

Sangto Vs. Paras Ram

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Court : Allahabad

Decided On : Jan-22-1919

Reported in : AIR1919All203; 49Ind.Cas.542

Judge : Rafique and ;Linsay, JJ.

Appellant : Sangto

Respondent : Paras Ram

Judgement :

1. The finding is that the testator 'Intended to make an independent gift of Bs. 800 to the plaintiff by his Will. The testator was the divided brother of the plaintiff's father; and managed the properties which she inherited, during her minority. Before his death, the testator bequeathed a portion of the properties which he was then managing to the 2nd defendant: by the same instrument he gave the plaintiff Rs. 800. She now sues to recover the devised inherited property and also the legacy of Rs. 800. The 8th issue in the case raises the question of election. In our opinion, the doctrine is applicable to the present case. The weight of authority in England is to regard the doctrine as based on the principle of compensation and not on that of forfeiture. [See Ker v. Wauchope (1) and Kandiffe (Lord) v. Parkyns (2).] The fact that the 2nd defendant may be compelled at the instance of the reversionary to give up the property after the lifetime of the plaintiff whereas she will have an absolute right in Rs. 800 bequeathed to her is not a ground for not applying the doctrine of election. The quantum of compensation is not what the

Court looks to. It is only concerned with seeing that a party deprived of a right vesting in him is recompensed by the gift of another property, whatever may be its nature or duration of enjoyment. See *Wilson v. John Touchshend* (Lord) (3) and *Webb v. Earl of Shaftesbury* (4). Further as pointed out in *Whistler v. Webster* (5), 'it is immaterial in regard to the doctrine of election whether the testator, in disposing of that which is its execution, and could dispose of his property as he pleased, has not , been successfully impeached, and this deed must anyhow stand. And as to the second and third sales, their Lordships upon consideration are not disposed to disturb the findings of the Court of Appeal. The plaintiff can, therefore, only get these deeds set aside upon the terms of repaying the several sums which were applied to pay antecedent debts.

2. It will be the principal only of these sums that the plaintiff will have to pay as the defendants have been in possession of the estate.

3. The Subordinate Judge made a decree in favour of the plaintiff for mesne profits, and rightly from his point of view, because the deeds were to be unconditionally set aside. But inasmuch as in the view of the Court of Appeal, which their Lordships accept, they are only to be set aside upon payment of certain sums, the pendants must be deemed to be lawfully in possession until they are set aside, and are therefore, not accountable for insane profits

4. Their Lordships will, therefore, humbly advise His Majesty that this appeal should be allowed, that the decree of the Court of the Judicial Commissioner of Oudh should be reversed, and that the plaintiff should have a decree setting aside the second sale and giving him possession of the 1-anna share in the village, Ferozepur, which passed by that sale upon payment of Rs. 1,622 and setting aside the third sale and giving him possession of the 1-anna share which passed by it on payment of Rs. 153-120 and that the plaintiff should have the costs in both Courts below and of this appeal.