
(1921) 01 AHC CK 0053
In the Allahabad High Court

Kandhai Pande

APPELLANT

Vs

Musammat Dachchina Misirain and Another

RESPONDENT

Date of Decision : 25-01-1921

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : AIR 1921 All 78 : 60 Ind. Cas. 784

Hon'ble Judges : Tudball, J;Lindsay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is a defendant's appeal. The two plaintiffs are the daughters of one Jagdeo Pande who died leaving two widows, Musammat Phu Kunwar and Musammat Hansrani. After his death then two widows on the 2nd of September 1913, made a gift of part of their estate in favour of the two daughters of Jagdeo conditional on the two daughters agreeing to support them, the two widows. There was a condition in the gift that if the widows were not supported they would have a right to set as the gift and to take possession of the gifted property. The two daughters applied to the Revenue Court for mutation of their names. They were opposed by Mandeo, the first cousin of Jagdeo Pande, and the mutation was fuled. Thereupon the plaintiffs brought a suit out of which this appeal has arisen for a declaration that they were the owners in possession of the shares specified in the deed of gift, Mandeo resisted the suit. He pleaded that Jagdeo had left a son Jamna who died two years after him, that the deed of gift was a conditional gift, that there had been no total surrender of the estate and that, therefore, the title to the estate had not passed to the donees. He also pleaded that Section 42 of the Specific Belief Act was a bar to the suit as brought. The Court of first instance granted a modified declaration. It held that Jagdeo was entirely separate from Mandeo, also that the gift was not a gift of the total estate and that the gift was also conditional. But it held that the plaintiffs were entitled to possession of the estate during the life time of the widows, The widows were made pro forma defendants to the suit but the real defendant was

Mandao alone. He has since died and he is now represented by the present appellant, Kandhai Pande. On appeal the decree was upheld by the District Judge. Three points have been taken before us:

- (1) That Section 42 of the Specific Belief Act is a bar to the suit,
- (2) That there has been no total surrender of the estate and that, therefore, the plaintiffs are not entitled to a decree at all, and
- (3) That the gift was conditional, void and not binding.

2. So far as Section 42 of the Specific Belief Act is concerned, Mandao, it is dear, was the only opposing defendant in the suit and as against Mandao the plaintiffs could only obtain a declaration. In these circumstances, they could have asked for no further relief as against him. It is dear, therefore, that there is no force in this plea. So far as the other points are concerned, the declaration granted by the Courts below is a declaration that the plaintiffs are entitled to possession of the property gifted so long as the two widows remain alive. Whatever the nature of the gift may be, it is quite dear that the widows at least were entitled to part with their own rights as such widows, and Mandao had no ground whatsoever to take any exception to such a transfer. The widows do not oppose the plaintiffs claim and Mandao is not in a position to contest the declaration that has been granted. The transfer by the widows of their rights as such was a valid transfer. It is dear, therefore, that there is no force in this appeal. We dismiss it with costs including fees on the higher scale.