

Made Gouda (Dead) and ors. Vs. Chenne Gouda and ors.

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Court : Chennai

Decided On : Feb-03-1925

Reported in : AIR1925Mad1174; 90Ind.Cas.331; (1925)49MLJ150

Appellant : Made Gouda (Dead) and ors.

Respondent : Chenne Gouda and ors.

Judgement :

Odgers, J.

1. In this case the plaintiff is the grandson of the 1st defendant. The latter is the appellant and is the uncle of the 2nd defendant who is his sister's son. The 1st defendant and his sons entered into a partition in the year 1908 of their joint properties. In this partition they purported to include the 2nd defendant and to allot to him a proportionate share of the joint properties. The 2nd defendant has subsequently assigned a portion of the property which he alleges he has thus acquired title to the assignee, the respondent. The learned District Munsif found that the 2nd defendant got his share as a gift or that he got it in consideration of the fact that he surrendered part of his property to the 1st defendant by exchange. In either case he held that as the property was over Rs. 100 in value and there was no registered instrument, whether the transaction was a gift or exchange, it offended against the provisions of the Transfer of Property Act. The learned Additional Subordinate Judge on appeal held that the 2nd defendant was made a

co-sharer. I must say I find it difficult to understand how the 2nd defendant could be made a co-sharer as he was admittedly not a member of the joint family and therefore not a co-parcener. The learned Judge further says that the transaction was not a gift, but a partition of family property of which family 2nd 'defendant was not a member. In Ex. C the 2nd defendant apparently described the property as having been given to him by way of gift. The comment of the learned Additional Subordinate Judge that this recital is interlineated is a mistake, the word or words simply having been underlined in the course of the argument. The learned Subordinate Judge bases his finding on the authority *Girhi Rani Misrdni v. Chandra Lal Kanth* 17 CWN 62. It is sufficient to say that this decision has been considered in S.A. No. 225 of 1920 by a Bench of this Court by which decision I am, sitting as a single Judge, bound. The Calcutta case was very carefully examined in that second appeal and Napier, J. says:--' I know of no authority for the proposition that the formal requirements of the Transfer of Property Act can be avoided by calling a transaction by a particular name under the Hindu Law. ' Krishnan, J., considering the same case, says that the Judges in the Calcutta case did not treat the case before them as one of gift, but they do not say under what category it falls. ' It does not appear that they meant to treat it as a family arrangement, but if it was meant to hold that a person could, by the mere recognition of another as a co-sharer of his, convey title to him of immoveable property without observing any of the formalities required by law for it, I am, with all respect, unable to follow their view.' Reference may also be made to the Privy Council case reported in *Ramkishore Kedarnath v. Jainarayan Ramrachhpal* ILR (1913).C 966 Therefore as regards Issue 4 I think the Subordinate Judge is clearly wrong and with regard to this the appeal must be allowed with costs. Mr. Bhashyam Aiyangar has, however, represented that the appeal should not be wholly disposed of in this manner, but that the case should be sent back to the Lower Appellate Court to be dealt with on Issues 1 and 2. No objection has been raised by Mr. Anantakrishna Aiyar to this course being adopted. What I propose to do is to allow this appeal with! costs and the case as to Issues 1 and 2 will be remitted to the Lower Appellate Court for decision. It will also consider whether any and what valid title has been acquired by the 2nd defendant independently of the points decided in this judgment. Appellant will have the Court-fee of the

second appeal refunded.

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