

## **Mewa Ram And Ors. vs Deo Prakash Minor Through Mst. ... on 16 July, 1954**

**Equivalent citations: AIR1954ALL770, AIR 1954 ALLAHABAD 770**

### **JUDGMENT**

Malik, C.J.

1. This appeal raises rather an interesting question though, on a careful examination, it is clear that the decision of the learned single Judge was right and that the points raised have no substance.

There was a decree obtained by one Chheda Lal against Muktal for unpaid purchase money by enforcement of the unpaid purchaser's lien. This decree was in suit No. 47 of 1926.

Muktal purchased a  $\frac{1}{54}$ th share in village Pohenal from Chheda Lal on 16-2-1925, for Rs. 1,000/-. He paid Rs. 450/- in cash but the balance had remained unpaid. It was for the balance that the decree was obtained on 28-1-1927.

The decree was then put under execution and  $\frac{1}{54}$ th share that had been purchased was sold by auction. For the balance remaining unpaid a personal decree under Order 34, Rule 6 was obtained on 22-6-1931.

In between these dates on 9-3-1928, Muktal had made a gift of a  $\frac{1}{54}$ th share (not the share that he had purchased from Chheda Lal) to his daughter's son, Murari Lal. The fact that the  $\frac{1}{54}$ th share gifted was other than the  $\frac{1}{54}$ th share purchased from Chheda Lal was specifically mentioned in the gift-deed. Murari Lal, instead of getting his name mutated over that  $\frac{1}{54}$ th share, got his name mutated over the whole of the  $\frac{1}{27}$ th share i.e., the  $\frac{1}{54}$ th that Muktal had purchased from Chheda Lal and the  $\frac{1}{54}$ th that Muktal owned from before and which he had gifted to Murari Lal.

Muktal then died and Chheda Lal, in execution of his decree, attached the  $\frac{1}{54}$ th share in the hands of Murari Lal on the allegation that the gift-deed executed by Muktal in favour of Murari Lal was a fictitious document. Murari Lal filed objections under Order 21, Rule 58, Civil P. C., when the property was attached, but those objections were dismissed on 29-7-1937, on the ground that the gift-deed was a fictitious document. Murari Lal did not file any suit within one year, as required under Order 21, Rule 63 and the order under Order 21, Rule 58 thus became final. But somehow the decree-holder did nothing further and did not proceed to sell up the property. Murari Lal died in 1941. He was succeeded by his son, Deo Prakash, who continued to remain in possession of the entire  $\frac{1}{27}$ th share.

Deo Prakash filed suit No. 149 of 1942 in the revenue Court claiming profits of the 1/27th share and Chheda Lal was impleaded in the suit as a defendant as he was the owner of another share in the village. Chheda Lal filed an objection that he was the owner by purchase of a 1/54 share in execution of a decree against Muktal in May, 1929, and that as regards the other 1/54 share the gift-deed executed by Muktal in favour of Murari Lal was fictitious. An issue was remitted to the civil Court on the question of title and the civil Court held in favour of Deo Prakash that he was the owner of 1/27th share in the property. On the finding having been returned to the revenue Court, that Court decreed Deo Prakash's suit.

2. The original decree-holder Chheda Lal having died in the meantime, his sons, Mewa Ram and another, on 27-2-1944, put the decree under Order 34, Rule 6 in suit No. 47 of 1920 in execution and attached the decree in suit No. 149 of 1942. Various objections were raised. The trial Court decided against Deo Prakash.

The lower appellate Court on appeal held that the decision in suit No. 149 of 1942 that the deed of gift was a valid document and Deo Prakash was the owner of 1/27th share operated as 'res judicata'. A new plea was raised before it that Murari Lal, as a universal donee, was liable to pay the decretal amount. On the question, whether Murari Lal was or was not a universal donee, an issue was remitted and the trial Court held that he was not a universal donee.

After the finding was returned, however, the lower Court, which was by that time presided over by another officer, came to the conclusion that the decree in suit No. 149 of 1942 was not 'res judicata', that the gift-deed was fictitious and that Murari Lal was a universal donee inasmuch as though he had not got the entire property under the deed of gift dated 9-3-1928, he must have got the rest of the property of Muktal under some oral gift.

3. On a second appeal to this Court, a learned single Judge of this Court set aside the order of the lower appellate Court and allowed the appeal of Deo Prakash. He held that Murari Lal was not a universal donee, that the decree in suit No. 149 of 1942 operated as 'res judicata' and the question, therefore, could not be gone into whether the gift-deed was or was not a fictitious document.

4. This Letters Patent Appeal was filed against that decision. On the question whether Murari Lal was a universal donee, learned counsel has not been able to challenge the judgment of the learned single Judge. Under the deed of gift, Muktal gifted to Murari Lal a 1/54th share of the property and he remained owner of the 1/54th share that he had purchased. The fact that Murari Lal got his name mutated over the entire 1/27th share would not make Murari Lal A universal donee. Learned counsel has, therefore, not challenged this finding.

5. On the question of 'res judicata' learned counsel has urged that the order under Order 21, Rule 58 dated 29-7-1937, being in these very proceedings, it was binding on the parties and no question of 'res judicata' arose and it could not, therefore, be said that the gift-deed was not fictitious and was not binding on Murari Lal. The proceedings under Order 21, Rule 58 were as much separate proceedings as the suit No. 149 of 1942. Order 21, Rule 58 provides that:

"Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit."

6. In case Murari Lal had filed a suit under Order 21, K. 63 and that suit had failed with the result that it had been finally decided that the gift-deed was fictitious and in spite of that decree, a competent Court had subsequently held 'inter partes' that the gift-deed was valid, the decision subsequent in date would operate as 'res judicata' and not the previous one, if the other conditions of Section 11, Civil P. C., were fulfilled.

7. There is, therefore, no force in this appeal and it is dismissed with costs.