

# ALLAHABAD HIGH COURT

Moti Shah

Vs

Ghandharp Singh

(Sulaiman and Boys, JJ.)

14.05.1926

## JUDGMENT

### **Sulaiman, J.**

1. This is a defendant's appeal arising out of a suit for recovery of possession of 3 biswas 15 biswanis shara in village Pitipur and 2 biswas 8 kachwansis share in village Mulupura, which had been recorded in the name of Mt. Durga Kunwar, and for possession of 10 kachwansis share in village Pitipur which had been purchased at auction by the defendant against Mt. Tikam Kunwar, deceased. The allegations in the plaint were that the property belonged to Suraj Narayan, the last male owner, and on his death his widow, Mt. Tikam Kunwar, inherited it, but that Mt. Durga Kunwar's name was recorded over a half-share for maintenance and consolation.

2. On the death of Mt. Durga Kunwar, Mt. Tikam Kunwar, as well as the plaintiff, Gandharp Singh, and the defendant Moti Shah, put forward a claim to her share in the revenue Court and filed separate applications for mutation of names; that during the pendency of the mutation case, Mt. Tikam Kunwar executed a registered agreement dated the 21st of June 1918, and the plaintiff and the defendant, out of some policy or expediency, executed a contemporaneous agreement, according to which the property was divided in equal shares between the parties. The plaintiff alleged that Mt. Tikam Kunwar was the limited owner entitled to the estate, and that these proceedings and the agreements are in no way binding on the plaintiff He sought possession by avoidance of this agreement. As regards the 10-kach-wansis share sold at auction, his case was that only limited interest of Mt. Tikam Kunwar had been sold and he is entitled to this portion on the death of Mt. Tikam Kunwar as the next reversioner.

3. Moti Shah contested the claim mainly on the ground that the plaintiff was estopped from challenging the agreements executed in June 1918. He also put forward the plea that Mt. Durga Kunwar had been in adverse and proprietary possession of the property standing in her name, which had become her stridhan, and that under a Will she had made a bequest of that property in favor of the defendant. The learned Subordinate Judge has decreed the claim holding that the

agreements in question did not create an estoppel against the plaintiff. He has held that there is nothing to show that the arrangement made by these agreements was to hold good for ever and was not intended to operate till the lifetime of Mt. Tikam Kunwar only. He has also thought that the transaction did not amount to an estoppel within the meaning of Section 115 of the Evidence Act, as it embodied a mere proposition of law, and lastly, that the agreement was not a family arrangement at all and did not constitute the recognition of any pre-existing title.

4. The plaintiff is the first cousin of Suraj Narain whose mother was Durga Kunwar and whose widow was Mt. Tikam Kunwar. That there were three claimants to the estate of Mt. Durga Kunwar soon after her death is an undoubted fact. We have the application of Mt. Tikam Kunwar dated 5th of March 1918, under which she applied for mutation of names in her favour on the allegation that she was the person entitled to the property, and that the name of Mt. Durga Kunwar had been entered merely for her satisfaction and consolation. We have also the application of Moti Shah dated the 12th of April 1918, in which he claimed that the proprietary possession of the property in dispute had devolved upon him from Mt. Durga Kunwar. We have not got the grounds on which this devolution was put forward, but in the present case Moti Shah has tried to show that the property was the stridhan property of Mt. Durga Kunwar which she had bequeathed to the defendant.

5. Unfortunately the application filed by Gandharp Singh has neither been filed by the plaintiff nor by the defendant. It is therefore impossible to know exactly in what form he put forward his claim. It is conceivable that he might have put forward a claim that his father and Suraj Narain's father were members of a joint family, and that not only Mt. Durga Kunwar's name was recorded for consolation, but that Mt. Tikam Kunwar's name was also so recorded. This however is a mere speculation. All that we know is that he put forward a claim to the property, and we know further that in the agreement executed by Mt. Tikam Kunwar she conceded that it was Gandharp Singh who was entitled to the estate of the deceased. Thus there were three claimants who were independently of each putting forward rival claims to the estate. It is now wholly immaterial to consider whether the claim of any one of them, or which of them was as a matter of fact unfounded and would not have been successful in a Court of law. So long as there was a dispute and a claim of a doubtful nature which was capable of being settled, a compromise in settlement of such dispute would be binding on the parties. That a compromise was arrived at cannot be disputed. There is no suggestion in the plaint that any fraud or misrepresentation was practised on the plaintiff at the time when he entered into this agreement. Under the agreement Mt. Tikam Kunwar agreed to give up all her claim to this estate and surrender it in favour of Gandharp Singh and Moti Shah who were to divide the property in equal shares. There was a reservation that after her death Moti Shah would have no concern whatsoever, with the other half of the property which had remained in the possession of Mt. Tikam Kunwar.

6. In the agreement entered into between Gandharp Singh and Moti Shah, it was clearly provided that in order to avoid being saddled with the expenses of the litigation consequent on the two

objections filed by them separately they had at the instance of some respectable persons, who were members of their brotherhood, mutually entered into a compromise in this way that the property left by the deceased Mussamat should belong to them half and half and that all the debts due against the said property should be paid by them in equal shares. Moti Shah further agreed to surrender at the time of the mutation of names a lease which he held for 25 years from Mt. Tikam Kunwar. By a further agreement executed on the 27th of June 1918 certain further conditions were put down which were stated to have been omitted by mistake from the previous agreements. The stamps for the two agreements were purchased on the same day and at the same time and both the documents were executed and presented for registration on the same date and successively. There can therefore be no doubt that the two formed one transaction. The question before us is whether this agreement is binding on the plaintiff or not.

