

## **Sri Prakash Singh And Ors. vs Madhusudan And Ors. on 12 August, 1953**

**Equivalent citations: AIR1954ALL164, AIR 1954 ALLAHABAD 164**

### **JUDGMENT**

Agarwala, J.

1. This is a plaintiffs' appeal arising out of a suit for possession over a bungalow situated in Sitapur and for some other reliefs. The facts are a little complicated but briefly stated are as follows:

2. The plaintiffs are the grandsons of Raja Sripal Singh, a Taluqdar of Tikra Basaidih. In the year 1911 Raja Sripal Singh purchased a bungalow called Churamau Bungalow in Sitapur. The sale deed was however executed in the name of Rajendra Singh, son of Raja Sripal Singh and lather of the plaintiffs-appellants. Raja Sripal Singh was declared a ward of the Court sometime in 1925. Raja Sripal died in October 1930. On 1-10-1930 Rajendra Singh, his son, applied under Section 10, U. P. Court of Wards Act that his property be taken under the superintendence of the Court of Wards. On 31-10-1931 the Court of Wards made a declaration to that effect, and actually took over the property under their superintendence, but left the bungalow in dispute in possession of Rajendra Singh as he used to reside therein.

On 14-2-1938 Kunwar Rajendra Singh sold the bungalow in dispute to Pt. Madhusudan, defendant-respondent No. 1 for a sum of Rs. 10500/-. Kunwar Rajendra Singh died on 7-11-1939, and after his death his property was retained by the Court of Wards under their superintendence under Section 45 of the Act. In 1940 a grandson of Rajendra Singh, namely Ajai Prakash Singh, son of Kunwar Sri Prakash Singh, plaintiff-appellant No. 1, filed a suit under the guardianship of his mother for possession over the bungalow in dispute on the ground that the sale-deed was void having been executed by Kunwar Rajendra Singh while he was a ward of the Court and thus incompetent to transfer any property. The Deputy Commissioner of Sitapur, the Manager of the Court of Wards, applied for being impleaded as a party to the suit. The application was granted and he was impleaded as a co-plaintiff in the suit. Thereafter on 5-4-1941 a notification was issued under Section 10, Court of Wards Act in respect of the property of Ajai Prakash Singh and his brothers, defendant-respondents Nos. 4 to 6.

The result of this notification was that Ajai Prakash Singh and his brothers lost their right of suit which now vested in the Court of Wards. The present plaintiff-appellants who had been impleaded as defendants in that suit and who had not put in any appearance before then came forward and applied that they may be allowed to continue the suit as plaintiffs. This was, however, not allowed and the suit was ultimately withdrawn. Then they brought the suit which has given rise to this

appeal on 8-1-1946 for the reliefs already stated.

3. The case set up by the plaintiffs in the plaint was two-fold. According to them, in the first place, the property was the joint Hindu family property of Rajendra Singh and his sons and grandsons. They alleged that Raja Sripal Singh, their grandfather, had purchased this property in the name of Rajendra Singh and after Raja Sripal Singh's death the property became ancestral in the hands of Rajendra Singh and was coparcenary property and as such Rajendra Singh could not transfer it except for legal necessity. They alleged that there was no legal necessity for the sale made by Rajendar Singh in favour of Pandit Madhusudan, defendant-respondent No. 1.

In the second place, they urged that even if the property was separate property of Rajendra Singh, it was under the management of the Court of Wards and Rajendra Singh being a ward was not capable of transferring the property, and that the transfer was, therefore, void. They alleged that afterwards the Manager of the Court of Wards who was arrayed as defendant No. 2 in the case and is now respondent No. 2 in the appeal, was attempting to rectify the transaction by executing a fresh sale-deed on behalf of the Court of Wards in favour of defendant-respondent No. 1. They prayed for an injunction to be issued against him forbidding him from taking this step. To the suit certain other defendants were also impleaded. These were defendants 7 to 20 and were transferees of the property in dispute from defendant-respondent No. 1. It also appears that after the purchase of 1938, defendant-respondent No. 1 had acquired free-hold rights in the site of the bungalow which was at the time of the sale a lease-hold property. The plaintiffs offered to pay the amount incurred by the defendant-respondent No. 1 in acquiring the free-hold rights in the site of the bungalow.

