
(1886) 11 CAL CK 0005
In the Calcutta High Court

Krishna Mohun Ghatuck

APPELLANT

Vs

Rudra Perkash Misser and Another

RESPONDENT

Date of Decision : 26-11-1886

Acts Referred:

Specific Relief Act, 1877 — Section 23

Citation : (1887) ILR (Cal) 241

Hon'ble Judges : Wilson, J; O'Kinealy, J

Bench : Division Bench

Judgement

1. It appears in this case that a person of the name of Shib Perkash Misser, in the year 1873, executed a deed of gift in favour of the first defendant, who was then his only minor son, with a reservation of certain benefits in favour of any afterborn son. The second defendant is a son who was afterwards born. The grantor retained for himself an interest in these terms : "From this date the guardian and manager for the time being shall pay me a monthly allowance of Rs. 400 for my maintenance and necessary expenses out of the profits of the gifted property, and besides that 150 bighas of land of Mouzah Phulbaria or any other mouzah, shall, on measurement, be held by me for the purpose of cultivation, and the measurement and thakbust (fixing boundaries) of the same shall be made as soon as possible, and such land shall be held and cultivated by me free of all rents."

2. Some years after the execution of this deed of gift, the present plaintiff obtained a decree against the grantor, Shib Perkash Misser. He proceeded to execute his decree, and himself became the purchaser at the execution sale. What he purchased appears from the sale-certificate, dated the 7th January 1884 : It was "the judgment-debtor's right to get by division or separation 150 bighas of land by measusement in Mouzah Phulbaria, or in any other mouzah within the jurisdiction of the Sub-Registrar of Tegra for the purpose of cultivation."

3. The plaintiff having purchased that interest brought this suit with a view to

obtain the benefit of the clause in the deed of gift about 150 bighas : in other words, to have 150 bighas assigned to him.

4. It does not appear that at any time there was any real answer to the claim on the merits. The controversy appears to have been whether the plaintiff might not be induced to make, or compelled to submit to, some declaration as to the duration of his title to the land to which he was entitled, the doubt being whether he should hold the land only for the life of Shib Perkash Misser, or on a larger title. That question obviously does not arise now, and may very likely not arise for years, and possibly may not arise at all. However, the suit was defended, and the plaintiff obtained a decree, and this appeal has been filed before us. The only real point suggested before us is that the interest of Shib Perkash Misser in 150 bighas under the deed was not such an interest as could be attached and sold in execution of a decree. Section 266 of the CPC describes what property is liable to attachment and sale in execution; and after mentioning a variety of matters, it says that, "except as hereinafter mentioned, all other saleable property, moveable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he had a disposing power which he may exercise for his own benefit, &c." Therefore any interest which is saleable is attachable and subject to sale in execution. It is perfectly clear from the terms of the Transfer of Property Act that the interest in question is saleable. u/s 6 of that Act, "property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force." The framers of that section clearly considered that property includes an actionable claim, because Clause (c) of that section says : "A mere right to sue for compensation for a fraud or for harm illegally caused cannot be transferred." Besides this there is a whole chapter in the Act, Chapter VIII, dealing with the subject of such claims, thereby placing it beyond doubt that a claim such as this is a transferable claim, and therefore capable of being attached and sold in execution within the meaning of Section 266 of the Code of Civil Procedure.

5. Moreover the remedy sought in this suit is a proper one. It is really a suit for specific performance of the condition in the agreement about 150 bighas. Section 23 of the Specific Relief Act says : "Except as otherwise provided by this chapter, the specific performance of a contract may be obtained by (a) any party thereto ; (b) the representative in interest, or ,the principal, of any party thereto." The plaintiff is the representative in interest of the original holder of the interest in 150 bighas. Therefore this suit was a proper suit. The appeal is dismissed with costs.