
(1878) 07 AHC CK 0002

Allahabad High Court

Case No: None

Rudr Narain Singh

APPELLANT

Vs

Rup Kuar and Another

RESPONDENT

Date of Decision: July 3, 1878

Citation: (1875) ILR (All) 734

Hon'ble Judges: Pearson, J; Oldfield, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Pearson and Oldfield, JJ.

The plaintiff has brought this suit on the allegation that the estate belonged to Chait Singh as a separate estate, and his widow, the female defendant, succeeded to it at his death, and took a life-interest, and plaintiff, as the next heir to her husband at her death, sues to cancel a deed of gift made by her in favour of defendant No. 2, on the ground that there was no necessity for the alienation, and further that it was ruled, in a suit brought by plaintiff's father against the widow, on the 30th August 1865, by the Sudder Dewani Adalat, that the lady had only a life-interest, and plaintiff was heir at her death and the above decision is binding.

2. The defendants pleaded that the above decision does not bind the parties to this suit; that Chait Singh made a gift of the property to the defendant his wife in his lifetime, by which she obtained it absolutely, and her transfer cannot be questioned; that the plaintiff is barred by limitation; and further that, in consequence of the confiscation of his father's property for rebellion, he has no locus standi, and the gift was a fitting reward to defendant No. 2 for services rendered as manager of the lady's property, and had been allowed by the brother of the plaintiff.

3. The lower Court has decided that there was a gift by Chait Singh in favour of his wife as defendants plead, and that it gave her absolute power over the estate, and on this ground he dismissed the suit.

4. It appears that on the 30th August 1865, there was a review by the Sudder Dewani Adalat of a former judgment in a suit brought by plaintiff's father and uncle against the defendant No. 1, the object of which was to be declared heirs of Chait Singh in respect of his property, among which is that now in suit, and to avoid certain alienations made by the widow. It appears to have been pleaded by the defendant that the estate was held separately by Chait Singh, and that some of the property had been sold, and some, including the mauza in suit, had been given to the lady by Chait Singh, and some inherited, and the Court held that the estate was the separate estate of Chait Singh, and that the mauzas sold did not form part of his estate at his death, but were the absolute property of the wife, but that the plaintiffs were entitled to be regarded as the reversioners after her death of the mauzas received by gift or inherited by her from the deceased, and competent as such to impeach any transfer thereof to other parties. The Court did not consider it necessary to decide the validity of the deed of gift on the part of Chait Singh to his wife, as they held it was immaterial to the plaintiff's whether it be valid or not, seeing that the mauzas conveyed by it would devolve on the widow by the Hindu law of succession by reason of their having belonged exclusively to her husband.

5. With reference to the pleas in appeal, we observe that it may be that the above decision has not the effect of *res judicata*, as the plaintiff contends, since the plaintiff does not come in through or under his father when he is suing as next heir to his uncle. Nor can there be any doubt that the defendant's husband, Chait Singh, did convey the property in suit to the defendant in his lifetime by deed of gift, for the evidence adduced on this point by the defendant is convincing. So much therefore of the case of the plaintiff which rests the claim on the allegation that the defendant succeeded as heir to her husband fails, but notwithstanding, we consider that the plaintiff is entitled to succeed in this case on the view we take of the case.

6. Admitting that the defendant obtained the estate by gift, there can be little doubt that by Hindu law she will have no absolute power over immovables given by her husband. What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or give it away, excepting immovables. The meaning is that, as regards Immovable property given by the husband, the wife is allowed to use it only by dwelling in it, but not to alienate it by gift, or sale, or in any other manner," Narada, Digest of Hindu Law by West and Buhler, Bk. ii, p. 74, and Mr. Colebrooke's remarks found in Strange, vol. ii, pp. 402, 407, which are as follows:-- "No doubt the widow may give away her own property, excepting land given to her by her husband or inherited from him, which she cannot dispose of without consent of the next heirs." There are other texts of the same purport, and this view of the effect of the gift was taken by the Sudder Dewani Adalat in the decision already referred to, in which the learned Judges cited a case in Macnaughten's Precedents (see case xxxi, 3d. ed., p. 230), and their ruling in that case has been followed by this Court in *Gunput Singh v. Gunga Pershad* 1867 HCR NWP 233. A ruling to the opposite effect by the Calcutta Court (see *Chattar Lal Singh*

v. Shewukram 5 BLR 123 : 13 AnWR 285 has been cited to us, but it is not in accordance with the rulings of this Court.

7. Immovable property given to a wife by a husband would appear therefore to be held on terms similar to those on which property inherited from her husband is held, and her acts in respect of it liable to question in a similar manner by the next heirs. And there seems no doubt plaintiff is in a position to question the alienation made by the widow as next heir, whether the property be held to be the lady's stridhan governed by the law of succession applicable to stridhan, or it be held subject to the ordinary succession of property inherited from her husband. In the latter case he is next heir to the husband, and if it be subject to the succession as stridhan, the lady being a childless widow, he will succeed failing the husband.

8. The defendants' pleas of limitation fail, since the right of suit to cancel the gift cannot be said to have accrued to plaintiff before the date of the alienation, and there has been no possession on the part of the widow which can be said to be adverse to the title. Nor is there anything in the confiscation of the father's property which can affect the plaintiff's reversionary rights as heir to his uncle. There remains the question of the validity of the alienation to defendant No. 2. The ground stated for the gift is that it was a reward for good and faithful services as the lady's manager. We do not think it is shown that the defendant has not always received his regular remuneration for services performed; on the contrary, it would appear that he has; and the gift in question can only be considered to be an act of generosity, and not one strictly called for by the circumstances, and which should be met from the lady's private resources if at all, but is not one which can justify a permanent alienation of part of the landed estate which belonged to her husband.

9. The plaintiff will have a decree declaring that the gift to the defendant is invalid so far as it affects plaintiff's reversionary right as next heir. The appeal is decreed with costs.