Privy Council Appeal No. 98 *of* 1916.

Bengal Appeal No. 44 *of* 1914.

Saudagar Singh - - - - - *Appellant,*

v.

Pardip Narayan Singh 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 19TH OCTOBER, 1917.

Present at the Hearing:

LORD PARKER OF WADDINGTON.
LORD WRENBURY.
SIR JOHN EDGE.
MR. AMEER ALI.
SIR LAWRENCE JENKINS.

[*Delivered by* LORD PARKER OF WADDINGTON.]

Their Lordships do not consider it necessary to call upon counsel for the respondents in this appeal.

The question is a very short one. It appears that the High Court from which the appeal has been brought has made a certain declaration. There is absolutely no ground for saying that that declaration is in any way erroneous, nor has counsel for the appellant suggested any error. The point is simply whether, under the practice prevalent in India, such a declaration ought to have been made. In order to show that no declaration ought to have been made, reference has been made to various cases, and in particular to the case of *Janaki Ammal* v. *Narayanasami Aiyer* (43 *I.A.*, *p.* 207). The point of that case is this: There was a Hindu widow entitled to an estate, and a suit was brought by a person, presumptively entitled as heir after her death, to prevent waste. It was held that there was no waste at all, and the question arose whether, under those circumstances, it was proper to give the persons presumptively entitled a declaration of their title as presumptive, or as sometimes called reversionary, heirs, and it was held by this Board

that no such declaration ought to be made. It is said that this case is analogous to that, and that no declaration ought to have been made. On the other hand, if section 42 of the Specific Relief Act, 1877, is referred to, it will be seen that one of the illustrations given is this: "The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her, may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow's lifetime."

It appears to their Lordships to be clear on this section that where any deed is executed, the result of which may be to prejudice the interests of the reversionary heirs, those heirs, though still reversionary and though they may never get any title because events may preclude them from doing so, may have a declaration as to the effect of the deed. The declaration here is simply confined to that. It is a declaration that a certain deed which was executed by the Hindu widow in possession, and purporting to confer the absolute estate in the property on one of the reversionary heirs, is not binding on the other reversionary heirs. It was intended that this deed should operate to confer the whole interest on the grantee, on the footing that the other reversionary heirs, being of the half blood only, could not come in in competition with the grantee, and the real question in the suit, as far as their Lordships can make out, was simply whether the claimants were claimants of the half blood or of the whole blood, and it was decided by both Courts that they were not of the half blood, but of the whole blood.

Under these circumstances, it appears to their Lordships that this is an exact illustration of that which section 42 of the Specific Relief Act was meant to provide for. It is quite true that it involves a finding that the ~~appellant~~ in this case ~~is~~ a reversionary heir, but that must always be the case where a declaration is made following the illustration (*e*) of the section, because it is only in virtue of the persons claiming the declaration being reversionary heirs, and therefore presumptively entitled, that the declaration is made.

plaintiffs / are / s/

Under these circumstances, their Lordships can see no possible ground for interfering with the decree of the High Court, and the appeal therefore should be dismissed with costs. Their Lordships will tender their humble advice to His Majesty accordingly.

In the Privy Council.

SAUDAGAR SINGH

v.

PARDIP NARAYAN SINGH AND OTHERS.

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