

Privy Council Appeal No. 8 of 1916.

Bengal Appeal No. 4 of 1914.

Amrit Narayan Singh - - - - - *Appellant,*

v.

Gaya Singh, since deceased, 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 22ND NOVEMBER, 1917.

Present at the Hearing :

LORD PARKER OF WADDINGTON.

LORD WRENBURY.

SIR JOHN EDGE.

MR. AMEER ALI.

SIR LAWRENCE JENKINS.

[*Delivered by MR. AMEER ALI.*]

This is a suit by a Hindu reversioner to recover possession of certain properties that originally belonged to his maternal grandfather, Jhamman Singh. He alleges that the defendants, respondents before this Board, wrongfully possessed themselves of these properties under colour of certain arbitration proceedings whilst the estate was held by his mother, Kar Koer, as a female owner under the Hindu law. Kar Koer died in 1905, and this action was brought in 1908. The suit is therefore clearly within time. The sole question for determination in this appeal is whether the arbitration proceedings and the decree on the award which gave to the predecessors of the respondents possession of these properties are binding on the appellant.

On Jhamman's death Radha Koer, his widow, applied for the registration of her name in place of her deceased husband in the Collector's records. Her application was opposed by some of Jhamman's agnatic male relations, whom the respondents now represent; they claimed the property both under the general Hindu law as also under some undefined family custom. Their objections were overruled by the Revenue Courts, and Radha Koer's name was duly entered in the Collector's register. Radha died shortly after in 1864, and was succeeded in the

possession of the estate by her daughter, Kar Koer, the mother of the appellant. The agnates raised a fresh contest as to her right to hold the property. In the disputes that followed, and which were eventually referred to the arbitration of a number of caste-men, she seems to have been represented by her husband, Rajander Singh. There is nothing, however, on the record to show if he had any authority to act for her as her agent. Before the arbitrators had taken any action in the matter, a compromise was arrived at, in which also Rajander purported to act both for her and her infant son, the appellant. Under this compromise, Kar Koer abandoned, in favour of the agnates, all right to the immovable property of her father, receiving on her part, besides some movable property, two small fractional shares in certain lands which stood in her and in her mother's names. The effect of the arrangement was to extinguish completely the reversionary interest of the appellant in his grandfather's estate.

The compromise was placed before the arbitrators and they were invited to make an award in accordance therewith, which they did. It is to be noted that there is nothing on the record to show that the proceedings before the arbitrators ever came to the knowledge of Kar Koer or that she knew of the compromise and its effect. In fact, it appears that Kar Koer did not acquiesce in the award, and the opposite party had to apply to the Civil Court under the provisions of section 327 of Act X of 1859 (the law that regulated at the time the procedure of the Civil Courts in India) for a decree on the award. The Court of First Instance held that all the proceedings in connection with the compromise and the award had been without Kar Koer's knowledge. It accordingly dismissed the application of the agnates under section 327.

They appealed to the District Judge, who apparently considered that as Rajander, her husband, was a party to the compromise, her denial could not be believed. He accordingly made a decree "to have the award filed and enforced under section 327." From this decision Kar Koer preferred a "special appeal" to the High Court of Calcutta, which was dismissed. She then applied for a review of judgment, in which she was equally unsuccessful. The result of these decisions was to put her out of possession of the properties covered by the compromise, and which form the subject-matter of the present action. Although the respondents or their predecessors appear to have obtained possession of these properties after the proceedings in the High Court, which terminated in 1865, their names were not registered in the Collectorate in substitution of Radha Koer until 1877.

It is to be noticed that neither in the judgment of the District Judge nor in that of the High Court is there any reference to the right of Kar Koer's infant son or to the effect of the compromise which culminated in the award on his reversionary interest. Had the question been presented in any

shape to the Courts that were dealing with the matter, it is hardly likely their judgments would not have contained some expression as to whether the compromise and the award based thereon were or were not for the benefit of the reversioner.

In this action the plaintiff charged that the arbitration proceedings, together with the compromise and award, were fraudulent and taken and entered into without the knowledge or authority of Kar Koer; that in any event he was not bound by them. The defendants, on the other hand, among other pleas urge that the award and decree precluded the plaintiff from maintaining the action. The Subordinate Judge of Patna, before whom the suit came for trial in the first instance, framed a number of issues on the several allegations of the parties, most of which have become immaterial in view of the shape the case took on appeal to the High Court. The Trial Judge, in a well-reasoned and exhaustive judgment, held in substance that Jhamman at the time of his death was separated from his agnates; that the defendants had failed to prove the custom they alleged relating to the exclusion of widows and daughters; and that the plaintiff was not properly represented in the arbitration proceedings or in the proceedings before the Civil Courts, and was not bound by the award or the decree based thereon. He accordingly decreed the plaintiff's claim.

