

# ALLAHABAD HIGH COURT

Lala Mahadeo Prasad Singh

Vs

Mata Prasad

(Tudball, CJ. Sulaiman, J.)

03.08.1921

## JUDGMENT

### **Tudball, CJ.**

1. This is a plaintiff's appeal arising out of a suit for recovery of possession of some immoveable property and mesne profits. It appears that Pirthi Pal Singh was the last male owner and he died leaving; a widow, Musammat Gajraj Kunwar, and a daughter, Musammat Balraj Kunwar. After the death of the widow, Musammat Balraj Kunwar entered into possession of the property as a limited owner. In the year 1897 Suraj Pal Singh was the immediate reversioner. On the 15th of October 1897 Musammat Bilraj Kunwar executed a perpetual lease in favour of Mata Prasad and Debi Sahai, the present defendants, on payment of a nazrana of Rs. 2,000, which was paid in cash before the Sub Registrar. The rent reserved was Rs. 1,255-5-2, which was exactly equal to the Government revenue to be paid by the lessor. This lease was attested by Suraj Pal Singh, the immediate reversioner. On the 29th of October 1901 Musammat Balraj Kunwar and Thakur Suraj Pal Singh jointly executed a deed of gift of the leased properties in favour of the same lessees. Mutation of names followed on the basis of this deed of gift, and Suraj Pal Singh was examined on oath and stated that he had consented to this gift, Musammat Balraj Kunwar died on the 9th of September 1906. On her death Suraj Pal Singh became entitled to the estate and got possession of it. While being examined in the Mutation Court, he again referred to the deed of gift and did not say that he repudiated it. Suraj Pal Singh lived for some three years more and died sometime in 1909. It was not till the 4th of September 1918, that the present suit was instituted on behalf of the minor son of Suraj Pal Singh under the guardianship of his mother. The suit is for possession of the gifted properties as against the donees by avoidance of the deed of gift, dated the 29th of October 1901. The plaintiff's case as set forth in the plaint was that Suraj Pal had been made to execute the deed of gift under undue influence and pressure; that in any case his consent as a mere reversioner was of no avail and the transfer being without legal necessity was not binding on the present plaintiff. On behalf of the defendants the allegations of undue influence and pressure were denied and it was pleaded that the consent of Suraj Pal Singh, the then immediate reversioner, completely estopped him as well as the present plaintiff from

challenging the validity of the transfer. It was also pleaded that the gift had been made in lieu of good services rendered by the defendants' ancestor and was, therefore, not without consideration. There were a number of other pleas also raised which it is not necessary to mention, The Court of first instance dismissed the suit, holding that the gift was for some consideration; that it was made with the Consent of Suraj Pal Singh; that no undue influence had been proved and that it was binding on the present plaintiff. The plaintiff has come up in appeal to this Court, but on his behalf no plea is raised in the grounds of appeal as to there having been any undue influence or pressure, It has, however, been strongly urged that the transfer was without consideration, that the consent of Suraj Pal Singh, at a time when he had no transferable interest in the property, was invalid and that there is no estoppel against the plaintiff. It will be noted that the present suit is not for the cancellation of the lease of the 15th October 1897. The plaintiff ignores this lease altogether, and the defendants do not plead that even if the gift is set aside the plaintiff is not entitled to possession as the defendants hold the property under that perpetual lease. In fact both parties have treated this lease as having been superseded and put an end to by the deed of gift. This latter deed says in so many terms that it should be known that the perpetual lease, dated the 15th October 1897 and registered on the 3rd of December of the said year which exists at present, is no longer to be considered valid and no right would be enjoyed under it." The perpetual lease had been granted in lieu of Rs. 2,000 paid as nazrana and was also in consideration of good services rendered by the lessees and their predecessors. It provided that if the lessees were dispossessed of any part of the leased property, they would have power to realize a proportionate amount of the nazrana. If, therefore, the lessees gave up all their rights under the lease and took a fresh document in the form of a deed of gift, it cannot be said that this latter deed was absolutely without any consideration.