4. The defence of defendant No. 2, the Manager of the Court of Wards, was also two-fold. In the first place, it was urged that the property in dispute was the private property of Rajendra Singh, that the sale-deed which was in his name was for his own benefit and that the Court of Wards never took over the management of this property, with the result that Rajendra Singh was fully entitled to make a transfer of it as he likes. In the second place it was pleaded that, if the property was taken over by the Court of Wards and was under their management, then the property having continued to be in their management after the death of Rajendra Singh, the plaintiffs who were the heirs of Rajendra Singh, were not entitled to bring any suit in respect of any property the management of which was continued by the Court of Wards after the death of the original ward. Certain other pleas were also raised with which we are not concerned at this stage. The defence of defendant No. 1 was similar.

In one of the paragraphs of the plaint the plaintiffs admitted that the property was part of the Tikra estate which was under the superintendence of the Court of Wards under Section 45, Court of Wards Act. At the trial also their counsel made a similar statement. He said that the plaintiffs are not the wards of the Court of Wards but their property is under the superintendence of the Court of Wards under Section 45(1) since the death of Rajendra Singh. It appears, however, that in arguments before the court below the position taken up by the plaintiffs was that the property not having been taken actual possession of by the Court of Wards could not be deemed to be property in respect of which there was a bar of suit by the heirs of the original ward under Section 49 (2), Court of Wards Act. It further appears that no reference was made in the arguments before the court below about the position taken up by the plaintiffs in the plaint that the property was ancestral property and

therefore joint Hindu family property of the plaintiffs and Rajendra Singh.

The court below framed three preliminary issues.

(1) Has the suit been wrongly valued and is the court-fee paid insufficient?

(2) Can the plaintiffs not maintain this suit on account of this property being under the superintendence of the Court of Wards? And (3) Can an injunction be issued against the defendant 2, as prayed?

5. It would thus appear that the court below did not frame any issue as to whether the property was the joint Hindu family property of the plaintiffs and Rajendra Singh deceased.

6. The lower court came to the conclusion that the court fee was duly paid but that the plaintiffs were not entitled to maintain the suit because the property being under the superintendence of the Court of Wards, Section 49(2) of the Act was a bar to the suit. Further it held that no injunction could be issued against the Deputy Commissioner of Sitapur, the Manager of the Court of Wards, because such an injunction would be contrary to the provisions of Section 54, Specific Relief Act. In the result it dismissed the suit.

7. In this appeal by the plaintiffs the points raised before the court below have been reagitated before us & it has further been urged by them that the property was the joint Hindu family property of the plaintiffs and of Rajendra Singh, with the result that when Rajendra Singh was declared a ward of the Court and his property was taken under the superintendence of the Court of Wards, the interest of the plaintiffs remained outside the jurisdiction of the Court of Wards and consequently when Rajendra Singh died and his property continued to remain under the superintendence of the Court of Wards under Section 45, Court of Wards Act, section 49(2) of the Act could only apply to the interest of Rajendra Singh and not to the interests of the plaintiffs which they had in the property by reason of their being co-parceners with Rajendra Singh.

8. So far as the plea involved in issue No. 2 framed by the court below is concerned, we are of opinion that the judgment of the Court below is perfectly correct. The plaintiffs' case before the Court below was that the property in dispute remained in the possession of Rajendra Singh in spite of Rajendra Singh having been declared a ward under Section 10, Court of Wards Act and in that view of the matter the property did not pass to the Court of Wards under Section 45 of the Act and Section 49 (2) could not apply to such property.

9. Now when Rajendra Singh made an application under Section 10 of the Act praying that his property may be placed under the superintendence of the Court of Wards he did not make any exception in the case of the bungalow in dispute and did not exclude it from his application. A declaration was made by the Court of Wards as prayed for by Rajendra Singh. The declaration had the effect to put all the property of Rajendra Singh under the superintendence of the Court of Wards. The mere fact that the bungalow in dispute was not actually taken possession of by the Court of Wards and the Court of Wards allowed the bungalow to remain in the occupation of Rajendra

Singh did not mean that the bungalow had not passed in the eye of law under the superintendence of the Court of Wards. That being so, on the death of Rajendra Singh the entire property, which was in the eye of law under the superintendence of the Court of Wards continued to be under their superintendence because the Court of Wards did not release the property but retained it under their superintendence for the reason that the debts and liabilities had not been discharged.

Section 45 reads:

"When a ward dies, or when a ward disqualified under Clause (a) or Clause (c) of Sub-section (1) of section 8, ceases to be disqualified before the liquidation is completed of the debts and liabilities with which the property is charged, the Court of wards may either release property or may retain it under its superintendence until such debts and liabilities have been discharged. (2) If the Court of Wards retains the superintendence, the person who has succeeded to the property or the person who has ceased to be disqualified shall not be competent to transfer or create any charge on, or interest in, any part of such property while it remains under the superintendence of the Court of Wards, nor shall any debts or liabilities previously incurred by any person who was so succeeded be chargeable on such property until the debts and liabilities due by the Court of Wards have been discharged."

