

(1895) 06 CAL CK 0015
In the Calcutta High Court

Abilakh Bhagat and Others

APPELLANT

Vs

Bhekhi Mahto and Another

RESPONDENT

Date of Decision : 25-06-1895

Acts Referred:

Citation : (1895) ILR (Cal) 864

Hon'ble Judges : Prinsep, J; Ghose, J

Bench : Division Bench

Judgement

Ghose, J.—The facts out of which this appeal arise are shortly these : One Chuturee Bhagat died, leaving two sons, Ram Sahye and Sheo Sahye, who succeeded to his estate; and there is no question in this case that they held separately the properties inherited by them. Subsequently, in or about the year 1838, Ram Sahye became insane. He left three sons, Abilakh, Dukhit and Dilchand. The last died without any issue, and the surviving sons had each two sons, Jugdeo and Denonath (sons of Abilakh), Again and Brijbehari (sons of Dukhit).

2. In the year 1871, Jugdeo and Again were appointed to be Ram Sahye's committee in lunacy under the provisions of Act XXXV of 1858; and these two persons, with the sanction of the Judge previously obtained, mortgaged the property in. suit in favour of the defendant. This mortgage does not appear to have been executed in their own behalf, but on behalf of the lunatic only; but however that may be, the mortgagee sued them on the mortgage, and a decree was obtained in 1882 against them both in their own capacity and as guardians of their grandfather. And in execution of this decree, the mortgaged property was brought to sale and purchased by the defendant in July 1885.

3. The present suit was instituted in 1891 by the sons and grandsons of Earn Sahye, and their respective wives; and the object of their suit was to have it declared that Ram Sahye, by reason of insanity, had no right in the property, and that the sale in July 1885 passed no title to the defendants. And among other matters it was alleged in the plaint that Abilakh and Dukhit, the two sons of Earn

Sahye, divided between themselves the whole of the paternal estate of Ram. Sahye and entered into possession of their respective shares.

4. It has been found by both the Courts below that at the time when the succession opened out to Ram Sahye, he was not insane, and that the insanity occurred after the estate had vested in him; that there was no partition of the estate between the two sons of Ram Sahye, and that the debt contracted under the mortgage was for the benefit of the joint family. And the lower Courts have held that the estate having once legally vested in Ram Sahye, he could not be divested of it by reason of subsequent insanity; that the sale in question rightfully passed the property in suit to the defendants; and that neither the sons nor the grandsons of Ram Sahye, nor their respective wives, were in a position to question this sale.

5. On second appeal to this Court, it has been broadly contended on behalf of the plaintiff's that, upon the happening of insanity, Ram Sahye became disentitled to the property, and that therefore the sale in question passed no title to the defendants. It has been further argued that the loan having been contracted on behalf of Earn Sahye only, and not on behalf of the family, the decree could not bind the joint family property, and that, therefore, the sale was ineffectual; and further, that, though the father Ram Sahye could bind the sons and grandsons by any debt contracted by him, not being of an immoral character, that right was personal to himself and not in his committee in lunacy.

6. The only authorities for the broad contention of the appellants that the learned Vakil on his behalf relied upon in the course of his argument are two decisions of a Divisional Bench of this Court-Ram Sahye Bhukkut v. Lalla Lahee Sahye ILR Cal. 149 and Ram Soonder Roy v. Ram Sahye Bhugut ILR Cal. 919 and the Mitakshara, chapter XII, Section 10, vv. 1 to 6.

7. Both the cases quoted related to this family. In the first mentioned case, Ram Sahye, or rather his committee, sued to recover possession of certain property which had passed to the defendants under a sale in execution of a decree for mesne profits passed against the sons of Ram Sahye and Sheo Sahye consequent upon a mortgage executed by them. This Court on a consideration of the Mitakshara, chapter II, Section 10, vv. 1, 3 and 6 held that an insane person loses his right to a share on partition of the family property, and that no decree for recovery of the property could be passed in favour of Ram Sahye which would contemplate a partition between himself and the purchasers of the interest of his co-parceners (i. e., his sons); and they accordingly dismissed the suit. At the same time, they expressed the opinion that the position assumed in the mortgage executed by the sons that by reason of insanity Ram Sahye was disqualified from claiming the property, could not "probably" be maintained and "that he was still the owner of the property."

