

ALLAHABAD HIGH COURT

Sundar Bibi Lal

Vs

Rajendra Narain Singh

(Lindsay, J.)

06.02.1925

JUDGMENT

Lindsay, J.

1. This is an appeal by Mt. Sundar Bibi who has obtained a decree against the respondent, Rajendar Narain Singh.
2. In execution of this decree she applied for attachment of the interest of the judgment-debtor in certain property comprised in an estate known as the Raja Bazar Estate.
3. The case for the decree holder was that the judgment-debtor had a vested interest in this property and she asked that that property be attached and brought to sale in execution.
4. The judgment-debtor filed an objection contesting the application on various grounds. The particular ground which we have to notice here is contained in the 4th paragraph of the petition held by the judgment-debtor. In that paragraph he took the plea that the application for attachment and sale of his interest was not entertainable on the ground that he had no vested interest in this property but only a contingent interest.
5. The Subordinate Judge has decided this point in favor of the judgment-debtor and the judgment-creditor has now filed this appeal.
6. In order to understand the nature of the point which arises for decision, it is, necessary to set out certain facts.
7. It appears that there is an estate known as the Raja Bazar Estate comprising certain landed property situated both in the Jaunpur and Partabgarh districts.
8. The last male owner of this estate was one Rajah Mahesh Narain Singh. Mahesh Narain Singh

was succeeded by his widow, and after this lady's death it appears that possession of the property was taken by Babu Lal Bahadur Singh, a collateral relation of the last male owner.

9. Thereupon a suit was brought in the Court of the Subordinate Judge of Partabgarh in Oudh by Babu Rajendra Narain Singh who figures in the present proceedings as the judgment-debtor.

10. Rajendra Narain Singh is the elder brother of B. Lal Bahadur Singh and he laid claim to the estate on the ground that as the succession to the estate was in accordance with the rule of male lineal primogeniture, he was entitled to eject his younger brother, Lal Bahadur Singh.

11. This suit was settled by a decree which was passed on the 20th of May, 1915. It appears that this decree was passed on a compromise between the parties to the suit.

12. A copy of the decree is printed at page 128 of the printed record, P.C.A. No. 45 of 1919.

13. The question which we have to decide must be determined with reference to the provisions of this decree and after hearing the arguments in the case and having considered the document in question, we are of opinion that the decision of the Subordinate Judge is erroneous and that Rajendra Narain Singh, according to the terms of the compromise and of this decree which is founded upon, it has a vested interest in the property in dispute.

14. The property comprised in the Raja Bazar Estate was divided into two portions, A and B. The portion described as A embraces the larger portion of the estate.

15. According to the compromise and decree B. Lal Bahadur Singh was to have a life-interest in that portion of the property which was described as A. The other party, B. Rajendra Narain Singh, was to have a life interest in the remaining property described as B by way of maintenance.

16. In the third paragraph of the compromise it was provided that after the death of Lal Bahadur Singh, if Babu Rajendra Singh, the plaintiff, should be alive, he was to be the absolute owner of the property described as A with transferable and heritable rights. It was further provided by his clause of the compromise that if Rajendra Narain Singh were not alive at the time of Lal Bahadur Singh's death the heritable and transferable estate in pro-party A was to go to that one of his male descendants who would be entitled to succeed him according to the rule of male-lineal primogeniture.

17. There were further provisions in this deed of compromise by which it was directed that when Rajendra Narain Singh or his heir succeeded to the full estate in the property known as A the property which was described as B should be made over for maintenance to the descendants of Lal Bahadur Singh.

18. It is not necessary to refer to any of the other clauses in the compromise. The question, therefore, is what is the nature of the interest which was created by this-decree in favour of Rajendra Narain Singh. It seems to us beyond all question that the interest was a vested interest and not a contingent interest as decided by the Judge of the Court below.

19. The learned Judge of the Court below seemed to be of opinion that because there was a possibility that Rajendra Narain-Singh might not be alive at the termination of the life estate in favour of Lal Bahadur and that in that event the estate-would go over to his heir according to the rule of male lineal primogeniture, the-interest which was created by this document was a contingent interest. In our opinion that is not so. It is clear from the terms of this document that, in the first instance, a life interest was created in favour of Lal Bahadur Singh and necessarily the further interest which arose under the document was bound to take effect from the death of Lal Bahadur Singh. The death of Lal Bahadur Singh is not an-uncertain event. It is of course uncertain at what time Lal Bahadur Singh will die but Lal Bahadur Singh's death is an event which must happen and, consequently, the further interest which was created under this document is necessarily a vested interest and not a contingent interest. The question whether Rajendra Narain Singh may not be alive at the time of the death of Lal Bahadur Singh and so may not receive this estate in possession does not affect the question at all. This is clear from a reference to the provisions of Section 19 of the Transfer of Property Act.