7. It would be convenient to dispose of first the preliminary question whether these agreements were intended to be confined in their effect to the lifetime of Mt. Tikam Kunwar only. The language of the document militates against this view: "The property is to belong to Gandharp Singh and Moti Shah in equal shares." It is not said that it shall remain in their possession during the lifetime of Mt. Tikam Kunwar only. Furthermore, if the idea was that the property shall be divided during the lifetime of Mt. Tikam Kunwar only, then there was not so much need for providing that after her death Moti Shah should have no concern whatsoever with her property. Again, as the plaintiff's case now is he was a mere reversioner and had no vested interest at that time. There was therefore no absolute necessity for Mt. Tikam Kunwar to obtain his consent if she merely wanted to give a portion of the property to Moti Shah. The word used in the original is "malik" which means "absolute proprietor" and in no way suggests that the interest that was to go to these persons was a limited one. We are therefore of opinion that the learned Judge erred in thinking that the arrangement made by the agreement was to hold good during the lifetime of Mt. Tikam Kunwar only.

8. As to the question of estoppel, we have already seen that the plaintiff apart from saying that the agreement is not binding on him has not explained under what circumstances this agreement was executed. He has not chosen to go into the witness-box to explain away his own agreement. If this agreement embodied a compromise which amounted to a settlement of a doubtful claim it must be held binding on the plaintiff, even though at the time when he entered into it he was a mere reversioner. It is he who has succeeded to the estate and is now claiming the property. He must therefore be personally estopped from claiming it if he has previously entered into a binding contract.

9. The point urged is that this agreement was without consideration inasmuch as Gandharp Singh was at that time a mere contingent reversioner. On the plaintiff's own case he got possession of a half share in Mt. Durga Kunwar's property during the lifetime of Mt. Tikam Kunwar, to which he was not then entitled. That is the first consideration. Next Moti Shah gave up all claim to the estate in the possession of Mt. Tikam Kunwar, whether that claim would have been good, bad or

indifferent. In the third place, Moti Shah agreed to surrender the lease which he held for 25 years. In a case of mutual compromise consideration passed from either side, and it is impossible to hold that a compromise of this kind is without consideration.

10. It is next contended that inasmuch as the interest of a reversioner is a mere contingent right i.e., *spes successionis*, he cannot transfer it relinquish it or surrender it. If this argument merely means that a reversionary right cannot be the subject of a transfer it is quite sound; for such a transfer is prohibited by Section 6 of the Transfer of Property Act. But there is nothing to prevent a reversioner from so acting as to estop himself by his own conduct from subsequently claiming a property to which he may succeed. The learned Advocate for the respondent has relied strongly on the case of *Annada Mohan Roy v. Gour Mohan Mallik* AIR 1921 Cal 501. On the facts that case is quite distinguishable because there the suit was for the specific performance of a contract of sale entered into by a reversioner during the lifetime of a Hindu widow. The Court declined to enforce such a contract. But after stating that a Hindu reversioner has nothing to assign or relinquish or transmit to his heirs, the learned Acting Chief Justice, at page 542 (of 48 Cal.) remarked: But though a transfer of his interest by a reversioner is void, he may by becoming a party to a compromise, and by taking the benefit of the compromise, be estopped from claiming as a reversioner.

11. We say no more than that. That a reversioner can be bound by a compromise to which he is a party, is well-settled by the decision of their Lordships of the Privy Council in the case of *Kanhi Lal v. Brij Lal*<sup>1</sup> In a Division Bench case of this Court, namely, *Mahadeo Prasad Singh v. Mata Prasad*<sup>2</sup> it was remarked 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 representation 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, that and further it was incorrect to say that in no cases reversioner can by his act or conduct estop himself from challenging a transfer after he has succeeded to the estate.

12. This case was referred to in the Full Bench case of *Fateh Singh v. Thakur Rukmini Rawanji Maharaj*<sup>3</sup> where it was held that a reversioner who actually succeeds to the immovable property can be estopped from challenging an alienation by a Hindu widow to which in her lifetime he had himself agreed. The Full Bench case does proceed on the principle of estoppel. There seems, therefore, no good ground for releasing the plaintiff from the effect of the estoppel merely because at the time when he entered into it he was a mere reversioner. It has already been stated that we do not in fact know whether he at that time had conceded that he was a mere reversioner or was claiming any higher right on the ground of jointness or on some other ground. Having given away the property under a settlement of rival claims he cannot now get it back, even though it did not vest in him originally but has vested in him now.

13. As regards the ten kachwansis share which had been sold at auction and purchased by the defendant, the matter is different. That share was a part of the property which had stood recorded in the name of Mt. Tikam Kunwar herself, and the share was sold in execution of a simple money-decree against the lady. All that could be sold was the rights and interests of the Hindu widow, and the defendant did not purchase anything more than that, vide the case of *Kullu v. Faiyaz Ali Khan*<sup>4</sup> It is therefore clear that on the death of Mt. Tikam Kunwar, the plaintiff as, the next reversioner, is entitled to that part of the property.

14. The appeal is accordingly allowed and the decree of the lower appellate Court is modified and the plaintiff's suit with regard to the 3 biswas and 15 biswansis share in Pitipur, and 2 biswas and 8 kachwansis in Mulupura is dismissed. The claim as regards 10 kachwansis in Pitipur stands decreed. We direct that the parties should pay and receive costs in proportion to their success and failure. The costs will include fees in this Court on the higher scale.

#### Cases Referred.

1AIR 1918 PC 70

2AIR 1922 All 297

3AIR 1923 All 387

4[1908] 30 All 394