8. In the other case, the committee of Ram Sahye similarly sued for recovery of a certain share in a property which had been alienated by one of his sons. This

Court followed the earlier case, and, upon a consideration of the Mitakshara, held that, inasmuch as on a partition between the plaintiff and his sons he would not get any share, and his sons would receive the whole property, and inasmuch as the rights of the sons had been extinguished under the law of limitation, Ram Sahye could not maintain the suit for the purpose of restoring it to the joint family.

9. It seems to us that these two cases do not support the broad contention of the appellant that upon the happening of insanity, Ram Sahye became disentitled to the property. They do not go any further than to hold that upon the event of a partition taking place, the insane father would not get any share, but that the whole property would be received by the sons. On the other hand, it will be observed that this Court in the first mentioned case practically affirmed the principle laid down in the case of *Balgobinda v. Lal Bahadur S.D.A.* 1854, p. 244 which was to the effect that, under the Hindu law, though an insane person cannot succeed to the inheritance of property, a person who has once succeeded to property cannot be dispossessed of it if he subsequently becomes insane. The same view was adopted by a Full Bench of the Allahabad High Court in *Deokishen v. Budhprakash* ILR All. 509, and it was held that when property has once vested by succession in a person, his subsequent insanity will not be a ground for its resumption. To the same effect is the case of *Sanku v. Puttamma* ILR Mad. 289 decided by the Madras High Court. The principle which underlies these cases is practically the same which was expounded by the Judicial Committee in the well known case of *Moniram Kolita v. Kery Kolutani* ILR Cal. 776 : IL.R. .ALL. 115.

10. As to the argument based upon the Mitakshara itself, we think it is equally untenable. We do not think that the rules laid down in it go any further than the two decisions of this Court already referred to, nor do we consider that the fact of Section 10, chapter II of the Mitakshara, being headed "on exclusion from inheritance" in any way indicates, as it was argued before us, that the author meant to lay it down that if a person after he has inherited a property becomes insane, he should be excluded from, or deprived of it. On the contrary, the last portion of verse 6 shows that it could not be so. It says, but one already separated from his co-heirs is not deprived of his allotment." To the same effect is a text of *Viramitrodaya*, chapter VIII, verse 4, which runs as follows: "The exclusion again of these takes place if their disqualification occur previously to partition (or succession); but not also if subsequently to partition (or succession), for there is no authority for the resumption of allotted shares." (Babu Golap Chandra Sarkar's Translation).

11. We may take it, therefore, that the property having once vested in Earn Sanyo under the law of inheritance, it remained with him notwithstanding his subsequent insanity, there being no partition between himself and his sons and grandsons. The question we have then to consider is whether the defendant acquired a good title to the property under the sale held in execution of the mortgage decree, to which we have already referred.

12. The mortgage does not purport to be expressly on behalf of the whole family but it was given on behalf of the father and head of the family under the sanction of the District Judge previously obtained under the provisions of Act XXXV of 1858; and it has been found that this was for the benefit of the whole family. The decree that was obtained by the mortgagee was, as has already been mentioned, against Jugdeo and Agam, both in their capacity of committee to the lunatic and in their personal capacity. The decree was passed upon confession of judgment, and this indicates that Jugdeo and Agam meant to execute the mortgage, not simply as committee of the lunatic, but as members of the family. And the debt having been contracted for the benefit of the whole family, we are of opinion that the whole family was bound by the mortgage and the decree obtained thereupon, and that at the sale which took place the entire property passed to the defendant. We do not feel pressed by the argument that the committee of the lunatic could not bind the whole family, for the act of the committee, with the sanction of the Judge, may well be regarded as the act of the father and head of the family; and the debt having been contracted for the benefit of the family, it seems to be clear enough that it is binding upon all.

13. Upon all these grounds we are of opinion that this appeal should be dismissed with costs.

Prinsep, J.

14. I agree in the judgment delivered by my learned colleague that the plaintiffs are bound by the mortgage which has been found to be on account of debts contracted by the father and grandfather of the male plaintiff, accepted by the manager of the family and sanctioned by the District Judge on behalf of the former, while the female plaintiffs have no right to contest the matter; but I desire to add that I have doubts as to the correctness of the law laid down in the cases cited ILR Cal. 149, and again in p 919, for I am inclined to doubt whether, as there held, an estate having once vested in Ram Sahye as a member of a joint Hindu family he can be deprived of his rights in it, because at the time of the determination of his specific right, title and interest by partition he happened to be a lunatic.

15. It is, however, unnecessary for the purposes of this appeal to determine this point, because the decision of this suit can be properly arrived at otherwise.

16. The two appeals are dismissed with costs.