
(1929) 06 AHC CK 0007
In the Allahabad High Court

Uma Shankar Lal and Others

APPELLANT

Vs

Mahabir Prasad and Others

RESPONDENT

Date of Decision : 26-06-1929

Acts Referred:

Citation : AIR 1929 All 854 : 118 Ind. Cas. 235

Judgement

1. This is a plaintiff's appeal arising out of a suit for recovery of possession of a house in the city of Ghazipur. On the finding of the Court below this house belonged to the ancestor of the plaintiffs Munshi Lachhman Prasad. Lachhman Prasad was Kayasth by caste and had a Rajput girl as his wife or mistress from whom a son Dip Narain was born. In either view he was an illegitimate son. He died leaving a son Mahabir Prasad, defendant 1. The plaintiffs are the sons of Ramapat Lal, a grandson of Lachhman Prasad who jointly with his nephew Dip Narain Lal executed a deed of gift of this house on 5th June 1913 in favour of Mahabir Prasad. At that time no son had been born to Dip Narain Lal but Ramapat Lal had sons alive who were minors. The plaintiffs' case was that the family was joint and that the gift was without authority. The plea taken in defence was that this house was acquired by Lachhman Prasad for his Rajput mistress and had been in occupation of the defendants all along. In the alternative it was pleaded that the defendant had spent a large sum of money in overhauling the house which could not be given back to the plaintiffs without payment of compensation.

2. The learned Subordinate Judge has found that Dip Narain Lal and Ramapat Lal were separate, that the house had not been acquired for the Rajput girl but was a part of the ancestral property and that the defendant had overhauled the house and spent Rs. 1,050 on it. He, however, held the plaintiffs were not entitled to possession of any portion of the house but should be given Rs. 250, half of the value of the house at the time of gift.

3. The plaintiffs have appealed and the defendants have filed cross-objections. The evidence in favour of the finding that Dip Narain Lal and Ramapat Lal were

separate is convincing and we see no reason to disturb that finding. It is also clear that the house was a part of the family property and therefore Dip Narain Lal had a half share in this house. At the time when he made the transfer he had no other member of his joint family in existence and was fully competent to transfer it. It is, therefore, obvious that the plaintiffs are not entitled to claim the half share of Dip Narain Lal.

4. As regards the remaining half share in which the plaintiffs have jointly an interest the order of the Court below cannot be supported. Either the gift was good and binding on the family or it was not. The plaintiffs cannot be deprived of their immovable property and compelled to take compensation for it.

5. It seems to us that Ramapat Lal as a head of a joint Hindu family had no authority to transfer a part of the family immovable property by way of gift to a person who was not a near relation of his, the transaction not being for any pious purpose or for spiritual benefit. No doubt the recitals in the document and the evidence suggest that Rampat Lal felt himself under an obligation to Mahabir Prasad inasmuch as the latter had educated his sons for a long time and had been helping them in their difficulties. It is also a fact that Mahabir Prasad and his family had been occupying this house for a very long time. In spite of all this the Hindu law does not authorize the head of a joint family to make a gift in view of such considerations. The alienation therefore cannot be upheld.

6. The learned Subordinate Judge has taken a further view that inasmuch as the house was actually overhauled the transaction might be treated as a license which has ceased to become revocable because of the permanent constructions that have been made. The deed does not purport to grant a license to the donee, nor was it ever the case of the donee that he had been given permission to build a house upon this land. This view therefore cannot be accepted.

7. At the same time it is quite obvious that the house at the time was in a tottering condition and dangerous to live in. Acting in good faith and on the assurance received from Ramapat Lal and his nephew the defendants believed that they were entitled to retain this house and spent considerable sums in overhauling it. This finding of the Court below is that Rs. 1,050 in all were spent on it.

8. We, therefore, think that it will be just and equitable to order that the plaintiffs should be allowed the possession of half the house on payment of half the amount spent by the defendants for improvements, that is to say Rs. 525.

9. We accordingly allow this appeal and modifying the decree of the Court below decree the claim of the plaintiffs for recovery of possession of half the house on payment of Rs. 525 within three months from this date. The rest of the claim would be dismissed.

10. In view of our findings in the appeal the cross-objections have no force. In view of the special circumstances of this case we direct that the plaintiffs should

bear their own costs throughout and pay half the costs of the defendants. If the amount is not paid within the time fixed the whole suit shall stand dismissed with costs in both Courts.