

Tunga Bidya Devi and ors. Vs. Panna Sashi Devi and ors.

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SooperKanoon Citation : sooperkanoon.com/859721

Court : Kolkata

Decided On : May-11-1928

Reported in : AIR1928Cal556,117Ind.Cas.676

Appellant : Tunga Bidya Devi and ors.

Respondent : Panna Sashi Devi and ors.

Judgement :

1. This is an appeal by the plaintiffs against the decree of dismissal of their suit which was for recovery of arrears of maintenance under the terms of a compromise that had been entered into between the predecessor of the defendants and a certain Mahatap Mukherjee. This Mahatap Mukherjee had two wives and one of them claimed the whole of a certain property under a gift. There was a suit in which Mahatap sought to set aside the alleged gift. The suit was compromised and in the compromise it was agreed that a certain sum should be paid annually by the first wife and her successor to Mahatap and after him to the other wife, if she survived him, and to her heirs and successors. Mahatap died and was succeeded by the second wife who enjoyed the maintenance; and when she died she made a will, appointing the plaintiffs as executors and also making one of them the beneficiary under the will. The plaintiffs have therefore sued to recover the arrears of maintenance. The learned Court of appeal below has held that the will does not devise the maintenance subsequent to the death of the testatrix to the legatees. The terms of the will have been correctly interpreted by the learned District Judge. The will expressly states that it devises the moveable and

immovable properties of the testatrix and the claim for future maintenance cannot come under either of those heads. That the testatrix did not intend to make any disposition of the future maintenance is abundantly clear from the provisions in the will that the maintenance due to her up to the time of her death should be taken by the plaintiffs. The fact that she made such a provision showed clearly that the testatrix did not intend to make any disposition of the maintenance allowance in the clauses relating to the disposal of moveable and immovable properties. Over and above this, there can be no doubt that the maintenance allowance was purely one for the benefit of the family of the descendants of Mahatap. The compromise that was recorded states that the heirs, successors and representatives of the second wife should be entitled to this maintenance from the first wife and her successors. If the property had been ordinary property undoubtedly the terms of the compromise would indicate that the intention was to convey the property out and out; in other words a hereditary estate capable of being transferred. But the property dealt with in the compromise is an allowance taken from another property which was given to the first wife as compensation for the taking of the property by the first wife; and because the family had been deprived of the profits from that property, and the compromise was entered into so as to compensate the family for the loss. In these circumstances the proper construction of the terms of the compromise would be that the maintenance charge was intended to be kept alive for the benefit of the family only and not for the benefit of the strangers or assigns or persons who may take it as legatees from one of the members of the family. In all these circumstances it appears that the decision of the learned District Judge is correct. The appeal therefore fails and is dismissed with costs.