aside that common danger instituted by the nearest reversion era affects all the reversioners as a body. Such a case is covered by the provisions of Expln. VI to Section 11, Civil P. C. The decree passed in a suit by a Hindu reveraioner for a declaration that the last male owner had died intestate, and that will asserted by his widow was a forgery was binding on all the reveraioners as a body."

In the light of this case, even if it be held that the plaintiff was not properly represented in Suit No. 445 of 1908, he is bound by the decree passed in it.

9. We hold that this case was rightly decided by the Courts below.

10. The appeal fails and it is hereby dismissed. We make no order as to costs in this Court.