

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Jiwan Singh v. Misri Lal from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered 7th December 1895.*

---

Present:

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The property in question in this appeal formerly belonged to one Sita Ram who died leaving two sons Baldeo Das and Jaikishan Das. Baldeo Das the elder died leaving a widow Mussammat Nabbo and an adopted son Kashi Ram. The latter died without children leaving a widow Gomti who thereupon took by inheritance the estate of a widow under the Hindu law. Nabbo who took nothing died in 1878 and Gomti died on the 8th of March 1880. Jaikishan Das had two sons Bhabuti Ram and Kashi Ram who was adopted by Baldeo Das. Bhabuti Ram who survived his father died in the lifetime of Gomti leaving a son Meghraj who survived Gomti and died on the 22nd of May 1881, leaving a son the Respondent Misri Lal. Consequently on the death of Gomti Meghraj became entitled as heir of Kashi Ram to possession of the property which consisted of one third of a mauza called Begpur Kanjaula, pargana Koel.

On the 7th of February 1890 Misri Lal then a

88274. 125.—12/95.

minor by his guardian brought a suit against the Appellant Jiwan Singh, who was in possession of the property, to recover possession of it and mesne profits.

The defence in the written statement was that after the death of Kashi Ram Jaikishan Das sold the property to Kewal Ram for Rs. 1500 and a deed of sale in respect of it was executed by Jaikishan Das on behalf of Nabbo and Gomti under his supervision and registered by his special power of attorney dated 17th September 1863; that Gomti adopted one Ranchhore Das as her son with the consent of Jaikishan Das; that the adopted son became the possessor of the property and money left by Kashi Ram; that a dispute arose between Gomti and Ranchhore Das which was compromised by part of the property left by Kashi Ram being taken by Gomti, part by Ranchhore Das and the remainder being presented to Sri Maharaj Parsotum Dasji; and that after the death of Gomti Meghraj brought a suit on a bond which was given to Gomti under the compromise and did not claim the property in the possession of Ranchhore Das and Gusain Parsotam Das. There was no proof of the adoption and no evidence of any legal necessity for the sale. The defence must rest upon the effect of the deed of sale and the conduct of Jaikishan with regard to it. The deed admitted in evidence for the Plaintiff purported to be made by Nabbo and Gomti and to sell one third share of the village Beghur Kanjaula with all the rights and interests pertaining thereto for Rs. 1500; it stated that the vendors "put the vendee in possession of "the share sold instead of us like ourselves;" and that "the vendee has become an absolute "owner of the share sold from the date of sale." It was signed as follows "Mussummat Gomti, "Lambardar, wife and Mussammat Nabbo,

“pattidar, mother of Kashi Ram, heirs of Kashi  
 “Ram, by the pen of Jaikishan Das *sarbarakar*  
 “and mukhtar.” It is dated the 17th of Sep-  
 tember 1863 and there was a power of attorney  
 of the same date from Nabbo and Gomti to  
 Jaikishan authorizing him to execute the deed  
 and get it registered which he did. Gomti  
 only had an estate in the property, Nabbo had  
 none. If the effect of the deed was to pass only  
 the estate which Gomti had as widow Misri Lal  
 would be entitled to recover possession. Upon  
 the evidence in the suit the question appears to  
 their Lordships to be, Was it so clear that more  
 than Gomti’s beneficial estate in the property—  
 the estate which she might have sold if there  
 had been a legal necessity for it—passed by the  
 deed, that Jaikishan Das must be taken to have  
 consented to its passing? The Subordinate  
 Judge who dismissed the suit does not appear  
 to have considered this question. He seems to  
 have assumed that this estate would pass. When  
 the case came before the High Court on appeal  
 the two learned Judges were of opinion that only  
 the estate of the widow passed by the deed. In  
 the judgment they say “There is not a word in  
 “the sale-deed which is inconsistent with the  
 “transfer being limited to the life-interest of  
 “the widow-vendors. There is no expression  
 “such as is usually employed, to intimate that  
 “an absolute title was conveyed . . . .  
 “the single member of the family, who helped  
 “and assisted in the making of the transfer, is  
 “not shown by a tittle of evidence to have  
 “consented to any transfer beyond the life-  
 “interest of the widows.” This view of the  
 transaction is supported by the fact that there is  
 no evidence that Jaikishan Das received any  
 part of the Rs. 1500 or was in any way benefited  
 by or had any inducement to concur in a sale  
 which would destroy his right as the apparent

reversionary heir. Their Lordships do not think it is necessary for them to give any opinion upon the construction of the deed. The opinion of the High Court which has been quoted is conclusive that it cannot be so clear that the whole estate passed by the deed that Jaikishan Das must be taken to have consented to its passing. The answer to the other part of the defence is that Jaikishan Das was no party to the compromise in June 1871 and that Meghraj's claiming on the death of Gomti the share of the property which she took under it is not inconsistent with the claim in this suit but the contrary. It was necessary for the Appellant to displace the title by inheritance of Misri Lal by satisfactory proof that the whole estate and not only the estate of Gomti as widow was sold to Kewal Ram. He has failed to do this and their Lordships will humbly advise Her Majesty to affirm the decree of the High Court in favour of the Respondent and dismiss the appeal.

---