

Ram Das and ors. Vs. Debu and ors.

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SooperKanoon Citation : sooperkanoon.com/458206

Court : Allahabad

Decided On : Mar-31-1930

Reported in : AIR1930All610

Appellant : Ram Das and ors.

Respondent : Debu and ors.

Judgement :

Kendall, J.

1. This is a defendants' appeal arising out of a suit for a declaration that a deed of gift dated 10th December 1924, was not fraudulent and had not been executed with intent to defeat or delay the claim of the creditors of the donor. It appears that a suit was brought against Mt. Sundra for possession of a house and mesne profits, and the house in question was attached before judgment, but that suit was withdrawn on 9th December 1924, with liberty to sue afresh. The second suit was filed on 10th December 1924. On this last mentioned date the deed of gift was executed by the defendant Mt. Sundra. Both the Courts below have found as a fact that it was executed with a fraudulent intention to defeat the claim of the plaintiffs.

2. The learned advocate for the appellants contends that inasmuch as on the date of this gift the claim of the plaintiff was only for mesna profits which were in the nature of unliquidated damages, he could not be considered a creditor of the

vendor, and Section 53, T. P, Act, would therefore not apply. In support of this contention he relies on the case of Vasudeo Raghunath Oka v. Janardan Sadashiv Apte [1915] 39 Bom. 507. That case is clearly distinguishable, for there the person who was trying to take advantage of Section 53 was an auction purchaser of the property. The Bombay High Court held that he was not a creditor of the vendor. They further held that he had no interest in the property at the time of the previous transfer.

3. It seems to us well settled that all future creditors are within the scope of this section. It does not appear to be necessary that a man should be actually indebted at the time when he makes the transfer, for if he does so with a view to being indebted at a future time his conduct may be equally fraudulent. In the present case a litigation was actually pending and the defendant had every reason to believe that she would be made liable to pay the mesne profits. If in order to evade such payment she put the property in possession of another under, a document which was wholly without consideration the presumption under Section 53 arose and the Court below was justified in recording a finding that the intention was fraudulent. The appeal is accordingly dismissed with costs including in this Court fees on the higher scale.