Privy Council Appeal No 67 *of* 1913.

Bengal Appeal No. 39 *of* 1910

Sheoparsan Singh and others - - - *Appellants,*

v.

Ramnandan Prashad Narayan Singh, since deceased, and others - - - - *Respondents.*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM, IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH MARCH, 1916.

Present at the Hearing:

THE LORD CHANCELLOR.
VISCOUNT HALDANE.
SIR JOHN EDGE.
MR. AMEER ALI.
SIR LAWRENCE JENKINS.

[*Delivered by* SIR LAWRENCE JENKINS.]

This is an appeal against a decree of the High Court at Calcutta, dated the 19th April, 1910, reversing the decree of the Subordinate Judge of the First Court, Mozufferpur, dated the 21st December, 1907.

The expressed purpose of the litigation is to obtain a declaration that the plaintiffs are the next reversioners to the estate of Babu Bachu Singh according to Hindu law, and, as such, entitled to apply for a revocation of probate.

The facts may be shortly stated. On the 12th November, 1899, Bachu Singh died, leaving two widows, the defendants Mussamut Ram Rachan Kunwar and Mussamut Ram Kishori Kunwar, but no male issue. On the 22nd September, 1902, the defendant Ram Nandan Singh applied in the Court of the District Judge of Mozufferpur for probate of a writing alleged by him to be the last will of Bachu Singh. In that writing he is described as Bachu Singh's Kartaputra.

The two widows, though heiresses of the deceased Bachu Singh, did not oppose the application. Caveats, however,

were lodged by three groups of persons, and the plaintiffs in this suit were the members of one of these groups. There thus arose a contention as to the grant of probate, and the proceedings thenceforth took, as nearly as might be, the form of a suit according to the provisions of the Code of Civil Procedure, in which the petitioner, Ram Nandan Singh, was the plaintiff, and the plaintiffs in this suit, with others, were the defendants. In due course issues were framed, and they raised the two material and essential questions, first whether the present plaintiffs, as persons by whom the caveat had been entered, had, as it was termed, any *locus standi* to oppose the application for probate, and secondly whether the will propounded was the genuine and duly executed will of Bachu Singh.

After evidence, oral and documentary, it was held on the first issue that the caveators had failed to prove their interest, and on the second issue that the will was proved. In accordance with this finding it was ordered that "probate be granted to Ram Nandan Prashad Singh, petitioner, executor."

From the order sheet it appears that Ram Nandan was held to be an executor by implication. The present plaintiffs preferred an appeal to the High Court. The appeal was heard and dismissed with costs on the 8th February, 1905. No appeal was preferred to His Majesty in Council. But on the 7th August, 1905, the present suit was instituted in the Court of the First Subordinate Judge of Mozufferpur. The plaint states the material facts, save that it erroneously alleges that letters of administration with the will attached were granted to Ram Nandan. It is then averred in paragraph 9 as follows :—

"These Plaintiffs have been advised that so long as these letters of "administration are in force they have no claim to the reversionary right "to the estate of the deceased; and, furthermore, that they cannot apply "for the revocation of the said letters of administration until what time "they obtain a declaratory decree from the Civil Court to the effect that "they are the nearest reversioners according to Hindu law of the deceased "Bachu Singh, and therefore entitled to his estate in case of an intestacy "after the death of the defendants second party."

The defendants second party were the two widows. The prayer of the plaint as originally framed was in these terms :

"that it be declared that the plaintiffs are the next reversioners to the "estate of the late Babu Bachu Singh according to Hindu law."

By a subsequent and significant amendment these words were added,

"and as such are entitled to apply to the Probate Court to get the probate "or letters of administration granted to Ram Nandan Singh revoked."

Before the hearing Mussamut Ram Rachan Kunwar died, and by an order of the 4th February, 1907, her co-widow was substituted in her place as legal representative.

On the 6th November the following issues were framed:

1st. Is the suit maintainable?

2nd. Is the suit barred by section 13 of the Code of Civil Procedure?

3rd. Is the suit bad for non-joinder of parties?

4th. Is the suit barred by limitation?

5th. Are the plaintiffs the nearest reversionary heirs of Rup Narayan Singh, *alias* Bachu Singh?

6th. Is the defendant No. 1 the Kartaputra of the said Rup Narayan Singh?

On these issues the findings of the Subordinate Judge were in the plaintiffs' favour, and by the decree it was declared that the plaintiffs were the *gotias* of and reversioners to the estate of Babu Bachu Singh. In the plaint there was no prayer as to their gotiaship.

An appeal to the High Court was preferred by Ramnandan Prashad Singh. It succeeded on the ground that the suit was barred by the rule of *res judicata*. But though the High Court held that the case was governed by section 13 of the Code of Civil Procedure, it tried the issue, which, in that view, was withdrawn from its consideration by the terms of the section.

From this decree the plaintiffs have preferred the present appeal.

