1952

Feb. 22.

v.

DHIYAN SINGH AND ANOTHER

JUGAL KISHORE AND ANOTHER.

[SAIYAD FAZL ALI and VIVIAN BOSE JJ.]

Arbitration—Award—"Malik Mustaqil", meaning of—*Whether conveys absolute estate—Award acted upon—Estoppel against contesting its validity.*

S and B were sons of two brothers respectively. S died in 1884 leaving a daughter M, surviving him. On the death of S dispute arose between B and M. B claimed the entire estate by survivorship, alleging that S died in a state of jointness with him and that all the properties were joint family properties and M was entitled only to maintenance. The dispute was referred to arbitration and an award was delivered. Under it the suit properties were given to M and the rest of the estate then in dispute was given to B. The operative part of the award stated *inter alia* that B, first party, and M, the second party, were held entitled to specified shares in the properties in dispute and each had become permanent owner (*Malik Mustaqil*) of his or her share. A division was effected and ever since the date of the award in 1884 each branch continued in possession of the properties allotted to it and each had been dealing with them as absolute owner. The defendants claimed that the plaintiffs were bound by the award and were in any event estopped from challenging it.

In 1941 B's grandsons instituted a suit claiming the properties allotted to M claiming that on the death of S his daughter M succeeded to a limited estate and reversion opened out on her death in 1929 and the plaintiffs were entitled as next reversioners, as M's son had predeceased her. The defendants (M's grandsons) alleged that the property possessed by M consisted partly of property which belonged to her and partly of property which belonged exclusively to her father to which she succeeded as daughter.

Held, that the award gave an absolute estate to M as the words *"Malik Mustaqil"* were strong, clear and unambiguous and were not qualified by other words and circumstances appearing in the same document in the present case.

Held further, that even if the award be assumed to be invalid the plaintiffs' claim was barred by the plea of estoppel. There was estoppel against B because by his conduct he induced M to believe that the decision of the arbitrator was fair and reasonable and both the parties would be bound by it and he induced her to act greatly to her detriment and to alter her position by accepting the award and never attempting to go behind it as long

as he lived; there was estoppel against B's sons because it descended to them as they stepped into his shoes, and further there was independent estoppel against B's son K by his acts and conduct as evidenced in this case. There was estoppel against plaintiffs who claimed through their father K.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8 of 1951.

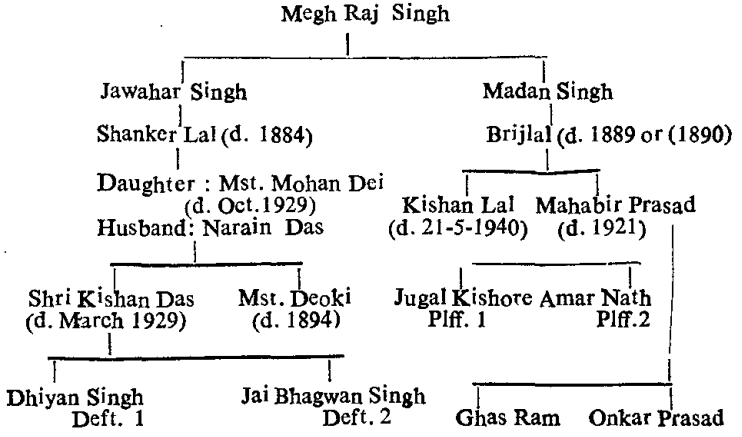
Appeal from the judgment and decree dated 12th October, 1944, of the High Court of Judicature at Allahabad (Allsop and Malik JJ.) in First Appeal No. 374 of 1941 arising out of a Decree dated 31st July, 1941, of the Court of the Civil Judge, Moradabad, in Original Suit No. 9 of 1941.

Bakshi Tek Chand (*S. K. Kapoor,* with him) for the appellant.

Achhru Ram (*Jwala Prasad,* with him) for the respondent.

1952. February 22. The judgment of the Court was delivered by

BOSE J.—This is a litigation between two branches of a family whose common ancestor was one Megh Raj Singh. The family tree is as follows :



The dispute is about property which, according to the plaintiffs, formed part of Shanker Lal's estate. The plyaintiffs state that the two branches of the family were separate at all material times; that on

1952

Dhiyan Singh and Another v. *Jugal Kishore and Another.*

Bose J.

Shanker Lal's death in 1884 his daughter Mst. Mohan Dei (the defendants' grandmother) succeeded to a limited estate. The reversion opened out on her death in October 1929 and the plaintiffs are entitled as the next reversioners, for Mst. Mohan Dei's son Shri Kishan Das predeceased her.

