

## **Gopal Singh And Ors. vs Hukam Singh And Anr. on 13 April, 1950**

**Equivalent citations: AIR1950ALL644, AIR 1950 ALLAHABAD 644**

### **JUDGMENT**

Mushtaq Ahmad, J.

1. These are three appeals involving different questions, though arising out of the same suit. The suit was for possession and mesne profits in respect of some property of which Mangad Singh, uncle of the original plaintiffs 1 and 2, was alleged to have been the last male owner. The property had in the first instance, devolved on his widow Mt. Man Kuer who died in December 1936 and the plaintiffs brought the suit leading to these appeals as reversioners to Mangad Singh. Hat Bhajan Singh, plaintiff 1, died during the pendency of the appeal in the lower appellate Court, being succeeded by his sons, Gopal Singh and Daulat Singh, appellants, in Second Appeal No. 1601 Of 1916.

2. Mt. Man Kuer, on 2nd November 1907, executed a sale-deed in respect of the property in dispute in favour of Gopal Singh, father of defendants 1 and 2 for Rs. 8000. Shares in three villages amongst the various items of property covered by this sale-deed were pre-empted by Dwarka Prasad defendant 3, who brought a suit No. 225 of 1909 of the Court of the Subordinate Judge, Shahjahanpur for that purpose. This suit was decreed on 1st May and Dwarka obtained possession under the decree on 2nd August 1910. He was impleaded in the suit giving rise to the present appeals in that capacity.

3. Before we enter into the pleadings in the present suit and the stages through which the litigation has passed prior to the case reaching this Court, it is necessary to refer to some previous history.

4. In 1911 Harbhajan Singh, the original plaintiff 1, brought a suit No. 349 in the Court of the Subordinate Judge, Shahjahanpur for possession in respect of a portion of the property covered by the sale-deed of 2nd November 1907 and for a declaration of his reversionary right in respect of the remaining portion of that property. The relief for possession was regarding a five biswa share claimed to have been inherited by Harbhajan Singh from his father Mulu Singh who, according to Harbhajan, had acquired it from Mt. Kokla Kuer, widow of Umrai Singh, a brother of Mulu Singh and Mangad Singh. The relief for declaration was regarding the remaining property on the allegation that Mt. Man Kuer had held it prior to the sale-deed as the widow of her husband Mangad Singh. The suit was partly decreed and partly dismissed by the trial Court, the prayer for possession being part of the dismissed portion. While there was no appeal by the plaintiff, there was an appeal against that decree by the present defendants 1 and 2, sons of the vendee Gopal Singh. The decree of the trial Court refusing possession to Harbhajan Singh over 5 out of the 20 biswas thus became final. The appellate Court modified the decree of the trial Court with regard to the remaining 15

biswas, inasmuch as it held that Mt. Man Kuer had held 71/2 biswas as the widow of her husband and that the plaintiff was entitled to a declaration of his reversionary right in respect of that share, if the sale-deed executed by the woman was not found to have been for legal necessity. The appellate Court agreed with the finding of the trial Court that there was no such necessity except for a sum of Rs. 2316 which represented the amount of a decree passed on a mortgage dated 13th October 1897, jointly executed by Man Kuer, Lakhan Singh, described as "the adopted son of Mangad Singh." and Mulu Singh in favour of one Baley. It was clearly provided in the decree that, in case defendants 1 and 2 paid the amount of this decree, the plaintiff Harbhajan Singh would be entitled to enter into possession of the property after the death of Man Kuer only on payment of that amount.

5. It is agreed that defendants 1 and 2 never paid the amount of this decree to the mortgagee-decree-holder, who, therefore, had to proceed to put the mortgage property to sale. The property was actually put to sale on 20th June 1913 and was purchased by one Tilok Singh, the auction sale being subsequently confirmed. Some complication, though of an ineffective nature, has been introduced by the fact of Tilok Singh not having obtained a sale certificate or even possession over the property. We shall deal with this aspect in connection with Appeal No. 1601 of 1946 later.

6. Man Kuer having died in December 1936, the suit giving rise to these appeals was filed by Harbhajan Singh and Aman Singh, two of the sons of Mulu Singh, in which his third son Chitan Singh was impleaded as defendant 4. We have already said, Dwarka Prasad, defendant 3, was impleaded as a pre-emptor who had actually obtained possession over the property under a pre-emption decree, although, curiously he had not been made a party to the earlier Suit No. 349 of 1911.

