
(1924) 08 BOM CK 0010

Bombay High Court

Case No: Second Appeal No's. 196 and 234 of 1923

Bala Ramchandra Gandbavie

APPELLANT

Vs

Daulu Rama Kiratsing

RESPONDENT

Date of Decision: Aug. 25, 1924

Acts Referred:

- Transfer of Property Act, 1882 - Section 52

Citation: AIR 1925 Bom 176 : (1925) 27 BOMLR 38

Hon'ble Judges: Lallubhai Shah, J; Kincaid, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Lallubhai Shah, Kt., Acting C.J.

1. These are two appeals arising out of two suits filed by the plaintiff in respect of certain land and a house. As regards Appeal No. 196 of 1923 which relates to the house both Courts have found that the plaintiff's title is not proved and that his possession within twelve years prior to the date of the suit is not proved. It is clear, therefore, that that appeal must fail. We confirm the decree of the lower appellate Court and dismiss the appeal with costs.

2. As regards the land the facts are these. Vithu made a gift of the land in 1910 by a registered document, and Vithu's daughter Radha was in possession of this property when, in January 1914, the present plaintiff filed a suit against Vithu for possession of this very land. Vithu died during the pendency of the suit, and Radha was brought on the record as the legal representative of Vithu. But before she was brought on the record, she sold the land to defendant No. 1. In that suit Bai Radha did not appear to contest the suit as the legal representative of Vithu with the result that an ex parte decree was passed in favour of the plaintiff and against Vithu's legal representative in respect of this very land on November 30, 1915. The possession of the land was with the defendants under the alienation in their favour

by Radha The plaintiff apparently sought to get possession of this land under the decree in the suit of 1914, but he was resisted by the present defendants. On the application of the defendants his effort to get possession failed. He then filed the present suit for possession of the land against the defendants.

3. The defendants in this suit claimed a title to this land through Bai Radha who acquired title to it under the gift made by her father in 1910. The defendants also claimed to have been in possession of this land for over twelve years in their own right adversely to the plaintiff. Both the Courts have found against the plaintiff on the allegation that this land was given to the mother and sister of the plaintiff and Vithu for maintenance. That allegation of the plaintiff must, therefore, be left out of consideration, It is found that Vithu was the owner of this land, that he made a gift of it in 1910 and that the defendants have been in possession through Bai Radha of this land. The finding of the lower appellate Court is that the plaintiff has not proved his possession within twelve years prior to the date of the suit, and even if the lower Courts were not satisfied that the defendants had been in possession for over twelve years adversely to the plaintiff, on this finding it is clear that the plaintiff cannot succeed.

4. It is urged on behalf of the plaintiff before us, as it was urged in the lower appellate Court, that in virtue of the decree in Suit No. 33 of 1914, his title to this land is established against Radha, and as the alienation by Radha in favour of the present defendants was during the pendency of the suit, the right of the plaintiff under the decree in that suit is not affected u/s 52 of the Transfer of Property Act. But when the facts are clearly understood, it follows necessarily that the defendants do not seek in any way to prejudice the right of the plaintiff against Vithu which he got under the decree against his legal representative. But what they claim is the title which came into existence long prior to this suit, namely, the title under the gift by Vithu to his daughter Radha. The defendants really assert that Vithu had no title to the land at the date of the suit. In the suit filed against him in 1911, Radha was; joined only as the legal representative of Vithu; and the question as to whether Vithu's title had passed on to Radha effectively before that suit was filed was not in question in that suit nor was it considered in that suit. It is quite clear that the doctrine of *Us pendens*, as stated in Section 52 of the Transfer of Property Act, cannot apply to these facts. All that the section provides is that property cannot be transferred or otherwise dealt with by any party to the suit or proceedings so as to affect the rights of any other party thereto under any decree which may be made therein. In the first place, in the present case, it is difficult to say that the alienation was by any party to the suit. It was an alienation by Radha in her own right, and she was not a party to that suit in her own right. Even assuming that Radha having been joined as the legal representative of Vithu she was a party to that suit, it is clear u/s 52 that the right of the plaintiff under that decree is not affected on account of the transfer by Bai Radha. The transfer that affects the plaintiff's right under the decree is the gift before the suit of 1914, and the transfer by Radha after the suit was filed is

independent of the title of Vithu at the date of the suit. This appeal, therefore, fails, and must be dismissed with costs.