The defendants admit that Shanker Lal was separate from the other branch of the family. They divide the property which their grandmother Mst. Mohan Dei possessed into two categories. First, there was property which they say belonged to her. These are properties which, according to them, she purchased or obtained under mortgages in her own right. Next, there were properties which belonged exclusively to her father and to which she succeeded as daughter. On Shanker Lal's death disputes arose between Shanker Lal's father's brother's son Brijlal (the plaintiffs' grandfather) and the defendants' grandmother Mst. Mohan Dei. Brijlal claimed the entire estate by survivorship, his allegation being that Shanker Lal died in a state of jointness with him and that all the properties were joint family properties. This dispute was referred to arbitration and an award was delivered. Under it Mst. Mohan Dei was given the suit properties as absolute owner and the rest of the estate then in dispute was given to Brijlal. A division was effected accordingly and ever since, that is to say, from 21-12-1884, the date of the award, down to 26-3-1941, the date of the suit, each branch has been in separate and uninterrupted possession of the properties respectively allotted to it and each has been dealing with them as absolute owner. The defendants claim that the plaintiffs are bound by this award and are in any event estopped.

The plaintiffs lost in the first Court but won in the High Court. The defendants appeal.

The first question is about the nature of the award. The defendants say that it gave Mst. Mohan Dei an absolute estate. The plaintiffs deny this and say she obtained only a limited estate. In our opinion, the defendants are right.

1952

Dhiyan Singh and Another
v.
Jugal Kishore and Another.

Bose J.

The question at issue is a simple one of construction. The award is Ex. A-1. The operative portion runs thus :

"Having regard to the specifications given above, Brij Lal, first party, and Musammat Mohan Devi, the deceased's female issue, second party, have been held entilted to *shares,* worth Rs. 28,500 and Rs. 42,482-10-0 respectively *in the said properties*; and accordingly . . .two lots have been made and the first lot is allotted to the first party and the second lot to the second party; and henceforth the parties shall have no claim or liability against each other; and each party has become *permanent owner* (malik mustaqil) of his or her share; and each party should enter in *proprietary* possesion and occupation of his or her respective share . . . . . ."

The underlining is ours.

We do not think the words admit of any doubt, particularly as the words "malik mustaqil" have been used : see *Ram Gopal* v. *Nand Lal and Others*(1) and *Bishunath Prasad Singh* v. *Chandika Prasad Kumari*(2). But it was argued that the award must be viewed as a whole and that certain earlier passages show that this could not have been the intention. The passages relied on are these. First, the finding that the properties claimed by Mst. Mohan Dei as her own really belonged to Shanker Lal. He had purchased some and acquired others through mortgages in her name but she was only a benamidar and had no title to them. Second, that some of the properties in dispute were ancestral and the rest self acquired, though whether with the help of ancestral funds or not the arbitrator was unable to determine. Third, the arbitrator's view of the Hindu law, namely that—

"the brother should be the owner of the *joint* ancestral property and the daughter who has a male issue should be owner of the self-acquired property."

And lastly, this passage—

(1) [1950] S.C.R. 766 at 778. (2) (1933) 60 I. A. 56 at 61 & 62.

1952

Dhiyan Singh and Another
v.
Jugal Kishore and Another.

Bose J.

"Furthermore, when the 2nd party (Mohan Dei) has inherited no property from her husband, she, in case of getting this share, will certainly settle down in Amroha and will make her father's haveli as her abode and thus the haveli shall remain abad as heretofore, and in this way the deceased's name will be perpetuated; and it is positive that, after the Musammat, this property shall devolve on her son, who will be the malik (owner) thereof, and later the descendant of this son will become the owner thereof."

We do not think these passages qualify the operative portion of the award and are unable to agree with the learned Judges of the High Court who hold they do. In our opinion, the arbitrator was confused in his mind both as regards the facts as well as regards the law. His view of the law may have been wrong but the words used are, in our opinion, clear and, in the absence of anything which would unambiguously qualify them, we must interpret them in their usual sense.

Some cases were cited in which the word "malik", and in one case the words "malik mustaqil" were held to import a limited estate because of qaulifying circumstances. We think it would be pointless to examine them because we are concerned here with the document before us and even if it be conceded that words which would ordinarily mean one thing can be qualified by other words and circumstances appearing in the same document, we are of opinion that the passages and circumstances relied on in this case do not qualify the strong, clear and unambiguous words used in this document. The learned counsel for the plaintiffs-respondents had to search diligently for the meaning for which he contended in other passages and had to make several assumptions which do not appear on the face of the award as to what the arbitrator must have thought and must have intended. We are not prepared to qualify clear and unambiguous language by phrases of dubious import which can be made to coincide with either view by calling in aid assumptions of fact about whose existence we can only guess.

