

Golab Devi Vs. Mohammad Abdul Ghafoor

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Court : Allahabad

Decided On : Jan-28-1927

Reported in : AIR1927All492; 101Ind.Cas.580

Appellant : Golab Devi

Respondent : Mohammad Abdul Ghafoor

Judgement :

Iqbal Ahmad, J.

1. This is an execution second appeal by the judgment-debtor and arises under the following circumstances:

2. Mt. Salem-un-nissa, wife of Abdul Ghafoor, brought a suit for profits against the defendant in the revenue Court. During the pendency of the suit, she transferred her right to the profits claimed and her share with respect to which the suit for profits was brought by her to Abdul Ghafoor on the 7th November 1921, by means of a registered instrument. Notwithstanding this transfer Abdul Ghafoor did not, as a transferee of the profits from Mt. Salem-un-nissa get his name substituted as a plaintiff in the suit for profits in place of Mt. Salemun-nissa. On the 9th of November 1921, Mt. Salem-un-nissa's suit was decreed. Thereafter, Mt. Salem-un-nissa died. Abdul Ghafoor filed an application for execution of the decree as an assignee of the decree. The learned Assistant Collector held that, though the assignor's interest in the land to which the decree for profits relates has become

vested in Abdul Ghafoor, still, as the latter has not got mutation of names effected in his favour, the application for execution was barred by the provisions of Section 193(i) of the Agra Tenancy Act (Local Act 2 of 1901) and accordingly rejected the application. On appeal by Abdul Ghafoor the lower appellate Court has refrained from deciding the question of law on which the decision of the learned Assistant Collector was based, but has held that even if Abdul Ghafoor is not entitled to execute the decree as an assignee of the same, he is undoubtedly entitled as one of the heirs of Mt. Salem-un-nissa, to execute the decree subject to the rights of the other heirs of Mt. Salem-un-nissa. Holding this view, the learned Judge has remanded the case to the Court of first instance with a direction to Abdul Ghafoor to proceed to execute the decree after making necessary amendments in the application for execution.

3. The decision of the lower appellate Court is challenged before me on two grounds, (1) That Abdul Ghafoor not having got mutation of names effected in his favour with respect to the property transferred to him by Mt. Salem-un-nissa was not entitled to execute the decree; and (2) that because of the transfer made by Mt. Salem-un-nissa of her claim for profits in favour of Abdul Ghafoor, neither Abdul Ghafoor nor any other heir of Mt. Salem-un-nissa had a right to execute the decree as her heir, inasmuch as she herself had no interest left in the decree having transferred her claim for profits.

4. I am unable to agree with the contentions of the learned Counsel for the appellant. An assignee of a decree is not entitled, in view of the provisions of Section 193(i) of the Agra Tenancy Act, to execute the decree

unless the assigner's interest in the land to which it relates has become and is vested in such assignee.

5. It is nowhere provided by that section that notwithstanding the vesting of the assignor's interest in the land in the assignee, the latter is not entitled to execute the decree, unless and until mutation of names has been effected in his favour. To accept the view of the learned Assistant Collector will be to read into Section 193(i) of the Tenancy Act words which are not there and as such, in my opinion, the learned Assistant Collector was wrong in rejecting the application for execution

on the ground on which he rejected the same.

6. Apart from all this Abdul Ghafoor is undoubtedly one of the heirs of Mt. Salem-un-nissa. If the assignment in his favour cannot be taken notice of because of certain statutory provisions by the execution Court, he can fall back upon his rights as an heir of Mt. Salem-un-nissa. The judgment-debtor cannot be allowed in one breath to say that Abdul Ghafoor is not entitled as an assignee to execute the decree and, in another, to maintain that he is not entitled to execute the decree as one of the heirs of Mt. Salem-un-nissa because he is an assignee. Notwithstanding the transfer of the claim for profits by Mt. Salem-un-nissa in favour of Abdul Ghafoor the former continued as a plaintiff in the suit and a decree was passed in her favour. That decree is a perfectly valid decree and is binding between the parties to the suit. So long as that decree exists the judgment-debtor cannot be heard to say that the decree was wrongly passed in favour of Mt. Salem-un-nissa. That being so, the decree is capable of execution at the instance of the heirs of Mt. Salem-un-nissa. Abdul Ghafoor being one of the heirs is entitled to execute the decree. In my judgment, the decision of the Court below is perfectly sound and I dismiss the appeal under Order 41, Rule 11, Civil Procedure Code.

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