

(1878) 11 CAL CK 0011
In the Calcutta High Court

Alukmonee Dabee

APPELLANT

Vs

Banee Madhub Chuckerbutty and Another

RESPONDENT

Date of Decision : 22-11-1878

Acts Referred:

Citation : (1879) ILR (Cal) 677

Hon'ble Judges : White, J;Mitter, J

Bench : Division Bench

Judgement

White J.

1. Several questions have been raised by the appellant in this case, but, for the purposes of this appeal, it is only necessary to express our opinion on one of them, which is whether Kali Kumar Chuckerbutty, as the purchaser under a sale in execution of a decree to which I shall presently refer, acquired the interest of Dinobundhu Roy and Bepin Roy, the minor sons and heirs of one Anundmohun Roy, their deceased father, in the three-anna twelve anna share of the jalkar mehal, which is the subject of the suit; for, if the respondents did not acquire their interest, we think that the present suit must fail, notwithstanding that all the other questions raised by the appellant are determined in favour of the respondents. (After stating the facts of the case as above, and finding that the respondent had all along been in actual possession, and that neither Kali Kumar nor his representative had taken any proceedings to obtain actual possession from the Court in charge of the execution of the decree, the learned Judge continued).--Upon this state of facts, it is contended on behalf of the respondents that the decree of 1859 was really a decree against the appellant as representing her minor sons, and that the interest in the jalkar, which was sold in execution of the decree, was in fact that of her infant sons.

2. In support of this contention, several cases have been cited for the respondents, but we need only consider the one which is admitted to be the most favourable to their view--the case of Ishan Chunder Mitter v. Buksh Ali Saudagar (Marshall's Rep., 614). We have had that case discussed in great detail

by the respective counsel and vakils of the parties, but it appears to us that it differs in a most material particular from the case now before us.

3. In *Ishan Chunder Mitter v. Buksh Ali Soudagar* (Marshall's Rep., 614), the plaintiff sought to recover certain property which he inherited from his father, but which had been sold during his minority for a debt of his father under a decree obtained against his mother. It cannot be clearly collected from the report of the case (Marshall's Rep., 614), how the mother was described in that suit, whether as mother and guardian of her minor son, or simply as his mother; nor how the mother was described in the decree, whether simply as defendant, or how otherwise? It is clear, however, that the debt upon which the decree proceeded was expressly stated in the decree to be the bond-debt of Juggomohun, deceased, who was the father of the minor and the husband of his mother. That important circumstance appears to us to furnish the solid ground upon which the decision in Marshall's Reports rests. This is shown by what the Court says, after alluding to the facts of the case,--"if the parties who went to the auction had referred to the decree, they would have found that the debt for which the sale was to take place was not the widow's but Juggomohun's, and that the property to be sold under the decree was not the widow's but Juggomohun's, because Juggomohun was really the debtor, and the widow was sued merely in her representative character". And again, at the close of the judgment, the Court says--"Looking, therefore, to the advertisement of sale, which referred to the decree, we think it is perfectly clear that it was intended to sell the right and interests of Juggomohun's representatives". In the case before us, no advertisement of sale has been put in evidence, but taking it that the perwana correctly represents the interest advertised to be sold as that of the debtor, a reference to the decree would not show to an intending purchaser that the suit was in respect of a bond of the appellant's husband, or that he was the real debtor. On the contrary, the description of the debt in the decree being simply that of a bond, and the decree passing against the appellant as "defendant" upon that bond, the reasonable and legitimate inference is that it was the bond of the appellant. The intending purchaser would not, therefore, from anything that appears in the body of the decree, be justified in concluding that Anundmohun, the appellant's husband, was the real debtor, or that the interest in the jalkar put up for sale was that of Anundmohun's infant sons.

4. It has been argued, however, that, although the bond is not stated on the face of the decree to be that of the appellant's "deceased husband", yet the description of the appellant in the heading of the decree as "the widow of Anundmohun and the mother of Dinobundhu and Bepin, minors", sufficiently showed that the bond-debt, upon which the decree proceeded was a debt of her deceased husband. We think that it would be too strong an inference to draw from that description alone that the bond-debt was the husband's or one for which his minor sons were liable.

5. No authority has been cited which supports the respondent's contention in

this respect, and it would in our opinion be pushing the doctrine contained in *Ishan Chunder Mitter v. Buksh Ali Soudagar* (Marshall's Rep., 614) to an unwarrantable length if we were to decide in accordance with that contention.

6. It has further been argued that Kali Kumar, being both the plaintiff in the suit and the purchaser at the auction-sale, and, therefore, fully aware that the debt for which the decree passed was a debt of Anundmohun, and also aware that the appellant had at the time of the sale no interest in the property except as representing her minor sons, must have intended, when he paid his Rs. 100, to purchase the rights of the minor sons in this jalkar. It may be that he so intended, and most probably he did so intend, but we cannot base a judgment upon Kali Kumar's intentions, however highly probable they may be; we must decide the question before us upon the documents which would properly come to the notice of a purchaser, who had not Kali Kumar's special means of knowledge; and we must have regard to the inferences which such a purchaser might; reasonably and legitimately draw from the documents.

7. These documents are the decree and the advertisement of sale, or the recital of the latter in the perwana which, for the purposes of our decision, we have treated as equivalent to the advertisement of sale.

8. Lastly, it is contended that, inasmuch as since the sale the appellant has inherited the jalkar from her sons, the respondents ought to succeed in this suit. The respondents did not attempt to show that the contingent interest, which the appellant had in the jalkar, in the event of both her sons dying without leaving issue or widows, was an interest of such a nature as could be attached or sold under a decree, but they sought to establish their point by applying to the facts of the present case the well-known doctrine that, where a party sells property of which he is not the owner, but afterwards becomes the owner, he is bound to make good the sale out of his subsequently acquired interest.

9. But that doctrine has no application to the present case, where the sale was compulsory, being made through the Court at the instance of an execution-creditor.

10. Our opinion, therefore, being adverse to the respondents on the main question involved in the suit, it is unnecessary to determine the other points raised on behalf of the appellant.

11. The result is that this appeal will be allowed with costs, and that the decree of the lower Court will be reversed. Appellant will also have her costs in that Court.