The award was attacked on other grounds also. It was urged, among other things, that the arbitrator had travelled beyond the terms of his reference in awarding Mst. Mohan Dei an absolute interest. It was also urged that even if Brijlal was bound his son Kishan Lal, who did not claim through him but who had an independent title as reversioner to Shanker Lal, would not be bound, and it was contended that if Kishan Lal was not bound the plaintiffs would not be either. But we need not examine these points because we do not need to proceed on the binding nature of the award. Even if the award be invalid we are of opinion that the plaintiff's claim is completely answered by the plea of estoppel.

Now it can be conceded that before an estoppel can arise, there must be, first, a representation of an existing fact as distinct from a mere promise *de futuro* made by one party to the other; second, that the other party, believing it, must have been induced to act on the faith of it; and third, that he must have so acted to his detriment.

It will be necessary to deal with this in stages and first we will consider whether there was any estoppel agtainst Brijlal. It is beyond dispute that he laid serious claim to the property in 1884. He claimed that he was joint with Shanker Lal and so, on Shanker Lal's death he became entitled to the whole of the estate and that Mst. Mohan Dei had only a right of maintenance. Whether he would have had difficulty in establishing such a claim, or indeed whether it would have been impossible for him to do so, is wholly immaterial. The fact remains that he pressed his claim and was serious about it, so much so that he was able to persuade the arbitrator that he had an immediate right to part of the estate. Mst. Mohan Dei, on the other hand, resisted this claim and contended that she was entitled to separate and exclusive possession, and in any event, that she was entitled in absolute right to a part of the property. On the facts which now emerge it is evident that Brijlal had no right and that his hopes of one day succeeding as

1952

Dhiyan Singh and Another
v.
Jugal Kishore and Another.

Bose J.

reversioner were remote. Mst. Mohan Dei had a son Shri Kishan Das who was the next presumptive reversioner and as the boy was a good deal younger than Brijlal, Brijlal's chances were slim. Actually, the boy survived Brijlal by nearly forty years. Brijlal died in 1889 or 1890 and the boy did not die till March 1929. Had he lived another eight or nine months he would have succeeded and the plaintiffs would have been nowhere. Now this dispute, seriously pressed by both sides, was refered to arbitration. It is neither here nor there whether the award was valid, whether the decision fell within the scope of the reference or whether it had any binding character in itself. Even if it was wholly invalid, it was still open to the parties to say : Never mind whether the arbitrator was right or wrong, his decision is fair and sensible, so instead of wasting further time and money in useless litigation, we will accept it and divide the estate in accordance with his findings. That would have been a perfectly right and proper settlement of the dispute, and whether it bound third parties or not it would certainly bind the immediate parties; and that in effect is what they did. By his conduct Brijlal induced Mst. Mohan Dei to believe that this would be the case and on the faith of that representation, namely the acceptance of the award, he induced Mst. Mohan Dei to act greatly to her detriment and to alter her position by accepting the award and parting with an appreciable portion of the estate, and he himself obtained a substantial advantage to which he would not otherwise have been entitled and enjoyed the benefit of it for the rest of his life; and to his credit be it said, he never attempted to go behind his decision. In any event, we are clear that that created an estoppel as against Brijlal.

In our opinion, the present case is very similar to the one which their Lordships of the Privy Council decided in *Kanhai Lal* v. *Brij Lal*(1). There also there was a dispute between a limited owner and a person who, but for an unproved claim (adoption) which he

(1) (1919) 45 I.A. 118.

put forward, had no right to the estate. The dispute was taken to the courts but was compromised and according to the agreement the property was divided between the two rival claimants and the agreement was given effect to and acted on for a period of twenty years. Later, the succession opened out and the other party to the compromise, who by then had stepped into the reversion, claimed the rest of the estate, which had been assigned to the limited owner, against her personal heirs. The Judicial Committee rejected the claim on the ground of estoppel and held that even though the plaintiff claimed in a different character in the suit, namely as reversioner, he having been a party to the compromise and having acted on it and induced the other side to alter her position to her detriment, was estopped. We do not think the fact that there was a voluntary compromise, whereas here there was the imposed decision of an arbitrator makes any difference because we are not proceeding on the footing of the award but on the actings of the parties in accepting it when they need not have done so if the present contentions are correct.