2. The learned Counsel for the appellant, however, contends that the consent of Suraj Pal Singh can, at best, raise a presumption that there was legal necessity for the transfer, but as in this case it is conclusively shown that even if the transaction was not a pure gift it was certainly not for any legal necessity, the consent of the immediate reversioner had no operative effect. He has strongly relied on the following cases: *Amrit Narayan Singh v. Gaya Singh*<sup>1</sup> *Gur Narayan v. Sheo Lal Singh*<sup>2</sup> *Rangasami Gounden v. Nachiappa Gounden*<sup>3</sup> and *Bai Parvati v. Dayahhai Manchharam*<sup>4</sup> In the case of *Amrit Narayan Singh v. Gaya Singh*<sup>5</sup> all that was held was that the guardian of a minor reversioner cannot bargain with the reversionary right on his behalf or bind him by any contractual engagement in respect thereto, for until the property actually vests in him he has nothing to assign or relinquish. No one can dispute that the right of succession of a reversioner is not a transferable right. That case, however, has no bearing on the present case because no question of estoppel arose in that case, nor could it have arisen against the minor reversioner.

3. In the case of *Our Narayan v. Sheo Lal Singh*<sup>6</sup> one Maha Sunder, who was in possession of the estate of her son as a Hindu mother, sold away portions of it under various deeds of transfer. Her daughter, Musammat Bhawani Kunwar, and her grandson, Hanuman Sahai, were alive at the

time, and this Hanuman Sahai was a party to the conveyance with respect to one village. Neither Musammat Bhawani nor Hanuman Sahai were the next reversioners, and on the death of Musammat Maha Sunder the property vested in two other persons who conveyed their rights and interests to Hanuman Sahai under a registered deed of transfer. The plaintiffs were Hanuman Sahai's sons and a transferee of part of the property from them. The alienees from Musammat Maha Sunder pleaded inter alia estoppel, inasmuch as Hanuman Sahai, the predecessor-in-title of the plaintiffs, was a party to one conveyance. Their Lordships of the Privy Council held that there could possibly be no estoppel, inasmuch as Hanuman had no assignable interest which he could convey or the assignment of which could enure to the purchaser and that this must have been fully known to the transferee. Hanuman Sahai had not in fact acquired the property as a contingent reversioner to Maha Sander but got it under a deed of transfer by the two reversioners. In these circumstances his consent to the transfer by Musammat Maha Sunder could not operate as estoppel to the present claim, and the case is clearly distinguishable.

4. In the case of *Rangasami Gounden v. Nachiappa Gounden*<sup>7</sup> a Hindu widow, who was in possession of her husband's estate, gifted a part of it to the then next reversioner who, however, predeceased her. The donee's heirs sold a part of the property and mortgaged another part of it to the plaintiff. On the death of the widow the plaintiff together with one of the heirs of the donee became the reversioner to the estate. The plaintiff sued this heir for his half share. On behalf of the defendant it was pleaded that the plaintiff, having taken a sale-deed and a mortgage-deed of part of the gifted property, had ratified the transfer by the widow and was estopped from challenging its validity. Their Lordships held that under the circumstances of the case no question of estoppel could arise. At the time when the plaintiff took the sale deed and the mortgage-deed he did not know whether he would ever be such a reversioner in fact as would give him a practical interest to quarrel with the deed of gift and that, therefore, by so doing he could not be held to have barred himself from asserting his own title after it had actually accrued to him. There was nothing to prevent him from taking a sale-deed and a mortgage-deed which would subsist only during the lifetime of the widow. His conduct, therefore, could not amount to a ratification of the original gift. It will be noticed that the previous Privy Council cases are cases where the reversioner who had given his consent to the transfer was not the reversioner who actually succeeded to the estate on the death of the limited owner. On page 550 of the report in 17 A.L.J. *Rangasami Gounden v. Nachiappa Gounden*<sup>8</sup> their Lordships, when referring to the case of *Bajrangi Sirgh v. Manokarnika Bakhsh Singh*<sup>9</sup> remarked that "in that case the reversioners having consented to the alienations, they were bound by their own consent." None of these cases, therefore, is any authority against the contention that the consenting reversioner, if he happens to succeed, is personally estopped from going behind his Consent.