10. The section applies to property which has legally vested in the Court of Wards by reason of the declaration under section 10 of the Act and the superintendence of which has been continued by them even after the death of the ward. It is immaterial that an item of property was either in the possession of the ward or of his transferees or heirs. In the eye of law, unless such property was released from superintendence, it would remain under the superintendence of the Court of Wards even after the death of the ward. The mere fact of the Court of Wards not having come into possession of the property in dispute is in our opinion immaterial. The test to determine whether a property has or has not passed under the superintendence of the Court of Wards is whether a declaration under section 10 has or has not been made in respect of it. If a declaration has been made or if the declaration covers the property in dispute, the Court of Wards is entitled to recover possession of it according to law.

Such being the case, it cannot be said that because the Court of Wards did not take possession of an item of property, the property did not legally vest in it. In our opinion Section 45 covers the case of property which, though not in the actual possession of the Court of Wards is liable to be taken possession of by them by virtue of the declaration under Section 10 provided the superintendence is retained even after the ward's death under section 45. Section 49 bars a suit relating to the property, the superintendence of which has been retained by the Court of Wards after the death of the ward. This section reads:

"when the Court of Wards retains superintendence of any property under the provisions of Section 45, Section 48 or section 48, it may exercise all or any of the powers conferred by this Act in respect of such property and may do all such things requisite for the proper care and management of the property as the proprietor

thereof if not disqualified might do for its care and management, and may pay such allowances to relatives and dependents of a deceased ward as may seem to it reasonable; all acts done by the Court of Wards in exercise of the powers conferred by this sub-section shall be binding on the person who succeeds to such property.

(2) All suits relating to the said property shall be brought or defended in the name of the Collector in charge of such property or of such other person as the Court of Wards may appoint in this behalf."

The section clearly deals with the property, the superintendence of which has been retained by the Court of Wards under the provisions of section 45. If the superintendence over a property would be deemed to have been retained by the Court of Wards under the provisions of section 45 the provisions of Clause (2) of section 49 would apply to that property also. If the property in dispute was the property of Rajendra Singh the claim of the plaintiffs was clearly barred under section 49 (2).

11. The decision of the court below on the second point raised before it, namely that no suit would lie for an injunction against the Court of Wards forbidding it to execute a sale-deed in respect of the property under its superintendence, is not material because it is admitted before us that as the suit was dismissed by the court below and the temporary injunction issued by the court below was discharged and no temporary injunction was issued by this Court, the sale-deed was in fact executed by the Court of Wards in favour of defendant No. 1. This brings us to third point raised before us, namely whether the suit was maintainable in view of the fact that the property.

according to the plaintiffs, was the joint Hindu family property of Rajendra Singh and of the plaintiffs.

The plaint makes it perfectly clear that the plaintiffs claimed reliefs not only on the ground that Rajendra Singh being a ward of the Court was incompetent to execute the sale-deed in question but also because the property was the ancestral co-parcenary property belonging to Rajendra Singh and the plaintiffs, and as such Rajendra Singh could only sell the property if there was legal necessity for the same. The plaintiffs further alleged that there was no such legal necessity and the sale was not binding on them. No issue was framed on this aspect of the case. It was strongly urged by the learned standing Counsel who appeared for the Court of Wards that this plea was not raised before the Court below and having been raised now for the first time should not be allowed to be raised. It is true that this point was not argued before the court below, but it cannot be said that the plea was not raised by the plaintiffs in the pleadings.

It is also true that the plaintiffs' counsel stated before the court below that the property of the plaintiffs was under the superintendence of the Court of Wards by virtue of section 45 of the Court of Wards Act, but the learned counsel never said that the property in dispute was also under the superintendence of the Court of Wards. Indeed their whole argument was that the whole property was not under the superintendence of the Court of Wards because it was not taken possession of by them. No doubt, again, no issue was framed in the court below upon the point now raised before us,

but it does not appear that the point was given up.

12. Having considered all the circumstances of the case, we think that in the interest of justice an issue should have been framed upon this part of the plaintiffs' case.

13. Consequently we allow this appeal, set aside the decree of the court below and remand the case to that court with directions to re-admit it to its original number and decide the case according to law after framing proper issues that arise upon the pleadings of the parties.

14. Costs here and hitherto shall abide the result.