It is true that in one sense a question of title is one of law and it is equally true that there can be no estoppel on a question of law. But every question of law must be grounded on facts and when Brijlal's conduct is analysed it will be found to entail an assertion by him that he admitted and recognised facts which would in law give Mst. Mohan Dei an absolute interest in the lands awarded to her. It was because of that assertion of fact, namely his recognition and admission of the existence of facts which would give Mst. Mohan Die an absolute interest, that she was induced to part with about one-third of the property to which Brijlal, on a true estimate of the facts as now known, had no right. There can be no doubt that she acted to her detriment and there can, we think, be equally no doubt that she was induced to do so on the faith of Brijlal's statements and conduct which induced her to believe that he accepted all the implications of the

1952

Dhiyan Singh and Another v. *Jugal Kishore and Another.*

Bose J.

award. But in any event, we are clear that Brijlal would have been estopped. The nature of the dispute and the description of it given in the award show that there was considerable doubt, and certainly much dispute, about the true state of affairs. Even if the arbitrator was wholly wrong and even if he had no power to decide as he did, it was open to both sides to accept the decision and by their acceptance recognise the existence of facts which would in law give the other an absolute estate in the properties they agreed to divide among themselves and did divide. That, in our opinion is a representation of an existing fact or set of facts. Each would consequently be estopped as against the other and Brijlal in particular would have been estopped from denying the existence of facts which would give Mst. Mohan Dei an absolute interest in the suit property.

We turn next to his son Kishan Lal. Brijlal died in 1889 or 1890. At that date Mst. Mohan Dei's son Shri Kishan Das was alive and was the next presumptive reversioner. Brijlal's sons therefore had no more right to that portion of his estate which was assigned to Brijlal than Brijlal himself. But they took possession and claimed through their father. They did not claim an independent title in themselves, and, as we know, they had no other title at that date. They were therefore in no better position than Brijlal and as Brijlal would have been estopped, the estoppel descended to them also because they stepped into his shoes. This would be so even if Brijlal had claimed the property independently for himself, which he did not; but much more so as he claimed in joint family rights and evidently acted as karta or manager on behalf of his family.

But apart from this, there was also an independent estoppel in Kishan Lal. We have said, he had no right to this part of the estate when his father died apart from the award. But nevertheless he took possession along with his brother and the two of them treated the property as their own and derived benefit

from it. They partitioned the estate between themselves and sold away parts of it to third parties. Kishan Lal knew of the award. He knew that mutation had been effected in accordance with it and possession taken by Brijlal under it and that the rest had been retained by Mst. Mohan Dei. His retention of the property therefore and his continuing to deal with it on the basis of the award indicated his own acceptance of the award and, therefore, by his acts and conduct, he represented that he also, like his father, admitted the existence of facts which would in law give Mst. Mohan Dei an absolute estate; and further, he allowed Mst. Mohan Dei to deal with the estate as her own, for she, on her part, also acted on the award and claimed absolute rights in the property assigned to her. She dealt with it on that footing and gifted it in that right to her grandsons, the contesting defendants, on 4th April, 1929. Mutation was effected and Kishan Lal raised no objection. We see then that Brijlal retained possession of property to which he was not entitled for a period of five or six years from 1884 to 1889 or 1890 and induced Mst. Mohan Dei to part with it by representing that he accepted the award and her absolute title to the rest, and after him Kishan Lal and his brother between them enjoyed the benefit of it from 1889 or 1890 down to October 1929 when Mst. Mohan Dei died, that is, for a further forty years, and led Mst. Mohan Dei to believe that they also acknowledged her title to an absolute estate. We have no doubt that down to that time Kisan Lal was also estopped for the reasons given above. Had he questioned the award and reopened the dispute Mst. Mohan Dei would at once have sued and would then for forty years have obtained the benefit of property from which she was excluded because of her acceptance of the award on the faith of Brijlal's assertion that he too accepted it. Kishan Lal's inaction over these years with full knowledge of the facts, as is evident from the deposition of D.W. 2, Dhiyan Singh, whose testimonyis uncontradicted, and his acceptance of the estate with all its consequential benefits, unquestionably creates an estoppel in him. This witness tells us that—

1952

Dhiyan Singh and Another v. *Jugal Kishore and Another.*

Bose J.

"Kishanlal always accepted this award and acted upon it."

He qualifies this in cross-examination by saying that Kishan Lal had also objected to it but the witness did not konw whether that was before or after Mst. Mohan Dei's death. The documents filed show it was after, so there is no reason why the main portion of his statement which is uncontradicted, and which could have been contradicted, should not be accepted.

