
(1880) 01 AHC CK 0018

Allahabad High Court

Case No: None

Pirthi Pal

APPELLANT

Vs

Ganga Bisheshar

RESPONDENT

Date of Decision: Jan. 19, 1880

Citation: (1880) ILR (All) 635

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

Bench: Division Bench

Final Decision: Dismissed

Judgement

Spankie, J.

The appellant before us was the appellant before the Judge, and he urged, first, that the deed impeached had been executed with the consent and admission of the plaintiff, respondent, who had remained silent from 1872 to 1878, having thus ratified his father's act; secondly, that the plaintiff could not sue under any circumstances to set aside the gift save with respect to his own share, viz., two annas and two pies in the property in suit. The Subordinate Judge held that there was no proof of consent on the part of the plaintiff and no sufficient evidence of acquiescence in what was done by the father. He also appears to hold that the plaintiff could sue to set aside the deed altogether, and not only in regard to his own share. We must not lose sight of these objections which the Court below had to determine. Before us the first plea goes beyond the objections urged before the lower Appellate Court and contends that as the transfer was not made for any illegal or immoral purposes, the suit was not maintainable. The other pleas go to the plea of consent and acquiescence and that of the limitation of plaintiff's right to sue to the extent of his own share only.

2. With respect to the plea of consent and acquiescence, I do not think that we can interfere with the Judges's finding. The admission of the Judge that the evidence on this point on the part of appellant is preferable to that on the part of defendant does not extend beyond the parol evidence. He assigns reasons for not crediting this

evidence, and on the entire evidence before him he arrives at the same conclusion at which the first Court had arrived. The finding therefore is not one with which we could interfere on this appeal. I understand the finding of both the lower Courts to be that the transfer was not made for any necessary purpose allowed by the Hindu law. The deed of gift appears to have been made by the father in performance of a promise to give a dowry to his daughter. But I am not aware that the performance of such a promise can be regarded as a lawful purpose justifying alienation under the Hindu law. It was not necessary for the support of the daughter, it was not for any religious or pious work, nor was it a pressing necessity. Daughters must be maintained until their marriage and the expenses of their marriage must be paid. But in this case the gift was not made at the time of the marriage. It was not executed until two years after the marriage. There is, I think, force in the Subordinate Judge's observations that the great stress laid upon the alleged consent, acquiescence, and aid of the plaintiff in effecting the transfer, is a circumstance going to show that without such consent the transfer was illegal. The first plea, upon the Subordinate Judge's finding, in my opinion, fails.

3. I have already given my opinion regarding the second plea. As to the third, the property being admittedly joint and undivided, and the gift not having been made with the consent of the plaintiff, and not being for any purpose allowed by the Hindu law, the plaintiff was at liberty to set it aside altogether; and in arriving to this conclusion the lower Appellate Court does not appear to have misunderstood any of the precedents cited before him. I would dismiss the appeal and affirm the judgment with costs.

Pearson, J.

4. I concur.