Privy Council Appeal No. 43 *of* 1923.
Allahabad Appeal No. 49 *of* 1921.

Maharaja Kesho Prasad Singh - - - - - *Appellant*

v.

Sheo Pargash Ojha and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH JULY, 1924.

Present at the Hearing:
LORD SHAW.
LORD BLANESBURGH.
MR. AMEER ALI.

[*Delivered by* LORD BLANESBURGH.]

This is an appeal against a decree of the High Court of Judicature at Allahabad of the 9th of July, 1921, affirming a decree of the Subordinate Judge of Ghazipur of the 3rd of September, 1918.

The suit was brought by the respondents against the appellant for the possession of certain lands described in the plaint. These lands consisted of a 2 anna 8 pie share in a permanently settled mouzah called Pachrokhia: and a grove No. 526 in Mouza Balihar.

A decree has been passed substantially as prayed. The defendant appeals.

The facts raising such questions in the suit as remain for their Lordships' consideration may be compendiously stated.

The respondents have been found to be, as they alleged they were, the reversionary heirs of one Manohar Ojha who died without issue in 1856. At his death he was entitled as part of his estate to both properties in suit. In Pachrokhia the appellant, who is the present Maharaja of Dumraon was also interested as the owner of an eight annas share.

Manohar Ojha left three childless widows him surviving. Oudha Koer was the last survivor of the three. She died in 1914. Thereupon, the succession to the estate of Manohar Ojha opened to the respondents as his reversionary heirs. After Oudha Koer's death exclusive possession of both properties in suit was found to be in the appellant under the following circumstances.

First as to Pachrokhia. That Mouza was in great part diluviated, and in 1892 Oudha Koer, by this time in possession of her deceased husband's share, failed to pay her proportion of the revenue assessed upon it. The appellant had to pay the whole and he sued Oudha Koer to recover her proper proportion. In January, 1894, a decree for Rs. 564-5-4 and interest was passed in his favour and to meet this debt Oudha Koer borrowed from one Kishan Prasad the amount due, viz. Rs. 587, together with a further sum, making in all Rs. 1,000, and she gave to Kishan Prasad by way of security a mortgage of Manohar Ojha's interest in Pachrokhia, dated the 25th of December, 1899, for the whole sum borrowed.

On the 31st of March, 1903, Kishan Prasad obtained a decree for the amount then due on his mortgage, and, in execution, he purchased, on the 16th of November, 1904, Manohar Ojha's two and two-third annas share in Pachrokhia and he was placed in possession.

Later Kishan Prasad, himself made default in payment of his share of revenue of Pachrokhia. The appellant as before was compelled to pay the whole assessment. He then sued Kishan Prasad for his proportion and obtained a decree for Rs. 698-1-9. This decree he executed against the property, which was purchased by him at auction on the 20th June, 1912. He was placed in possession, and he so remained at the death of Oudha Koer in 1914.

Such was the title to this property set up by the appellant in the suit.

Their Lordships will deal separately with his claim to the Grove.

Now, so far, the question as to Pachrokhia, between the respondents as reversionary heirs of Manohar Ojha and the appellant would depend, primarily at least, upon the question whether the mortgage made by Oudha Koer, a Hindoo widow, in favour of Kishan Prasad was for legal necessity so as to be binding on the estate of Manohar Ojha. And this issue was found in favour of the respondents by the Subordinate Judge in the present suit.

In the High Court, however, the decision against the appellant was based upon another ground, dependant upon a further fact which their Lordships now proceed to state.

Immediately upon Kishan Prasad obtaining, on the 31st of March, 1903, as above mentioned, his decree for sale on the basis of his mortgage of the 25th of December, 1899, Dhanai Ojha, the then presumptive reversioner to the estate of Manohar Ojha sued Kishan Prasad and Oudha Koer for a declaration that the alienation to him by the widow was without legal necessity, that

that alienation and the decree obtained thereon by Kishan Prasad could not affect Pachrokhia otherwise than for the lifetime of the widow, and that neither was binding upon the reversionary body. And in that suit a decree was passed on 21st June, 1904, in the plaintiff's favour as against both the widow and Kishan Prasad.

