

Privy Council Appeal No. 60 of 1922.

Musammat Lajwanti and others - - - - - *Appellants*

v.

Safa Chand, since deceased, and others - - - - - *Respondents*

FROM

THE CHIEF COURT OF THE PUNJAB.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 29TH JANUARY, 1924.

Present at the Hearing :

LORD DUNEDIN.

LORD SHAW.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* LORD DUNEDIN.]

Jawahara Mal, a Datt Brahmin, living in the Punjab, died in 1852. He was survived by three wives, but at the time of his death had no children. Shortly after his death, as alleged, his eldest wife had a posthumous son named Hira Nand, who died after a few months. He undoubtedly had a posthumous daughter by his second wife, who is plaintiff in this action. He had three brothers, the eldest Bhim Sen, who in turn had two sons Hem Raj and Jamiat Raj. The other two brothers were Ram Bhuj and Gowhur Sen, who both had sons and grandsons who are some of the respondents in this case. He and his brothers were possessed of considerable property, ancestral and otherwise. After his death his widows were entered in the settlement records as proprietors of a fourth share of certain Mouzahs. In 1865 a new settlement was being made, and in furtherance of the entries to be made therein an action was raised by Hem Raj in 1867 asking that the entries of all parties except himself should be deleted in respect of certain Mouzahs.

Hem Raj raised the action in two capacities. He was sole heir of his father Bhim Sen, his brother Jamiat Raj having renounced all his rights in his favour, and he was also, he alleged, the adopted son of Jawahara Mal and as such his heir. He cited all the members of the joint family and the two widows of Jawahara Mal, the eldest widow having died in 1862. The first question that had to be determined was whether the Mouzahs, as to which he made exclusive claim, were the separate property of Bhim Sen and Jawahara Mal, or whether they were family property. As to certain of the Mouzahs it was determined that they were the separate property acquired by Bhim Sen and Jawahara Mal. That being so he was entitled to one-half as sole heir of his father. His claim to the exclusive possession of the other half depended upon whether he could make out adoption and this was found against him. Appeals were taken as to different Mouzahs by all the parties concerned. The case went to the Chief Court and the Chief Court finally decided as follows:—

His claim to the one-half was confirmed. As regards his claim to the other half it was said that he had abandoned his claim in virtue of adoption, and it was pointed out that his uncles, on Jawahara Mal's death, would always be preferable to him. That disposed of his claim, but the judgment then went on to deal with the questions that had arisen on the various appeals between the different defendants. The judgment continued thus:—

“The only other question for decision with regard to these Mouzahs is whether the widows are entitled to hold the half-share left by Jawahara Mal for their lives. They clearly are so entitled as, according to the facts as found above, the fathers of the appellants who took the inheritance were separate in food and estate from Jawahara Mal at the time of his death.”

This final judgment was given in 1869, and the widows were duly entered as proprietors of certain Mouzahs in respect of their widows' estate of the estate of their late husband Jawahara Mal. They entered into possession. The elder of the two—that is to say, the original second widow—lived till 1900, when she died. The Mouzahs were then possessed by the third and surviving widow till her death in 1910. On her death the daughter of the second wife raised the present suit to have declared her right to the Mouzahs as heir of her father Jawahara Mal. Her claim is opposed by various descendants of Jawahara Mal's brothers who claim as heirs of Hira Nand, to whom the property went on his birth after his father's death, they alleging that the long possession of the widows was only by reason of an arrangement that they should hold the Mouzahs as maintenance. Certain persons who might have been respondents backed up the plaintiff and were added as plaintiffs, a very unnecessary proceeding, as no decree could pass in their favour. As already stated, the plaintiff denied that Hira Nand ever existed. The District Judge held that Hira Nand never had existed. He then decreed

half the property to the plaintiff and half to certain of the respondents on grounds which no one supports and which need not here be specified. Both parties appealed. The learned Judges of the Chief Court reversed that judgment and found that Hira Nand did exist, and that in consequence the respondents are entitled as heirs to his estate. They mention a question as arising on adverse possession of the widows, but they did not really deal with the argument that arises thereon. Appeal has been taken from that decree.

Their Lordships will assume that the judgment is right in saying that Hira Nand did exist, but if he existed, then, in the litigation which arose in 1867 and was finished in 1869, his heirs who either are, or are represented by, the various respondents in this case, were entitled totally to extrude the widows from the Mouzahs in question. All that the widows were entitled to was maintenance. The allegation that they were allowed to possess the Mouzahs in name of maintenance was not admitted to be proved and further it is straight in the teeth of the judgment of the High Court of 1869 already quoted. It is clear, therefore, that though the judgment may have been wrong there has been adverse possession by the widows from 1869 to 1910 and the respondents' title is destroyed by Section 28 of the Limitation Act. It was then argued that the widows could only possess for themselves; that the last widow Devi would then acquire a personal title; and that the respondents and not the plaintiff were the heirs of Devi. This is quite to misunderstand the nature of the widows' possession. The Hindu widow, as often pointed out, is not a life renter but has a widow's estate—that is to say, a widow's estate in her deceased husband's estate. If possessing as widow she possesses adversely to anyone as to certain parcels, she does not acquire the parcels as stridhan but she makes them good to her husband's estate. The result is the Mouzahs are Jawahara Mal's estate, the respondents having no title to attack them, and as such the plaintiff is entitled as heir to her father to take them.

An attempt was made to say that the result as above being founded on the Mitakshara Law a different result should be arrived at because of a custom in the Punjab. Their Lordships are not able to consider any such plea because the record was void of averment and of proof of the precise custom which would lead to a different result from that obtained under the Mitakshara Law. The result is that the appeal must be allowed and judgment pronounced in favour of the plaintiff, with costs here and in the Courts below, and their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

MUSAMMAT LAJWANTI AND OTHERS

v.

SAFA CHAND, SINCE DECEASED, AND OTHERS.

DELIVERED BY LORD DUNEDIN.

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