

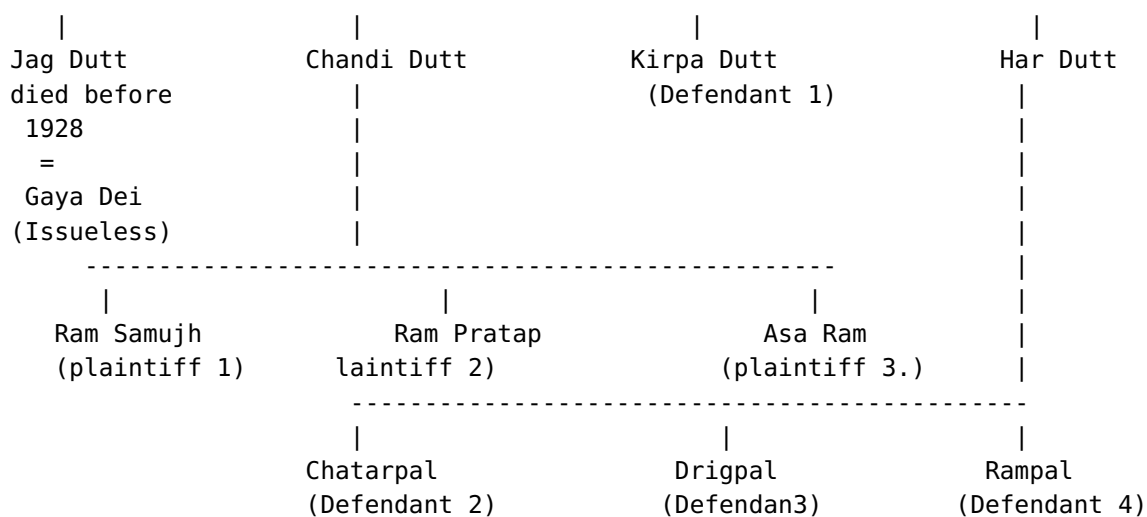
Ram Samujh And Anr. vs Kirpa Dutt And Ors. on 8 September, 1950

Equivalent citations: AIR1951ALL408, AIR 1951 ALLAHABAD 408

JUDGMENT

Kidwai, J.

KALI PRASAD |



1. After the death of Jag Dutt, a dispute arose as to properties, including a 1 anna 6 pies share in village Rajpur, left by Jag Dutt since mutation of them had been made in favour of his widow, Gaya Dei and Gaya Dei and Chandi Dutt had jointly executed a mortgage in respect of it. Kirpa Dutt and Har Dutt raised a dispute and the dispute was settled by a registered compromise dated 5-7-1928, according to which the mortgage was paid off and provision was made for the maintenance of the widow of Jag Dutt.

2. The property of Jag Dutt was divided among his three brothers. Different shares were allotted to each of the three brothers in different villages. Out of the 1 anna 6 pies share in Rajpur it was provided that Chandi Dutt should get a 9 pies share and Har Dutt and Kirpa Dutt a $4\frac{1}{2}$ pies share each. An application was made for mutation of names in accordance with this compromise by the parties jointly. Mutation was as a fact made in respect of the share in Rajpur to the extent of 6 pies in favour of each of the three surviving brothers. About 10 years before the institution of the suit the

6 pies share recorded in the name of Chandi Dutt was sold in execution of a decree.

3. On 3-6-1944, Ram Samujh, Ram Pratap and Asa Ram instituted the suit out of which this appeal arises against Kirpa Dutt and the sons of Har Dutt for a declaration that they are the owners of a 3 pies share out of the share which stands recorded in the khewat in the names of the defendants. The plaint, after giving a history of the manner in which Chandi Dutt had become entitled to a 9 pies share, stated that the entry had been made in the revenue records by a mistake and neither the plaintiffs nor their father had any knowledge of this mistake. Paragraph 8 then stated as follows:

"The plaintiffs became aware of the wrong entry in the khewat in June 1943 and defendants 1 to 4 were then asked on behalf of the plaintiffs to get the entries corrected but they in the month of June, 1943, refused to have this done and also denied the title of the plaintiffs. Hence it has become necessary to institute the suit."

The relief claimed was :

"A decree declaring that the plaintiffs are the owners of a 3 pies share in the under-proprietary right in village Rajpur Ghalbapur, pargana Mankapur, district Gonda out of that share which is recorded in the Khewat in the names of defendants 1 to 4 be passed against the defendants."

4. The defendants raised a large number of pleas including the plea of limitation and of adverse possession and the trial Court framed issues 3 and 4 to try these two issues,

5. The trial Court found that the suit was not barred by time and that the defendants had failed to prove their adverse possession. It accordingly decreed the suit, having held that the family arrangement upon which the plaintiffs relied was valid and was not a fictitious deed.

6. The defendants appealed and the lower appellate Court, while it upheld the finding of the trial Court that the family agreement was valid and was not fictitious, held that the suit was barred by time. It accordingly reversed the decree of the trial Court and dismissed the suit. Two of the plaintiffs Ram Samujh and Asa Ram have now come up in second appeal while Ram Pratap has been impleaded as respondent 5.

7. It has been contended by the learned counsel for the appellants that the lower Court has erred in considering that limitation had expired because the knowledge of the appellants-as to the wrong entry is shown to have been acquired more than six years before the institution of the suit. The wrong entry by itself did not affect their rights and they could ignore it. That proposition of law is not disputed in this appeal nor has the learned Civil Judge in any way gone against it.

8. It is always open to a person in respect of whom a wrong entry is made or upon whose title some cloud is cast to ignore that entry or that cloud if he does not consider it worthwhile to get the entry corrected or to remove the cloud. If, however, he bases his cause of action upon that wrong entry or upon the casting of that cloud then he must bring the suit within six years of his knowledge of the

wrong entry or of the cloud that has been cast upon his title since Article 130 would apply.

9. In the present case there was one of two causes of action pleaded by the plaintiffs. They either pleaded that it is the wrong entry that gave them the cause of action or they pleaded that it was wrong entry coupled with the denial of their title in June 1943 by the defendants that gave them the cause of action. The learned Civil Judge considered the latter plea first and he found that in his statement in Court plaintiff 1, Ram Samujh did not venture to state on oath that the defendants had denied his title in 1943. There was no other evidence to show that the denial had taken place within the period of six years allowed by the law of limitation.

10. The defendants denied that they had denied the title in 1943 and they pleaded that they were holding the property on a denial of the plaintiffs' title for more than 12 years before the suit. It was, therefore, for the plaintiffs, if they based their cause of action upon the denial of the title to establish that that denial took place within six years. The evidence in this case was such that this was not established and the suit based on that denial is not shown to be within time,

11. The learned Civil Judge then proceeded to consider what the situation would be if it was taken that the wrong entry in the khewat was the cause of action. He found that, although the plaintiffs might have ignored that wrong entry, if they did not choose to ignore it and they brought a suit for a declaration of right in order to get that entry removed, they must bring the suit within the six years of the entry having been made or of their having become acquainted with that entry.

12. The learned Civil Judge then discussed the evidence and came to the conclusion that the plaintiffs knew of the entry some six years before the institution of the suit. This latter finding is a finding arrived at after a consideration of all the material evidence and the circumstances of the case. It is a finding of fact and cannot be interfered with in second appeal. Thus it must be taken for the purposes of this part of the case that the plaintiffs had come to know of the wrong entry more than six years before the institution of the suit. The suit based upon this cause of action was, therefore, barred by time. In either view of the matter, therefore, the suit was barred by time and the decision of the lower appellate Court on this point must be upheld. This appeal, therefore, fails and is dismissed with costs.