5. *The case of Bai Parvati v. Dayabhai Manahharam*<sup>10</sup> does certainly support the Appellant's contention. In that case an owner died leaving a mother and two sisters, one of whom died after him. In 1891 the mother and the surviving sister gifted away two properties to the sons of the deceased sister. In 1911 after the mother had died, the sister sued to recover the properties from

the donees. The Bombay High Court held that there was no estoppel against her and that the gift was valid only during the lifetime of the mother.

6. Dr. Katju, who has argued this case with great ability, has laid before us a number of authorities which go to support his contention that so far as the consenting reversioner himself is concerned, he is, if he succeeds to the estate, estopped from challenging it. As early as the year 1880 Prinsep, J., in the case of *Triochn Chuckerbutty V. Umesh Chander Lahiri*<sup>11</sup> remarked as follows: "On consideration of the authorities we are of opinion that the consent of the reversionary heir for the time being would be binding only upon him, etc."

7. In the case of *Sia Dasi v. Gur Sahai*<sup>12</sup> a Hindu widow, her deceased husband's mistress, his illegitimate daughter, and a next reversioner to the estate had entered into an arrangement for the distribution of the entire estate by an instrument of the year 1867. A remote reversioner to the estate was a witness to this instrument and has given his full consent to the division. The widow subsequently transferred part of the property in 1876 for payment of certain ancestral debts. On the death of the widow the remote reversioner succeeded to the estate and was the person in whom the estate actually vested. He brought a suit for recovery of possession against the transferees by evidence of the deeds of 1867 and 1878. As to the deed of 1876 the transfer was held to have been for the satisfaction of ancestral debts and was, therefore, valid. As regards the transaction of 1867 the defendant pleaded that the plaintiff, having himself consented to the distribution of the property, was estopped from contesting the legality of the said conveyance. This Court held that the plea of estoppel was well founded and that it was no longer open to the plaintiff to challenge the validity of the distribution. This case is a clear authority in support of the respondents' contention.

8. In the case of *Ramadin v. Mathura Singh*<sup>13</sup> a Hindu widow in possession of her husband's estate had made a gift of the property of her husband (it is not, however, clear whether it was the whole of the estate or only a part of it) to one of the two sons of her daughter. The donee sold a part of it to the plaintiffs. The plaintiffs, however, could not get possession of the property and the widow died. The plaintiff, therefore, brought a suit for recovery of possession (of the property transferred to them) against the daughter, the donee and the other son of the daughter. The defendants pleaded that the gift was not operative beyond the life-time of the widow and that the daughter's consent was immaterial. The question that arose in the case was whether the plaintiffs were entitled to the life-interests of the widow and the daughter or not, but the question as to who would be the person entitled on the death of the daughter did not then arise. This Court held that a Hindu widow-in-possession can, with the consent of a reversioner, make a valid gift which will operate so far as the interests of the widow and that of the consenting reversioner are concerned. It will be noticed that in this case the gift was in favour of only one of the grandsons and no question of surrender of the whole estate to his donee could arise. This case also clearly supports the contention of the learned Vakil for the respondents.

9. This last case was followed in the case of *Shib Chandra Kar v. Dulcken* 48 Ind. Cas. 78, 28 C.L.J. 123, where the sons of a Hindu daughter in possession of her father's estate had joined in a mortgage executed by their mother and it was held that they could not be allowed to go back upon the representation made by them in the mortgage-deed. In this case, however, there had been an express representation in the mortgage-deed that the money was being raised for some legitimate purposes as justified an absolute alienation of the inheritance of a limited owner, and it was held that the sons, after they had succeeded to the estate, were concluded by their solemn declarations and were not free to resile from the position they deliberately took up and go behind the representations of fact made by them. The question as to their competency to bind their expected interest as reversioners by actual interest before the succession had opened out was not expressly considered.