20. We have no doubt whatever, therefore, that the interest which Rajendra Narain Singh has in this property specified as A (which is the property of which attachment and sale have been sought), is a vested interest, and that being so, his interest in the property is transferable and can, therefore, be attached and brought to sale in execution of a decree.

21. We, therefore, allow this appeal set aside the order of the Court below and send the case back for decision after disposal of the other matters which arose under the petition of objections filed by the judgment-debtor. Costs here and hitherto will abide the result and in this Court will include fees on the higher scale.

Kanhaiya Lal, J.

22. The question for consideration in this appeal is what is the nature of the interest held by the judgment-debtor in the property in dispute. The property in question originally belonged to Raja Mahash Narain Singh who was a taluqdar entered at No. 249 in list No. 1 appended to Act I of 1861. His estate comprised several distinct properties, one of which was known as taluqa Parhat, which was entered at No. 113 in list No. 2. Another was known as taluqa Mangaula which was entered at No. 56 in list No. 5 appended to Act I of 1889. Besides these properties he held certain landed property in the Jaunpur district which was not governed by Act I of 1869. He was succeeded by his widow, Rani Dhanraj Kunwar, on whose death Lal Bahadur Singh, one of the

paternal kinsmen of her husband, took possession of the estate under a will, alleged to have been executed by the deceased Rani. Rajendra Narain Singh, the elder brother of Lal Bahadur Singh, however, claimed the whole estate, including the property situated in the Jaunpur district, in his own right and he filed a suit for the possession of the same, alleging that the estate was impartible according to the family custom and that he was entitled to it according to the rule of lineal primogeniture or single heir descent.

23. The suit resulted in a compromise, the effect of which forms the subject-matter for consideration in this appeal. The property dealt with by the compromise consisted of what might be described as the main estate, situated partly in the Jaunpur district and partly in Oudh, and the Babuana estate similarly situated in both places. By virtue of the compromise Lal Bahadur Singh was allowed to retain the main estate for life without any power of transfer and Rajendra Narain Singh was similarly allowed to retain the Babuana estate for his life without any power to transfer it so as to prejudice the rights of the eventual holder.

24. It was further provided that after the death of Lal Bahadur Singh, if Babu Rajendra Narain Singh should remain alive, he shall be the absolute owner of the main estate with transferable and heritable rights subject to certain conditions specified therein, and that if he did not survive Lal Bahadur Singh, then the property would go to his lineal male descendants according to the principle of male lineal primogeniture with transferable and heritable rights subject to similar conditions.

25. In regard to the Babuana estate it was similarly provided that after the death of Rajendra Narain Singh it shall go to Lal Bahadur Singh and, in case of his death, to his male issue of the male branch in lieu of maintenance, subject to certain limitations with which this case has no concern.

26. The property comprised in each of these estates was separately specified in the schedules appended to the deed of compromise, in accordance with which a decree was passed. The question for consideration is whether of by virtue of the compromise Rajendra Narain Singh acquired a vested interest in the estate made over to Lal Bahadur Singh for his life.

27. The petition of compromise clearly indicates that the main estate which was to be held by Lal Bahadur Singh for his life was to go after his death to Rajendra Narain Singh, if he survived him with transferable and heritable rights, and in case he died in the life-time of the former, to his lineal male descendant according to the rule of lineal primogeniture. Section 19 of the Transfer of Property Act lays down that whereon a transfer of property, an interest therein is created in favour of a person in terms specifying that it is to take effect on the happening of an event which must happen such interest is vested, unless a contrary intention appears from the terms of the transfer. The explanation appended to that section declares that the intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is

postponed or whereby a prior interest in the same property is given or reserved to some other person or from a provision that if a particular event shall happen, the interest shall pass to another person. It is obvious, therefore, that the interest awarded by the compromise and the decree passed in accordance therewith to Rajendra Narain Singh was a vested interest, which was liable to be defeated in case he did not survive Lal Bahadur Singh. The condition imposed by the compromise merely affected the retention of that interest by Rajendra Narain Singh. It was not a condition precedent to its acquisition. In these circumstances the view taken by the Court below cannot be upheld.

28. How far such a defensible interest can be safely sold before the contingency on which its defeasibility depends has happened without serious injury to the parties and whether any safeguards can be devised to prevent such injury are matters to be considered by the executing Court when holding the sale. There are other matters raised in the petition of objection which have not been dealt with by that Court. I, therefore, agree with the order proposed.

