

Gobind Prasad Vs. Raghunath Prasad

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SooperKanoon Citation : sooperkanoon.com/462162

Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1886)ILR8All76

Judge : Brodhurst and; Tyrrell, JJ.

Appellant : Gobind Prasad

Respondent : Raghunath Prasad

Judgement :

Brodhurst and Tyreell, JJ.

1. This is a suit brought by an adult son against his father and the trustee of an idol, on whom the father conferred a house and some moveable effects by a deed executed on the 6th May 1881.

2. It is conceded that the father and the son are joint owners of a considerable ancestral estate. It is also unquestionable that the shares of the parties in case of a partition between them would be half and half each. On the 8th April 1884, the son brought this suit to cancel the deed of transfer, on the single ground that, under the Hindu law, his father was incompetent to make any disposal whatever of the ancestral estate without his, the son's, consent.

3. The first Court tried this issue and decided it in favour of the father, dismissing the claim of the plaintiff. The latter pleaded in appeal before the District Judge the absolute inability of his father to deal with the property as he had done, the absence of any legitimate necessity for the alienation in question, and, finally, that the motive of the endowment was not piety to the gods, but malice against the son, who had interfered with a previous disposition of a portion of the property in favour of Musammatt Gumti, a sister of the plaintiff. The Judge found that the father's powers to make an alienation of ancestral estate against the will of his son would not extend to provision of a permanent shrine of a family idol; and that, even if it did, the alienation should be restricted to 'a small portion' of the estate. The Judge, holding that the alienated property represented a value of Rs. 693 out of an entire estate worth Rs. 4,000, decided that the gift was exclusive, and decreed the appeal and the suit. This decision is challenged in second appeal; and an examination of the authorities is sufficient to show that a father is competent to deal with ancestral property, not only for the especial exigencies mentioned by the Judge, but also to make 'pious and reverential gifts to Brahmans, as Brahmutra Krishnarpana,' also 'gifts from affection towards Vishnu and other divinities'--Gopal Chand Pande v. Babu Kunwar Singh S.D.A.L.P. 1843 vol. 5 p. 24. The finding of the Judge on this point therefore cannot stand; and we are not; informed on what materials he based his finding that the value of the estate is Rs. 4,000 only. The Judge has also omitted to decide the important plea as to the real motive underlying the gift--that is to say, the question of the good faith of the donor.

4. We have not materials on the record to enable us to dispose of these questions. We therefore refer the following issues for trial under Section 566 of the Civil Procedure Code:

1. What is the value of the entire ancestral property of the parties to the suit?
5. Has the endowment been made bond fide for the satisfaction of the idol and the benefit of the donor's soul, or from motives of spite against the plaintiff-respondent, as pleaded by him in his fifth plea before the Judge?
6. On receipt of the findings, ten days will be allowed for objections.

