

Equivalent Citation: AIR 1924 Lah 83, 72Ind. Cas.91

IN THE HIGH COURT OF LAHORE

Decided On: 08.02.1923

Appellants: **Nabi Bakhsh and Ors.**

Vs.

Respondent: **Muhammad Salam Ullah and Ors.**

Hon'ble

Le Rossignol and Harrison, JJ.

Judges/Coram:

JUDGMENT

1. The plaintiffs in this case are one branch of the reversioners of one Mahbub Alam, who died leaving two widows, Mt. Jawahar Bibi and Mt. Niamat Bibi and a daughter Mt Rasul Bibi, who is the child of Mt. Jawahar Bibi. Both widows have now died and the plaintiffs claim their share of the land left by Mahbub Alam, the only contesting defendant being Salam Ullah, the son of Mt. Rasul Bibi and grandson of Mahbub Alam. The suit was decreed by the trial Court on the ground that, in consequence of the previous litigation, the pleas now put forward by Salam Ullah were governed by the law of *res-judicata*. On appeal the learned District Judge held that Explanation IV of Section 11 did not apply and remanded the case for decision on the merits; and the only point before us is whether the present defence to the claim is barred by that section.

2. On the death of Mahbub Alam both widows had the land entered in the name of their son in-law, Aman Ullah. In 1886 the present reversioners sued for a declaration that the gift by the widows in favour of this son in-law of Mahabub Alam would not affect their reversionary rights. The suit was resisted on two grounds, that the gift was valid and that he (Aman Ullah) was a *Khana-dama*, but the plaintiffs succeeded and obtained a decree. Aman Ullah died in 1890 and the land standing in his name was mutated in favour of the present defendant, his son Salam Ullah, in 1895). In 1905 Mt. Jawahar Bibi died and then the reversioners brought another suit for possession against Salam Ullah. This suit was dismissed on the ground that the second widow was still alive, but the

plaintiffs were given a declaration that the mutation did not affect their reversionary rights. That suit was contested by Salam Ullah only on the ground that he stood in big father's shoes. He did not urge either of the pleas which he now puts forward that he is entitled to the land as his mother's son and that the land is not ancestral. On the question whether these pleas should have been taken in the previous suit, we find that the suit would certainly have been defeated by the present pleas had they been established, or rather by the plea that Salam Ullah, as grandson of Mahbub Alam, was entitled to succeed, that as the plea was not taken it cannot be taken now and that the present defence of Salam Ullah is barred by Section 11, Explanation IV.

3. We, therefore, accept the appeal and restore the order of the trial Court giving the plaintiffs the decree they seek. The plaintiffs' costs will be paid throughout by Salam Ullah. The other defendants were merely *pro forma* and have not appealed.

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