In March, 1929, Mst. Mohan Dei's son Shri Kishan Das died and Kishan Lal thereupon became the next presumptive reversioner, and in October, 1929, when the reversion opened out the estate vested in him, or rather would have vested in him but for the estoppel. The question therefore is, did he continue to be bound by the estoppel when he assumed a new character on the opening out of the reversion? We have no doubt he did. The decision of the Judicial Committee which we have just cited. *Kanhai Lal* v. *Brijlal*(1), is, we think, clear on that point. Although other reversioners who do not claim through the one who has consented are not bound, the consenting reversioner is estopped. This is beyond dispute, when there is an alienation by a limited owner without legal necessity. See *Ramgouda Annagouda* v. *Bhausaheb*(2) where the ground of decision was—

". . . but Annagouda himself being a party to and benefiting by the transaction evidenced thereby was precluded from questioning any part of it."

In our opinion, the same principles apply to a case of the present kind.

It was contended, however, on the strength of *Rangasami Gounden* v. *Nachiappa Gounden*(3) and *Mt. Binda Kuer v. Lalitha Prasad*(4), that even if Kishan Lal did take possession in 1889 or 1890 on the strength of a title derived from his father, that would not have precluded him from asserting his own rights in a different character when the succession opened

(1) (1918) 45 I.A. 118.
(2) (1927) 54 I.A. 396 at 403.
(3) (1919) 46 I.A. 72.
(4) (1936) A.I.R. 1936 P.C. 304 at 308.

out. Reliance in particular was placed upon page 308 of the latter ruling. In our opinion, that decision is to be distinguished.

In that case the reversion did not fall in till 1916. Long before that, namely in 1868, the next presumptive reversioners entered into a compromise whereby the grandfather of one Jairam who figured in that case obtained a good deal more than he would have been entitled to in the ordinary way. But for the compromise this grandfather would have got only one anna 12 gundas share, whereas due to the compromise he got as much as 2 annas 4 gundas. The actual taking of possession was however deferred under the compromise till the death of one Anandi Kuer. She died in 1885 and on that date Jairam was entitled to his grandfather's share as both his father and grandfather were dead. Jairam accordingly reaped the benefit of the transaction. But it is to be observed that the extra benefit which he derived was only as to a 12 gundas share because he had an absolute and indefeasible right to 1 anna 12 gundas in any event in his own right under a title which did not spring from the compromise.

Jairam lost 1 anna 4 gundas to a creditor Munniram and out of the one anna which he had left from the 2 annas 4 gundas he sold 13 gundas to the plaintiffs for a sum of Rs. 500. Now it is evident that on those facts it is impossible to predicate that the 13 gundas which the plaintiffs purchased came out of the extra 12 gundas which Jairam obtained because of the compromise rather than out of the 1 anna 12 gundas to which he had a good and independent title anyway; and of course unless the plaintiffs' 13 gundas could be assigned with certainty to the 12 gundas it would be impossible to say that they had obtained any benefit from the compromise. The Judicial Committee also added that even if it was possible to assign this 13 gundas with certainty to the 12 gundas it by no means followed that the plaintiffs admitted that fact nor would that necessarily have given them a benefit under the compromise. They had the right to contest the

1952

Dhiyan Singh and Another
v.
Jugal Kishore and Another

Bose J.

position and gamble on the possibility of being able to prove the contrary. Their Lordships added—

"Unless the plaintiffs' individual conduct makes it unjust that they should have a place among Bajrangi Lal's reversioners their legal rights should have effect."

In the other case, *Rangasami Gounden* v. *Nachiappa Gounden*(1), their Lordships' decision about this matter turned on the same sort of point : see page 87.

The present case is very different. When Kishan Lal took possession of his father's property he held by virtue of the award and under no other title, and for forty years he continued to derive benefit from it. Accordingly, he would have been estopped even if he had claimed in a different character as reversioner after the succession opened out.

It was conceded that if the estoppel against Kishan Lal enured after October 1929, then the plaintiffs, who claim through Kishan Lal, would also be estopped.

The appeal succeeds. The decree of the High Court is set aside and that of the first Court dismissing the plaintiffs' claim is restored. Costs here and in the High Court will be borne by the plaintiffs-respondents.

Appeal allowed.

Agent for the appellants : *Ganpat Rai.*

Agent for the respondents : *Sardar Bahadur Saharya.*

(1) (1919) 46 I.A. 72.