

Allahabad High Court

Bal Krishna Das vs Hira Lal Bagla And Ors. on 28 April, 1914

Equivalent citations: (1914) ILR 36 All 406

Author: T A Chamier

Bench: Tudball, Chamier

JUDGMENT Tudball and Chamier, JJ.

1. This is a plaintiff's appeal arising out of a suit for possession of property. The plaintiff's case was that one Ram Jas died leaving an estate and a widow, Musammat Hira Dei. The latter died and was succeeded by his daughter Musammat Lakhi Bibi, who died on the 23rd of April, 1906. Musammat Lakhi Bibi transferred certain portions of the estate. The plaintiff claims as a bandhu a one third share of the estate, admitting that defendant No. 2 is entitled to two thirds. He impleaded defendants 1 and 2 as being in possession of some of the property, defendants 3 and 4 as transferees of a certain house in Calcutta from Musammat Lakhi Bibi, and defendant 5 as a mortgagee of another portion of the estate from the same lady. These transfers he alleges to be null and void as against his interest. There were various defences, among them being the plea that the suit was bad for multifariousness. During the pendency of the suit the plaintiff and defendants 1 and 2 came to terms. Under the compromise that house which was transferred to defendants 3 and 4 and the property which was mortgaged to defendant 5 were to go to the plaintiff and the rest of the property was to go to defendant 2. On the basis of this compromise the court below gave the plaintiff a decree as against defendant 1 and 2, but it held that the suit was bad for multifariousness and it called upon the plaintiff to elect as to the portion of his suit with which he would proceed. The plaintiff declined to elect, and so the court below dismissed the suit with costs. We may also note that after the compromise with defendants 3 and 2 the plaintiff sought to amend his plaint so as to enable him to recover the whole of the property transferred to defendants 3, 4 and 5. The plaintiff has come here on appeal. It is urged that the decision of the court below is incorrect, especially in view of Rule 3, Order I, and the decisions in *Parbati Kunwar v. Mahmud Fatima* (1) (1907) I. L. R. 29 All. 267. and *Kubra Jan v. Earn Bali* (2) (1694) I. L. R. 30 All. 660. On behalf of the respondents it is urged that the case is similar in all its aspects to the decision in *Ganeshi Lal v. Khairati Singh* (3) (1907) I. L. R. 16 All. 279. We are clearly of opinion that, whatever may have been the correct view of the law as it was prior to the present Code of Civil Procedure, the point is covered by the clear language of Order I, Rule 3. Under that order it is clear that the plaintiff's suit was not bad for multifariousness and he was entitled to join all the defendants as parties to the suit so as to enable him to recover his share in the whole of the estate of Ram Jas. In this view the appeal must succeed. We allow the appeal, set aside the decree of the court below and remand the case to that court for decision according to law. The plaintiff will be allowed to amend his plaint as desired. The costs of this appeal will be cause in the cause and will abide the result.