

Pirthi Pal Vs Ganga Bisheshar

None

Court: Allahabad High Court

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.