This decree affects the appellant's claim, it is said, in two ways. First of all, the purchase by the appellant on the 16th of November, 1904, from Kishan Prasad was subsequent to the decree and it is suggested with great force that all that was then purchased by the appellant consisted of the rights and interests of the widow in Pachrokhia, as these had been declared by the order of the 21st of June, 1904. Their Lordships feel the force of this view but they do not propose to dispose of this part of the case in reliance upon it.

Like the Court of Appeal they will decide this question on the second ground which emerges from the decree of the 21st of June, 1904. In their Lordships' judgment that decree obtained by Dhanai as against the widow and Kishan Prasad is binding as between the parties to the present suit. No Court in India can now, as the Board think, go behind it, and, as it was therein held that the transfer to Kishan Prasad was not binding on the estate after the death of the widow, the respondents as the reversionary heirs are now in their Lordships' judgment, by virtue of that decree, entitled to possession. The Board agrees with the High Court in thinking that this result necessarily flows from the judgment of their Lordships in *Venkata Narayana* v. *Subhamal* 42 I.A. at 129 delivered by Mr. Ameer Ali. After pointing out that the Indian law permits the institution of suits in the lifetime of the female owner for a declaration that an adoption made by her is invalid or an alienation effected by her is not binding against the inheritance, Mr. Ameer Ali there lays it down that the object of the second class of suit as of the first class

> " is to remove a common apprehended injury to the interests of all the reversioners, presumptive and contingent alike. . . . In both " the right to sue " is based on the danger to the inheritance common to all the reversioners which arises from the nature of their rights."

And the law is expounded in the same sense by their Lordships in the later case of *Janaki Ammal* v. *Narayanasami Aiyar* 43 I.A. 207. They there observe as follows

> ". . . a reversionary heir . . . is recognised by Courts of Law as having a right to demand that the estate be kept free from waste and free from danger during its enjoyment by the widow or other owner for life . . . a reversionary heir thus appealing to the Court truly for the conservation and just administration of the property does so in a representative capacity so that the corpus of the estate may pass unimpaired to those entitled to the reversion."
>
> The operation
>
> " is justified by the consideration of keeping the estate intact for the person to whom, as reversioner, it shall ultimately and at the proper time be determined that the estate shall go."

These words, in their Lordships' judgment, accurately describe in relation to this property the suit of Dhanai Ojha which eventuated in the decree of the 21st of June, 1904. That decree is binding on the appellant as the successor in interest of Kishan Prasad and of the benefit of it the respondents are now possessed as the heirs of Manohar Ojha in the event "entitled to the reversion." To the present case the application of this principle is obvious and eminently salutory. It would be *pessimi exempli* that the appellant, whose predecessor in interest failed on the same issue and was content to accept the adverse judgment against him, should be held entitled, years afterwards, when it might be, much of the relevant evidence was no longer available, to raise the same issue all over again. Their Lordships of course recognise that the principle is less obviously just where it operates to bind the ultimate reversioners by the result of a suit in which a plaintiff had failed whose interest, then merely presumptive, never ultimately matured. The danger of a feigned issue in such a suit is not to be overlooked.

But this danger is mainly serious where the failure of the first suit has been brought about by fraud or collusion where, of course, further and different considerations would arise. In their Lordships' judgment there is no answer either in principle or in fact to the contention of the respondents that the decree of the 21st of June, 1904, is conclusive of their claim to this property.

Their Lordships can dispose very shortly of the appellant's claim to the second property in suit—the Grove No. 526. On the death of the widow the appellant wrongfully took possession of it and he now contends that the property within the meaning of the Tenancy Act is "land held for agricultural purposes" and that the period of limitation for a suit to recover it is, under Section 79 of that Act six months only. With the High Court their Lordships are of opinion that it is impossible to hold that that section has any application whatever to such a property as the Grove in fact is.

In their Lordships' opinion the appeal entirely fails: and they will humbly advise His Majesty that it be dismissed and with costs.

In the Privy Council.

MAHARAJA KESHO PRASAD SINGH

v.

SHEO PARGASH OJHA AND OTHERS.

DELIVERED BY LORD BLANESBURGH.

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