10. The case of *Bakhtawar v. Bhagwana*<sup>14</sup> was a case where a remoter reversioner had brought a suit for a declaration that a gift executed by a Hindu widow was inoperative as against the contingent reversioners. The immediate reversioner, however, had consented to the transfer. It was contended inter alia that the plaintiffs, being remote reversionary heirs, were not entitled to maintain the suit for the cancellation of the gift. On page 178 Page of 32 A.--[Ed.] the learned Judges who decided that case remarked that there was no force in that contention, for the nearest reversionary heir, by consenting to the gift and concurring in the act of the widow, had precluded himself from disputing the validity of the impeached gift. Consequently the plaintiffs as next presumable reversioners would be entitled to sue. They referred to the case of *Rani Anand Kunwar v. Court of Wards*<sup>15</sup> where their Lordships of the Privy Council remarked that if the nearest reversionary heir refuses without sufficient cause to institute proceedings or if he has precluded himself by his, own act or conduct from suing, or has colluded with the widow, or has concurred in an act alleged to be wrongful, the next presumable reversioner would be entitled to sue.

11. In an unreported Letters Patent Appeal No. 49 of 1915, decided on the 28th of May 1915, which affirmed the judgment of Knox, J., reported as *Jamna Kunwar v. Jamna Singh* 28 Ind. Cas. 496, a Hindu widow had with the consent of her husband's mother gifted the whole estate to persons who were the reversioners next to the mother, and it was held that on the death of the widow the mother, who had consented to the transfer could no longer be entitled to oppose the same. The decision seems to have proceeded on the principle of estoppel, though: it could also be supported on the ground that the transfer amounted to a surrender of the whole estate. Our attention has also been drawn to two cases of the Madras High Court reported as *Venkata Row v. Tularam Row*<sup>16</sup> and *Shanmugha Velayudham Chetty v. Koyappa Chettiar*<sup>17</sup> In the first of these cases a Hindu widow in pursuance of a promise had alienated part of the estate of her husband in consideration of certain debts of the husband being paid by the transferee. The next reversioner had attested the deed and gives his express consent to it. It was held that he was estopped from afterwards disputing the transaction when the succession opened to him.

12. In the second case the first defendant, who was one of the reversionary heirs, was a party to a number of transactions by which item No. 1 of the properties in dispute was divided and

devolved solely on one Karuthan. The question raised was whether the first defendant having been a party to all those transactions could, when the reversion had fallen to him, turn round and claim the same property against the person who derived title under these, transactions. The learned Judges of the Madras High Court pointed out that the doctrine of estoppel as laid down in the Evidence Act was a rule of pleading based upon a man's conduct, who by his representations made to a third party has induced the latter to alter his position, and that, therefore, the mere fact that the presumptive reversioner had no vested interest in the estate which he could effectively deal with, did not prevent the application of the rule of estoppel if he had by his conduct induced another person to alter his position. They accordingly held that the plea of estoppel was well founded. It will thus appear that the weight of authority is entirely on the side of the respondents. The case of Bai Parvati v. Dayabhai Manchharam 58 Ind. Cas. 266 : 44 B. 486 : 22 Bom. L.R. 704, relied on by the learned Oonnel for the appellant, may be distinguishable. We have not had the advantage of seeing the deed of transfer in that case, but we gather from the judgment that it purported to effect a transfer of the limited interest of the mother and the sister's chance of succession. The judgment clearly states that it is not a case of an alienation by a widow of property of which she is the life-tenant with the consent of the next reversioner. "If all that was held in that case was that the deed purported to transfer a mere chance of succession and that such transfer was void, then no difficulty arises. But if it was intended to lay down the general proposition that in no case a reversioner can by his act or conduct estop himself from challenging a transfer after he has succeeded to the estate, then we would not agree with the decision.

