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Court : Allahabad

Decided On : Jul-18-1951

Reported in : AIR1952All83

Judge : Misra and ;Beg, JJ.

Acts : Hindu Law; [Transfer of Property Act, 1882](#) - Sections 53

Appeal No. : Second Appeal No. 302 of 1944

Appellant : Ram Rao Singh and ors.

Respondent : Ajodhya Pd. Singh and ors.

Advocate for Def. : M.P. Srivastava, Adv. for Respondent Nos. 1/1 to 1/4

Advocate for Pet/Ap. : R.B. Lal, Adv.

Disposition : Appeal dismissed

Judgement :

Misra, J.

1. This is a second appeal by some of the defts. in a suit for possession of certain shares in village Goendi, district Faizabad.

2. The case of the plff. Jaskaran Shukul (who has since died & is now represented by his legal heirs) was founded upon a permanent lease executed by Mahesh Singh, deft. 5 on 23-11-1940. The latter had already transferred the property under a registered deed of gift dated 15-12-1939 to his three sons, namely, Ram Res Singh, deft. 1, Ram Bahadur Singh, deft. 2 & Sheo Bahadur Singh. deft. 3 & his wife, Mt. Lekhraj. Mahesh Singh & his sons were members of a joint Hindu family & the property covered by the deed of gift was ancestral. The suit was resisted by the donees on the basis of the transfer in their favour. The plff. had anticipated the defence & pleaded in para 3 that the gift was fictitious & void adding that the document was legally invalid & ineffective against the plff. & other creditors that it was executed with the object of defeating & delaying creditors that the deed purported to give away the entire property which Mahesh Singh possessed & that on the basis thereof no right accrued to defts. 1 to 4. The trial Court overruled the plff's. plea & gave effect to the earlier document holding that it was not executed to delay & defeat the creditors & though the property was ancestral & though the later deed was otherwise binding on the joint family because it was executed for the payment of antecedent debts he came to the conclusion that it must stand defeated if only because Mahesh Singh had no subsisting right to execute it. Jaskaran Shukul's suit was accordingly dismissed by the Munsif. He succeeded, however, in Court of first appeal (Dist. J., Faizabad), the learned Judge's finding being that the transfer in favour of the donee defts. was made in order to defeat & delay the creditors of Mahesh Singh & was as such invalid. The question of fictitiousness of the deed & the plea as to its void nature does not seem to have been either agitated by the parties in the two Courts below or considered by them. Under the Mitakshara law Mahesh Singh had no right to transfer the property by gift except in certain specified circumstances. The law in this regard does not admit of much doubt. It is set out concisely in Article 47 Gupta's 'Hindu Law', (1945 Edn.) & it has not been disputed at the bar.

Article 47 states:

'No coparcener may make a gift of the whole or any portion of the joint family property.'

'Exceptions: (1) Any coparcener may with the consent of the other coparceners make a gift of his undivided interest in the property.

(2) A coparcener who is a father may without the consent of his male issue make a gift within reasonable limits of (i) movable property for indispensable acts of duty or through affection, & (ii) immovable property for pious purposes.

(3) A coparcener who is the manager may without the consent of the members of the family make a gift within reasonable limits of immovable property for pious purposes.

(4) A sole surviving coparcener may make a gift of the whole or any portion of the joint family property.

'Explanation': A coparcener may renounce his interest in the joint family property in favour of his coparceners.'

The alienation by Mahesh Singh was of the entire ancestral estate. The deed shows that excepting Ram Res Singh, deft. 1, the other two sons, namely, Ram Bahadur Singh & Sheo Bahadur Singh were minors, at the date of its execution. We do not know whether the first three donees were the only members of the joint family at the time or whether there were other coparceners also in existence. The wife of the donor who was the fourth beneficiary was undoubtedly a stranger to the ancestral estate. We are clear in these circumstances that the case could not attract the doctrine of surrender or renunciation. There is scarcely any doubt, therefore, that the transfer of 1939 was legally unauthorised & was void 'ab initio' under the Hindu Law. The point is purely one of law & can be decided even in second appeal without calling for fresh findings on any questions of fact.

3. The Courts below proceeded as have been stated above to determine the case under Section 53, Transfer of Property Act & to consider whether or not the donor's intention was to delay or defeat the creditors. That question had obviously no materiality if the gift was void 'ab initio.' Most of the arguments urged at the bar before us relate to the plaintiff's omission to observe the formalities which ought to accompany a suit under Section 53, Transfer of Property Act. It appears to us that

these arguments lose their significance in view of what has been said above.

4. The suit was essentially for possession on the basis of title under the perpetual lease of 1940. The question of validity of the gift arose only incidentally because the defendant's title was made to rest on it. The document was challenged as stated above on the ground that it was fictitious, that it was void & that it was in any event voidable being a transfer made to delay & defeat the creditors. The learned counsel who appeared in the Court of first instance & the Court of first appeal treated the suit as being essentially one of the nature contemplated by Section 53, Transfer of Property Act but this was obviously wrong for that section, as is well-known, proceeds entirely upon the assumption that the alienation complained of is good & operative but it is liable to be avoided in the interest of the creditors on equitable grounds. A deed which is void or fictitious is in-fructuous. It does not need to be set aside at all. Obviously, therefore, when such a deed comes into competition with another document which is valid, the latter must prevail not because the former deed offends against the equitable doctrine embodied in Section 53, Transfer of Property Act, but because it is mere waste paper & does not operate & never did operate as a conveyance.

5. We think the appeal has no substance. The decision of the lower appellate Court giving effect to the lease executed by Mahesh Singh in favour of the plaintiff on 23-11-1940, is correct. We dismiss the appeal with costs.

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