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(1922) 02 AHC CK 0042

Allahabad High Court

Case No: None

Debi Singh		APPELLANT
	Vs	
Pandit Bansidhar		RESPONDENT

Date of Decision: Feb. 7, 1922

Acts Referred:

- Transfer of Property Act, 1882 - Section 123

Citation: AIR 1922 All 44 : 66 Ind. Cas. 480

Hon'ble Judges: Ryves, J; Gokul Prasad, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. This appeal arises out of execution proceedings. Bansidhar got a decree on the 30th of January 1917 in a suit which he brought against Debi Singh describing him as a member of a joint family and heir of one Tej Singh, deceased, and claiming a certain sum of money as assets of Tej Singh in the hands of Debi Singh after Tej Singh''s death. Debi Singh did not contest that suit and it was decreed expert. The decree was in terms of the prayer, namely, against the assets of Tej Singh in the hands of Debi Singh after Tej Singh''s death. An application for execution of this decree was filed on the 23rd of January 1920 and certain property was attached. Debi Singh objected on the ground that he wa9 not the heir of Tej Singh but was his natural son born of a Brahmin woman who was living with Tej Singh and that, as far back as the 28th of January 1905. Tej Singh had made a gift of all the property of which he was then possessed and which had been attached. He, therefore, asked for the removal of the attachment on the ground that the property was his own and was not the assets of Tej Singh which had same into his hands after Tej Singh''s death. The decree-holder contended that the property was the assets of Tej Singh and had some to the possession of Debi Singh as such after Tej Singh''s death. The learned Munsif upheld the objection and ordered the attachment to be removed. The decree bolder appealed and the learned District Judge has found as a fast that

Debi Singh was the natural son of Tej Singh by a won an of another caste and could not succeed to his property as his heir. With reference to the deed of gift, he does not hold that it was not executed. What he says is, that having regard to its terms he thinks that it was not a deed of gift really but was a Will to some into operation after the death of Tej Singh and that, having regard to the fact that no steps had been taken during Tej Singh''s life to have the revenue papers altered and to bring the name of Debi Singh on to the Revenue Records, he thinks that it was evidence to show that the deed of gift had never been given effect to, On this ground he allowed the appeal and dismissed Debi Singh''s objection. It seems to us that it was not open to the learned District Judge to some to this conclusion. This was really a new question which had not been raised in the Trial Court. The learned Judge seems to be under the impression that among Hindus, a deed of gift, to be valid, mint be accompanied by delivery of possession. In this view he is mistaken, vide Section 123 of the Trans-for of Property Aef, which has been explained in many rulings of this Court, for instance, Pahlwan Singh v. Bam Bharose 27 A. 169 : 1 A. L. J. 625; (1901)A. W. N 222, which followed Phul Chand v, Lakkhu 25 A. 358; (1903)A. W. N 70. It must be remembered that when the deed of gift was executed Debi Singh was a child of tender years living in the house with his father Tej Singh and his mother. By the execution of the deed of gift followed by its registration, the ownership of the property wa9 transferred to Debi Singh and the possession by his father was possession on his behalf from that date. In our opinion, therefore, the learned Munsif was right. We, therefore, allow the appeal and, setting aside the order of the District Judge, restore that of the learned Munsif with costs throughout including in this Court fees on the higher scale.