13. We are accordingly of opinion that Surajpal, who actually became the owner after the death of Musammat Balraj Kunwar, by having joined in the deed of gift was estopped from challenging it and that the plaintiff, who claims through Surajpal, is equally estopped.

14. The result is that this appeal fails and is hereby dismissed with costs, including fees on the higher scale.

#### Cases Referred.

<sup>1</sup>44 Ind. Cas. 408 : 16 A.L.J. 265 : 23 M.L.J. 142 : 23 C.W.N. 409 : 27 C.L.J. 296 : 34 M.L.J. 298 : 4 P.L.W. 221 : (1918) M.W.N. 308 : 7 L.W. 581 : 20 Bom. L.R. 546 : C. 590 : 45 : I.A. 35 (P.C.),

<sup>2</sup>49 Ind. Cas. 1 : 17 A.L.J. 66 : 36 M.L.J. 68 : L.W. 335 : 24 C.W.N. 521 : 1 U.P.L.R. (P.C.) 1 : 46 C. 566 : 12 bur. L.T. 122 : 46 I.A. 1 (P.C.)

<sup>3</sup>50 Ind. Cas. 498 : 17 A.L.J. 536 at p. 550 : 36 M.L.J. 493 : 29 C.L.J. 539 : 21 Bom. L.R. 640 : 23 C.W.N. 777 : (1919) M.W.N. 262 : 42 M. 523 : 26 M.L.T. 5 : 10 L.W. 105 : 46 I.A. 72 (P.C.)

<sup>4</sup>58 Ind. Cas. 266 : 44 B. 486 : 22 Bom. L.R. 704

<sup>5</sup>44 Ind. Cas. 408 : 16 A.L.J. 265 : 23 M.L.J. 142 : 23 C.W.N. 409 : 27 C.L.J. 296 : 34 M.L.J. 298 : 4 P.L.W. 221 : (1918) M.W.N. 308 : 7 L.W. 581 : 20 Bom. L.R. 546 : C. 590 : 45 : I.A. 35 (P.C.)

<sup>6</sup>49 Ind. Cas. 1 : 17 A.L.J. 66 : 36 M.L.J. 68 : L.W. 335 : 24 C.W.N. 521 : 1 U.P.L.R. (P.C.) 1 : 46 C. 566 : 12 bur. L.T. 122 : 46 I.A. 1 (P.C.)

<sup>7</sup>50 Ind. Cas. 498 : 17 A.L.J. 536 at p. 550 : 36 M.L.J. 493 : 29 C.L.J. 539 : 21 Bom. L.R. 640 : 23 C.W.N. 777 : (1919) M.W.N. 262 : 42 M. 523 : 26 M.L.T. 5 : 10 L.W. 105 : 46 I.A. 72 (P.C.)

<sup>8</sup>50 Ind. Cas. 498 : 17 A.L.J. 536 at p. 550 : 36 M.L.J. 493 : 29 C.L.J. 539 : 21 Bom. L.R. 640 : 23 C.W.N. 777 :

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117 C.L.R. 571 at p. 573  
123 A. 362 : 2 Ind. Dec. (N.S.) 170  
1310 A. 407 : A.W.N. (1888) 79 : 13 Ind. Jur. 232 : 6 Ind. Dec. (N.S.) 274  
145 Ind. Cas. 270 : 32 A. 176 : A.L.J. 121  
156 C. 764 (P.C.) : 8 C.L.R. 381 : 8 I.A. 14 : 4 Shome L.R. 78 : 4 Sar. P.C.J. 195 : 5 Ind. Jur. 161 : Raflique and  
Jackson's P.C. No. 63 : 3 Ind. Dec. (N.S.) 495  
1638 Ind. Cas. 270 : (1917) M.W.N. 30 : 5 L.W. 482  
1760 Ind. Cas. 635 : (1920) M.W.N. 679