The contest before their Lordships has been confined to the two issues:—

1st. Is the suit maintainable?

2nd. Is the suit barred by section 13 of the Code of Civil Procedure?

The first of these problems takes the more specific form of an enquiry whether in the circumstances of this case the plaintiffs are entitled to claim from the Court a mere declaratory decree of the character proposed.

The Court's power to make a declaration without more is derived from section 42 of the Specific Relief Act, and regard must therefore be had to its precise terms. It runs as follows:—

"Any person entitled to any legal character, or to any right as to any "property, may institute a suit against any person denying, or interested "to deny, his title to such character or right, and the Court may in its "discretion make therein a declaration that he is so entitled, and the "plaintiff need not in such suit ask for any further relief: Provided, "that no Court shall make any such declaration where the plaintiff, "being able to seek further relief than a mere declaration of title, omits "to do so."

A plaintiff coming under this section must therefore be entitled to a legal character or to a right as to property. Can these plaintiffs predicate this of themselves? Clearly not; and this is, in effect, stated in the plaint, where they described themselves as entitled to Bachu Singh's estate *in*

case of an intestacy after the death of the defendant widows (para. 9).

But as things stand there is no intestacy: Bachu Singh's will has been affirmed in a Court exercising appropriate jurisdiction, and the propriety of that decision cannot in the circumstances of this case be impugned by a Court exercising any other jurisdiction.

It is not suggested that in this litigation the testamentary jurisdiction is, or can be, invoked, and yet there can be no doubt that this suit is an attempt to evade or annul the adjudication in the testamentary suit, and nothing more.

This is apparent from the plaint, from the amendment made in the High Court after Ramnandan had died, and from the very circumstances of the case.

This use of a declaratory suit illustrates forcibly the warning in Sree Narain Mitter *v.* Srimutty Kishen Soondory Dassee (L.R., I.A., Sup. Vol., at p. 162), where it was said:

"There is so much more danger in India than here of harassing and "vexatious litigation that the Courts in India ought to be most careful "that mere declaratory suits be not converted into a new and mischievous "source of litigation."

Here, however, no question of discretion arises; the suit fails at the very outset, for the plaintiffs, while the will stands, as stand it must for the purposes of this suit, are not clothed with a legal character or title which would authorise them to ask for the declaratory decree sought by their plaint. The suit therefore should be dismissed because it is misconceived and incompetent.

Some reference was made in the course of the argument to a reversioner's right to sue where a widow with the particular interest was committing acts of waste to the prejudice of those who might succeed to the inheritance on her death. But such a position of necessity assumes the absence of an immediate and absolute testamentary disposition.

In this connection there is an instructive comment in Kathama Natchiar *v.* Dorasinga Tever (L.R. 2, I.A., at p. 191), where it was said in reference to such suits:

"Suits of that kind form a very special class, and have been enter- "tained by the Courts *ex necessitate rei*. It seems, however, to their "Lordships that if such a suit as that is brought it must be brought by "the reversioner with that object, and for that purpose alone, and that the "question to be discussed is solely between him and the widow; that he "cannot, by bringing such a suit, get, as between him and a third party, "an adjudication of title which he could not get without it."

There has been much discussion at the Bar as to the application of the plea of *res judicata* as a bar to this suit. In the view their Lordships take the case has not reached the stage at which an examination of this plea and this discussion would become relevant. But in view of the arguments addressed to them their Lordships desire to emphasise

that the rule of *res judicata*, while founded on ancient precedent, is dictated by a wisdom which is for all time.

> " 'It hath been well said,' declared Lord Coke, '*interest reipublicæ* " *ut sit finis litium*,' otherwise great oppression might be done under " colour and pretence of law.' "—(6 Coke, 9 A.)

Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu commentators. Vijnanesvara and Nilakantha include the plea of a former judgment among those allowed by law, each citing for this purpose the text of Katyayana, who describes the plea thus: "If a person though defeated at law sue again he should be answered, 'You were defeated formerly.' This is called the plea of former judgment." (See "The Mitakshara (Vyavahara)," Bk. II, ch. i, edited by J. R. Gharpure, p. 14, and "The Mayuka," Ch. i, sec. 1, p. 11 of Mandlik's edition.)

And so the application of the rule by the Courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law.

Their Lordships have not failed to observe that Ram Nandan Prashad Singh died before the hearing in the High Court, but they refrain from pronouncing any opinion as to its legitimate consequence in this suit, for this formed no part of the discussion before them. They have dealt with this litigation, as it was presented to them, apart from the possible effect of Ram Nandan's death.

Their Lordships will, therefore, humbly advise His Majesty that the appeal should be dismissed. The appellants will pay the costs of such of the respondents as have appeared.

In the Privy Council.

SHEOPARSAN SINGH AND OTHERS

v.

RAMNANDAN PRASHAD NARAYAN SINGH, SINCE DECEASED, AND OTHERS.

DELIVERED BY
SIR LAWRENCE JENKINS.

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