
(1887) 02 AHC CK 0006
In the Allahabad High Court

Kanta Prasad and Another

APPELLANT

Vs

Jhula and Another

RESPONDENT

Date of Decision : 25-02-1887

Acts Referred:

Citation : (1887) ILR (All) 441

Hon'ble Judges : John Edge, J;Brodhurst, J

Bench : Division Bench

Final Decision : Allowed

Judgement

John Edge, Kt., C.J.—In this action the plaintiffs sue for a declaration that a deed of gift made by the widow of one Gopal, their paternal grand-uncle, in favour of a nephew of Gopal should be declared not to be binding upon their interest in the property. It appears that the donee Harakh is the son of one Jai Karan, a brother of Gopal, who was alive at the commencement of the action, and is still alive, and who was not made a party to the action. The Judge in the first Court held that Jai Karan colluded with the widow, and decreed the relief asked for in the action. On appeal, the Judge of Mirzapur, putting, in my opinion, a wrong interpretation upon the Full Bench ruling in the case of Ramphal Rai v. Tula Kuari I. L. R. All. 116 came to the conclusion that it was not necessary to consider whether Jai Karan was in fact in collusion with the widow, and decided in favour of the plaintiffs without considering the question whether Jai Karan was in collusion or not. It appears to me that, inasmuch as Jai Karan was the presumptive heir, as I may say, of this property--at any rate the nearest person who, if he survived the widow, would inherit--he was the person to bring this action, unless it was shown or found that he refused without sufficient cause to sue, or had precluded himself by his own act from suing, or had colluded with the widow ; and, unless that was shown, the present plaintiffs, who were not the nearest heirs, could not maintain this action. I think that proposition of law is fully supported by the Full Bench ruling to which I have referred, and by the judgment of the Privy Council in the case of Rani Anund Koer v. The Court of

Wards L. R. 8 I. A. 14 and by the judgment of this Court in the case of Raghunath v. Thakuri I. L. R. 4 All. 16. Mr. Abdul Majid has referred to another case as an authority in his favour--Madan Mohan v. Puran Mal I. L. R. 6 All. 288. It appears to me that that case does not support the contention of Mr. Abdul Majid at all. That was an action brought by the donee to establish his right. In that case, as appears from the report, the widow had made a gift with the consent of the next presumptive heir. I think it was very rightly held in that case that the defendant, who disputed the gift, was entitled to do so under the circumstances of the case. I am of opinion that this case must be remanded in order that the Judge may find on the issues which are material in the case, and to which I have referred. Ten days will be allowed for objections.

Brodhurst, J.

2. I concur in the order of remand proposed by the learned Chief Justice.