
(1931) 11 AHC CK 0001
In the Allahabad High Court

Dhup Nath Upadhya and Others	Vs	APPELLANT
Ram Charitra Upadhya and Others		RESPONDENT

Date of Decision : 05-11-1931

Acts Referred:

Citation : AIR 1932 All 662 : (1932) ILR (All) 366

Hon'ble Judges : Sen, J

Bench : Division Bench

Judgement

Sen, J.—This is an appeal by the plaintiffs and arises out of a suit for a declaration that a deed of gift, dated 16th September 1927, executed by Mt. Dhana in favour of Earn Gharitra Upadhya, defendant 1, passed no title to the donee. The suit was contested on the ground that the title of the donor had matured by 12 years" adverse possession and that, in any event, the jural position of the donor was that of a Hindu widow. The Court of first instance repelled the pleas raised in defence and decreed the suit. The lower appellate Oourt found that Mt. Dhana was in possession of the property in her capacity as a Hindu widow belonging to a joint Hindu family, that she was in possession of the property in lieu of maintenance and that she did not acquire any title to the property by adverse possession. The Court however dismissed the plaintiff's suit for cancellation of the deed of gift in its entirety and upheld the transfer during the duration of Mt. Dhana's life. It has been contended that, where property has been granted to a Hindu widow in lieu of maintenance, she has no right to transfer the property during her lifetime. We are of opinion that this contention is not jtenable. A right to maintenance is a personal right, and as such, inalienable. But where property has been given to a widow of a joint Hindu family in lieu of maintenance, the transfer of such property during the lifetime of the said widow is not the transfer of the right to maintenance, and the transfer is valid and effective during the lifetime of the widow. To hold otherwise may give rise also to serious complications.

2. A Hindu widow put in possession of the property in lieu of maintenance may

not be able to manage her property herself and may be under the necessity of leasing out the property for purposes of good management. Similarly, in years of dearth and scarcity, she might be compelled to raise money against the security of the property so given to her. We are of opinion that the donor had the right to transfer the property, and the transfer is to remain in force during the natural life of the donor. This does not in any way prejudice the members of the joint family who are and continue to remain the owners of the property, notwithstanding the transfer. We are of opinion that the decree passed by the Court below was a proper decree. We accordingly dismiss this appeal with costs.