

## **Bibi Iftikhar Jahan Begum And Ors. vs Balwant Singh And Ors. on 3 March, 1953**

**Equivalent citations: AIR1953ALL522, AIR 1953 ALLAHABAD 522**

### **JUDGMENT**

Agarwala, J.

1. This is a plaintiffs' appeal arising out of a suit for exclusive possession and ejectment of the defendants or in the alternative for joint possession with the defendants over three Sir plots. The suit has been dismissed by both the Courts below. The facts briefly are as follows :

2. One Mohammad Ismail Khan was a co-sharer in a zamindari property in which the three Sir plots in dispute were situated. On his death the property devolved upon his widow, Bilqis Jahan Begam, defendant 16, his son Iftikhar Ahmad Khan, defendant 15, and his two daughters, the plaintiffs-appellants. On 31-5-1935 Bilqis Jahan Begam, the widow, executed a sale deed of the aforesaid plots in favour of the defendants-respondents, first party. The widow's share, according to the Mohammadan law, exceeded the area thus transferred by her. But she had no right to transfer the entire area of the three plots which were the joint Sir of all the heirs of Mohammad Ismail Khan. Bilqis Jahan Begam was in possession of the entire property on her own behalf as well as on behalf of other heirs because she had been appointed guardian of the property of the other heirs who were her minor children. By the sale she transferred the possession over the plots to the transferees. She also executed a deed of relinquishment with regard to her exproprietary rights and did not claim exproprietary rights in the plots sold by her for more than six months. Her exproprietary rights, therefore, became extinguished after the expiry of six months from the date, of sale.

3. When one of the daughters attained the age of majority, she in her own right and as guardian of her younger sister brought the suit, which has given rise to this appeal, in 1944 for the ejectment of the transferees from the aforesaid plots and in the alternative for joint possession over the said plots on the ground that the sale made by their mother did not bind them, and conferred no rights on the transferees so far as the Sir plots were concerned, or, at any rate, their own shares in the Sir plots did not pass to the transferees. The suit was contested by the transferees who pleaded that the plaintiffs could not obtain either exclusive possession or joint possession because they had become co-sharers in the plots and they were entitled to remain in exclusive possession of the plots because they had been in peaceful possession for a long time since the date of the sale, and that the plaintiffs could file a suit for partition or for profits. Other pleas were also raised, but we are not concerned with them in this appeal.

4. The defence case was accepted by the trial Court and the suit was dismissed. The lower appellate

Court confirmed the decree of the trial Court.

5. The only point for determination in the present appeal is whether the plaintiffs are entitled to eject the defendants-transferees or to obtain joint possession with them. The widow being merely a co-sharer was not entitled to sell more than her share in the proprietary right in the plots in dispute. Though she purported to transfer the plots in their entirety, her sale deed would be deemed to be valid to the extent of the share which she could lawfully transfer. The transferees, therefore, acquire the widow's proprietary share in the plots. The widow was not entitled to transfer the Sir rights in the plots. The transferees could not, therefore, become cosharers in the Sir rights in the plots. The widow having transferred her proprietary rights in the Sir, plots was entitled to claim exproprietary rights to the extent of her share in the plots. At the moment of the sale, the position was that the widow became by law an exproprietary tenant in the plots to the extent of her share and the other cosharers in the joint Sir plots were left with Sir rights to the extent of their shares. The widow did not obtain possession of her exproprietary rights in the plots for over six months with the result that her ex-proprietary rights became extinguished.

6. The share of the widow in the Sir plots ceased to be Sir and therefore became 'khalsa' land over which the transferees could remain in possession only as 'khudkasht' holders. The remaining portion of the Sir plots appertaining to the share of the other heirs did not cease to be Sir. The appellants are entitled to exclusive possession over that portion, but since there is no demarcation between their share and the share of the widow they are entitled to joint possession along with the transferees over the entire Sir plots with a right to have their share demarcated in the revenue Court. This view is fully supported by a Full Bench decision of this Court in --Jokhu Mal v. Gopi Mal', AIR 1952 All 251 (F. B.) (A).

7. We, therefore, allow this appeal in part and decree the plaintiffs' suit for joint possession over the plots in dispute. They are not entitled to exclusive possession so long as their share in the Sir plots in dispute is not demarcated. The plaintiffs will get half of their costs from the respondents who will bear their own.