7. The suit was based on the ordinary allegations common to a suit by a reversioner claiming possession over the property of the last male-holder after the death of the latter's widow on the ground of the alleged invalidity of the alienation in favour of the party actually in possession of the property. It may be mentioned at once that the plaintiffs challenged the sale-deed dated 2nd November 1907 in favour of Gopal Singh, father of defendants 1 and 2, in its entirety, not admitting the validity or the binding nature even of that portion of the sale consideration, namely, Rs. 2316, which had represented the amount of the decree passed on the mortgage in favour of Baley dated 13th October 1897.

8. Defendants 1 and 2, on the one hand, and defendant 3 on the other, contested the suit. They pleaded that Mt. Man Kuer, after the death of her husband Mangad Singh, had adopted Lakhan Singh, one of the sons of Mulu Singh, so that that the plaintiffs could have no right to claim Mangad's property as his reversioners. They also pleaded the existence of legal necessity. Defendants 1 and 2 further urged that the property covered by the mortgage of 13th October 1897 having been sold to Tilok Singh the latter became its absolute owner and was all along in possession of it through receipt of profits from those defendants who were the lambardars in the village. In the alternative, they also claimed to have acquired adverse possession over the property covered by the auction sale as against Tilok Singh. In substance, they pleaded that this property not being part of the assets of Mangad Singh after the death of his widow Man Kuer, the plaintiffs had no right to claim any reversionary interest therein. In other words, their claim to the property was based on a ground other than the sale deed dated 2nd November 1907. These defendants also alleged that Mt.

Man Kuer was still alive and that, therefore, the suit was premature. Dwarka Prasad, defendant 3, in addition to the pleas common between him and the other defendants, also pleaded that Man Kuer had died 15 or 16 years before the suit, that is, earlier than 1936 and that, therefore, the suit was barred by time.

9. Rejecting these pleas in defence, the trial Court decreed the suit, holding that Man Kuer had died in 1936, and that she had not adopted Lakhan to her husband Mangad Singh.

10. Two separate appeals were filed in the lower appellate Court, one by defendants 1 and 2 and the other by defendant 8, which were disposed of by a common judgment. The Court found that Man Kuer had died in December 1936, that the defendants had not proved the adoption of Lakhan Singh by that woman and that Tilok Singh, the auction-purchaser, had become the owner of the property which he purchased at the auction dated 20th June 1913 in execution of his mortgage decree, despite the fact that he had neither obtained a sale-certificate nor any formal possession over the property purchased. On these findings, the lower appellate Court dismissed the suit except in regard to a 21/2 biswa share in mohal Dharam Singh which had been saved after the sale of a five biswa share in that mohal at the aforesaid auction to Tilok Singh.

11. Second Appeal No. 1601 was filed by the plaintiffs, Second Appeal No. 1611 by defendants 1 and 3, and Second Appeal No. 2200, all of 1946, by defendant 3, in this Court. We propose to deal with these separately.

12. Second Appeal No. 1601 of 1946.--The main controversy raised by the appellants in this appeal is that they were entitled to a decree for possession even over the property which had passed out under the auction sale dated 10th June 1913, in favour of Tilok Singh. The contention of their learned counsel was that Harbhajan Singh, father of the appellants, having obtained a decree in the suit of 1911 for cancellation of the sale-deed dated 2nd November 1907, the present plaintiffs were entitled, after the death of Man Kuer, to enter into possession of the entire property of her husband Mangad Singh. As regards the question of the effect of the restriction imposed on the plaintiffs' right in the decree passed in that suit on account of the charge held by the mortgagee Baley, learned counsel urged that Baley not having been a party to the suit, he or his representatives-in-interest could not take advantage of anything that might have been held against Harbhajan Singh with reference to or on the strength of the mortgage held by Baley. This in our opinion, was not a right approach to the question to be determined in this appeal. It is admitted that the property covered by the mortgage was actually sold at an auction to Tilok Singh. It is also admitted that the sale was confirmed by an order of the Court. Under Section 65, Civil P. C., title vests in the purchaser after the confirmation of the sale from the date of the sale. It is not necessary that a sale certificate should be actually obtained. Such a certificate is not a document which creates title. It is only evidence of title. This was held in *Makhan Lal v. Baldeo Prasad*, A. I. R. (25) 1938 ALL 471: (176 I. C. 774). A full Bench case of this Court in *Jagan Nath v. Baldeo*, 5 ALL. 305 (1883 A. W. N. 48 F.B.), laid down that title vested in the auction-purchaser after the confirmation of the sale even though the sale was not followed by the issue of a sale certificate.. This view was followed by the Calcutta High Court in *Iswar Pershad v. Jai Narain*, 12 Cal. 169, the Madras High Court in *Velan v. Kumarasami*, 11 Mad. 296 and re-affirmed by this Court in *Het Ram v. Baldeo*, 1894 14 A. W. N. 64.

