

Sitla Bakhsh Singh vs Kr. Surendra Bikram Singh And Ors. on 4 January, 1952

Equivalent citations: AIR1953ALL378, AIR 1953 ALLAHABAD 378

ORDER

Beg, J.

1. This is an appeal by Raja Sitla Bakhsh Singh, defendant 1 in a suit for possession of a house situate in village Payer Khas, district Gonda. The suit was tiled against him by the plaintiff-respondent Kunwar Surendra Vikram Singh, The plaintiff brought the suit for possession of the house on the allegation that one Rani Sarfaraz Kunwar was the owner of the property in dispute. She gifted the same to defendant a Rani Jairaj Kunwar by a gift deed dated 9-3-1899, and the said defendant 3 Rani Jairaj Kunwar gifted it to the plaintiff on 18-4-1946. Defendant 1, Sitla Bakhsh Singh and his wife defendant 2 were in unlawful possession of the said property and the plaintiff prayed for possession of the said house.

2. The main contesting defendant in the case was Sitla Bakhsh Singh. He raised a number of defences. He denied the right of Rani Sarfaraz Kunwar to gift the property in question in favour of Rani Jairaj Kunwar. He further alleged that the property was held by Rani Jairaj Kunwar as a widow of Raja Udai Narain Singh along with Rani Jaswant Kuar, who was the co-widow of Raja Udai Narain Singh and a joint owner of the said property. The gift of Jairaj Kunwar without the consent of the co-widow was bad in law. The other defences raised by the defendant 1 are not relevant at this stage of the case.

3. The suit of the plaintiff has been decreed by both the Courts and this second appeal has been filed by defendant 1 Sitla Bakhsh Singh. The main ground advanced by the learned counsel appearing for the appellant in this Court is that the house in dispute has not been proved to be the property of Rani Sarfaraz Kunwar. It cannot be doubted that Rani Sarfaraz Kunwar was the taluqdariya of Bhabhnipayar taluqa. Her name is entered in List I at No. 177 and in List II at No. 75. These lists were prepared under Section 8, Oudh Estates Act (I of 1869). In Section 10 of the said Act it is laid down that the Court shall take judicial notice of the said lists and shall regard them as conclusive evidence that the persons named therein are taluqdars or grantees. Learned counsel for the appellant has argued that in spite of the said provision of law contained in Section 10 it is open to the Court to enquire into the correctness of the said entry. In my opinion, the provision of law embodied in Section 10 clearly bars the Court from any enquiry into the ownership or right of the person whose name is entered in the list to hold the taluqa or to possess the same. Section 10 does not state that the inclusion of a person's name in the said list merely raises a presumption of ownership in his favour. On the other hand it states, that the existence of his name in the said list should be taken to be the conclusive evidence of the fact that he was a taluqdar or a grantee as

contemplated by the Act. I cannot find any merit in this part of the argument of the appellant's learned counsel.

4. The second argument of the learned counsel for the appellant is that in any case the house in dispute has not been proved to be part of the estate or taluqa. This is a new point that was not taken in any of the Courts below. It involves new questions of fact and law and it is too late at this stage to allow the plaintiff to open up new avenue of attack on this ground. In any case, so far as the question of the ownership of the house along with the adjoining land is concerned, there can be no doubt that Rani Sarfaraz Kunwar was the owner of the said property. Her name as owner is entered in EX. 15, khasra of the first settlement. The entries contained in the said document would be presumed to be correct under Sections 44 and 57, U. P. Land Revenue Act. No evidence has been adduced on behalf of the defendant-appellant to cast any doubt on the correctness of the entries made therein or to rebut the presumption of correctness that arises from such entries. Under these circumstances Rani Sarfaraz Kunwar must be held to be the owner of the property in dispute.

5. Once Rani Sarfaraz Kunwar is found to be the absolute owner of the property in dispute, she would have power to gift it to any one she liked. The facts that she gifted the property in dispute to Rani Jairaj Kunwar on 9-3-1899, and that Rani Jairaj Kunwar gifted it to the plaintiff on 13-4-1945 have been found to have been proved by both the Courts below and the correctness of this finding has not been challenged in this Court. In view of the said finding the plaintiff must be held to be the rightful owner of the property claimed by him.

6. In the end, the learned counsel for the defendant-appellant has relied on certain admissions made on behalf of the plaintiff-respondent I in a case in Sitla Bakhsh Singh v. Surendra Bikram Singh, 1942 Oudh W. N. 687. He has invited my attention to the record of proceedings in Court referred to in the judgment of that case which states that "It was admitted in the proceedings dated 21-9-1937, that Raja Udai Narain Singh was the talaqdar of Babhnipayar under Act 1 of 1869 and that the name of Rani Sarfaraz Kunwar was entered in the list in his behalf."

This judgment was not filed by the defendant appellant in the case as a piece of evidence in his favour, I am of opinion that reliance on this judgment as a piece of evidence would be tant amount to admission of new evidence in the case. This is certainly not permissible at this stage of the case. Learned counsel appearing for the respondent has argued that the admission in question was made for the purpose of that particular case, as it suited both the plaintiff as well as the defendant of that case to proceed on the basis that Raja Udai Narain Singh was the taluqdar of Babhnipayar estate. If this document had been filed as evidence on behalf of the defendant, then it would have been the duty of the plaintiff to explain the admission made in that case. The document in question having not been filed by the defendant, it is not open to him to rely on any admission contained in the judgment of that case. The ruling of a case is an authority for the proposition of law contained therein. If it is sought to rely on any facts contained in the judgment of a case published in a Law Report then the party should file that as a piece of evidence in the case in order to enable the other side to file any documents in rebuttal of the same. Under the circumstances the document in question to which my attention has been drawn by the learned counsel for the appellant must be ignored by me as irrelevant and inadmissible for the purposes of this case.

7. No other argument has been advanced on behalf of the appellant.

8. Having considered the facts and circumstances of the case, I am of opinion that there is no force in this appeal which is dismissed with costs. The stay order dated 19-11-1948, is vacated.