

**Lala Parmeshri Das Vs. Ram Sahai**

**LegalCrystal Citation :** [legalcrystal.com/485357](http://legalcrystal.com/485357)

**Court :** Allahabad

**Decided On :** Jul-18-1929

**Reported in :** 118Ind.Cas.713a

**Judge :** Dalal, J.

**Appellant :** Lala Parmeshri Das

**Respondent :** Ram Sahai

**Judgement :**

Dalal, J.

1. The only item with regard to which there is any substance in appeal is Item No. 12. As regards Items Nos. 10 and 11 it was objected that the plaintiff had no cause of action as those had already been taken into account in partition between the parties who are own brothers. The question will only be one of costs and the order of costs of the lower Appellate Court will have to be altered and this matter considered at the end of the judgment.

2. Item No. 9 a gun, has been held to have been the property of the father of the parties. That is a finding of fact. As to decrees Nos. 3 to 6, some reference was made to what the lower Appellate Court said in his judgment as regards the realisation of those decreed. Those observations are not copied in the decree of the lower Appellate Court and do not afford grounds for appeal.

3. Finally as to Item No. 12 the appeal must succeed. Under Section 66 of the Code of Civil Procedure no suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims. The case for the plaintiff was that he and the defendant were divided among themselves and also from their father for a long term of years. Paragraph 12 of the plaint relating to the claim for Item No. 12 is in the following words: 'The plaintiff by right of inheritance from Lala Banke Lal deceased is the owner in possession of and entitled to half of the zemindari property in Mauza Hirdaipur entered at No. 12 of the list attached to the plaint.' Thus the argument of the learned Counsel for the plaintiff-respondent here that this property was purchased for the joint Hindu family in the name of the defendant cannot hold. The defendant being entered as the certified purchaser, the plaintiff cannot sue on the ground that the defendant was benamidar for their father Banke Lal The appeal must succeed as to Item No. 12.

4. In the result I modify the decree of the lower Appellate Court by deleting from that

decree the declaration that the plaintiff is joint owner to the extent of one-half in Mauza Hirdaipur, Item No. 12. This appeal is otherwise dismissed.

5. In this Court parties shall bear their own costs. In the trial Court the costs will be governed by the order as to costs passed by the Munsif on 11th February, that, is, the parties shall bear their own costs, and in the lower Appellate Court the defendant will pay the costs of the plaintiff of the appeal.

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