13. If title had actually vested in Tilok Singh, the auction-purchaser, then it is obvious that the property sold had also ceased to be a part of the property of Mangad Singh. It could not, after such an event, be claimed as a part of Mangad's assets on the death of his widow in a suit by the reversioner. Such a suit can, from the nature of things, embrace only such properties which before her death the widow of the last male owner can be deemed to have held as a part of her husband's property. Nothing which had already gone out of the possession of the widow in liquidation of a lawful charge could be conceived to be still a part of the husband's estate, so as to entitle the reversioner to claim it after the death of the male owner's widow.

14. Elaborate arguments were addressed to us on the question whether the party in adverse possession of a property also acquires a valid title to it or only the title of the original owner by reason of his having remained out of possession for the statutory period is extinguished. Prima facie, we should think that the one involves the other. That is to say, if the owner of property by reason of having remained out of possession of that property for over 12 years has lost his title, the same remaining in the possession of another party for all that period, the said party would, normally speaking, acquire by virtue of such possession title which the original owner loses by reason of the absence of his possession. In the present case, however, the question is merely of an academic interest. If, as we are inclined to think, Tilok Singh had become the lawful owner of the property under his purchase in execution of his mortgage decree and, by parity of reasoning, this involved a diminution of the estate left by Mangad Singh, the property cannot still be claimed by the reversioner as part of Mangad's estate. This would be an independent ground for defeating the plaintiffs' claim, irrespective of any question of defendants 1 and 2 having acquired or not any title by adverse possession, and of any question of limitation. Having given our thought to this question, we have come to the conclusion that the view taken by the lower appellate Court that the plaintiffs, in the circumstances of this case, had no right to claim the property which had passed out to Tilok Singh by the sale of 20th June 1913, was perfectly correct, and we have no ground to differ from it. Accordingly, we dismiss this appeal with costs.

15. Second Appeal No. 1611 of 1946.--(This appeal was dismissed with costs. It is not relevant for the purposes of reporting.)

16. Second Appeal No. 2200 of 1946.--This appeal was filed by Dwarka Prasad, defendant 3. As we have already mentioned, this man had acquired the property covered by the sale deed of 2nd November 1907 under a pre-emption decree and had actually entered into possession of it as such. He was, no doubt, left out from the array of parties in the earlier suit. Now when impleaded he naturally resisted the suit on grounds both common to the other defendants and also some others peculiar to his defence. The main plea taken by him was of the adoption of Lakhan Singh, a son of Mulu Singh by Man Kuer to her husband Mangad Singh. Both the Courts below found against this case of adoption. The learned counsel for the appellants laid emphasis on two documents, one a sale deed of 4th February 1896, executed by Mulu Singh in favour of Lakhan Singh and the other the mortgage deed of 13th October 1897 already mentioned. In both these, Lakhan Singh was described as the adopted son of Man-gad. The argument was that this acknowledgment by Mulu Singh of Lakhan being the adopted son of Mangad concluded the question. We may say at once that the plaintiffs having claimed the property as reversioners in their own right to Mangad Singh and not

through their father Mulu Singh, they would not be bound by any admission made by Mulu Singh on the question of the status of Lakhan Singh. The learned Civil Judge referred to a number of circumstances from which he drew the inference, in agreement with the trial Court, that this alleged adoption had not been proved. Indeed, when referring to the recital of parentage of Lakhan in the two documents, the learned Judge called this a "device" chosen for some ulterior motive. We cannot say that he was wrong in his re-action, so far as this question is concerned ; and we have, therefore, no alternative but to affirm the concurrent findings of the Courts below that the appellant had not succeeded in proving that Man Kuer had adopted a boy to her husband Mangad Singh. This point is decisive of the appeal.

17. Learned counsel was equally earnest in raising other points also against the judgment of the lower appellate Court, but they also were only questions of fact and could not be re-urged in second appeal. We, accordingly, dismiss this appeal with costs.