From this decree the defendants appealed to the High Court of Calcutta, where the case proceeded on the assumption that Jhamman was separate from his agnates, and that assumption has not been challenged before this Board. The contest in the High Court turned solely on the binding effect of the award and the decree enforcing it on the rights of the infant reversioner.

The learned Judges state thus the questions they had to determine, viz:—

“(1.) Whether Rajander Singh had power to refer the matter on behalf of his minor son to arbitration; (2) whether the plaintiff was properly represented in the proceedings in the Civil Court under Section 327 of Act VIII of 1859; and (3) and if he was, whether he can now treat the decree, which was based on the award, as a nullity, and claim possession of these properties at this distance of time.”

After answering the first two questions in the affirmative, the learned Judges decided the third against the plaintiff, and reversing the decree of the Subordinate Judge, dismissed the plaintiff's suit.

Their Lordships are unable to concur in the propositions on which the learned Judges of the High Court have based their judgment. With respect, in proceeding to consider whether Rajander Sing, the plaintiff's father, had power to refer the matter on behalf of his minor son to arbitration, they seem to have misconceived the legal position of the infant under the Hindu law. Evidently they thought he had a right which could form the subject of bargain. This is an obvious mistake; a Hindu reversioner has no right or interest *in presenti* in the property

which the female owner holds for her life. Until it vests in him on her death, should he survive her, he has nothing to assign or to relinquish, or even to transmit to his heirs. His right becomes concrete only on her demise; until then it is mere *spes successionis*. His guardian, if he happens to be a minor, cannot bargain with it on his behalf or bind him by any contractual engagement in respect thereto. Rajander's action, therefore, in referring to arbitration any matter connected with his son's reversionary interest was null and void.

The learned Judges seem also to have lost sight of the fact that the award actually made was based on the compromise; it gave effect to the agreement at which the parties had arrived. Even had the minor an existing right, the father would have no power to enter into an arrangement which wiped out all his interest without any consideration, for the little property that was left to Kar Koer was taken by her under the compromise, and not by virtue of her right to her father's estate. It is difficult to see how the learned Judges came to the conclusion that the compromise was to the benefit of the minor.

Apart from the question whether Rajander could represent his son under the proceedings under section 327 of Act VIII of 1859 without a certificate under section 3 of Act XL of 1858 on which their Lordships' desire to express no opinion, it is abundantly clear that the Civil Courts did not purport in any shape or character to deal with or adjudicate upon the reversionary right of the infant. The decree enforcing the award was based on the finding that Kar Koer had acquiesced by her husband in the reference to arbitration, and that she had similarly consented to the compromise, and was therefore bound by the award. Beyond that the order of the District Judge, which was affirmed by the High Court, did not go; it affected her interest, and her interest only.

It may be noted here that on the appeal to the High Court the minor was not a party.

In the present appeal it has been attempted on behalf of the respondents to sustain the decree of the High Court on the basis of the *dictum* of the Judicial Committee in the well-known *Shivagunga Case*,* where, dealing with the question under what circumstances a decree against the widow may bind the reversioners, the Board expressed itself thus:---

“that unless it could be shown that there had not been a fair trial of the right in that suit, or, in other words, unless that decree could have been successfully impeached on some special ground, it would have been an effectual bar to any new suit by any person claiming in succession to Angamootoo. For assuming her to be entitled to the Zemindary at all, the whole estate would for the time be vested in her, absolutely for some purposes, though in some respects for a qualified interest; and until her death it could not be ascertained who would be entitled to succeed. The same principle which has prevailed in the Courts of this country as to tenants in tail representing the inheritance would seem

* *Kulama Natchiar v. Srimut Raju Mootoo Vijaya* (9 Moo. I.A. 539).

to apply to a Hindu widow ; and it is obvious that there would be the greatest possible inconvenience in holding that the succeeding heirs were not bound by a decree fairly and properly obtained against the widow."

In the present case their Lordships think it enough to say that the proceedings culminating in the decree by which the plaintiff is sought to be bound are entirely devoid of the conditions on which and which alone a reversioner can be shut out from the assertion of his right, which comes to him altogether independently of the female owner.

Their Lordships are of opinion that the judgment and decree of the High Court should be reversed and the decree of the Subordinate Judge restored. And they will humbly advise His Majesty accordingly. The appellant will have his costs in the High Court and in this appeal.

In the Privy Council.

AMRIT NARAYAN SINGH

v.

GAYA SINGH AND OTHERS.

DELIVERED BY MR. AMEER ALI.

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