
(1909) 11 AHC CK 0011
In the Allahabad High Court

Beti Maha Lachmi Bai

APPELLANT

Vs

Raja Bahadur and Others

RESPONDENT

Date of Decision : 30-11-1909

Acts Referred:

Citation : 4 Ind. Cas. 394

Hon'ble Judges : John Stanley, C.J.; Banerji, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal arises out of a suit for foreclosure of a mortgage made on the 30th of June, 1900, for one lakh of rupees by two brothers, Raja Bahadur and Jang Bahadur. The defendants are the two mortgagors Raja Bahadur and Jang Bahadur and the three sons of Jang Bahadur. The suit was defended by the sons of Jang Bahadur on the ground that the debt was not incurred for family necessity but that it was incurred for immoral purposes. In the third paragraph of their written statement they alleged that Raja Bahadur and Jang Bahadur were spendthrifts, debauchers, drunkards and imprudent men and that they have squandered all the ancestral household property of the family. In the fourth paragraph they say that of the debts stated in the document sued on as having been paid some are fictitious and have no existence at all. Then they go on to state that "if any debts are actually proved their amounts must have been improperly spent by, Raja Bahadur and Jang Bahadur or must have been paid to defray the expenses of their drink and debauchery."

2. They further state that no part of the debts mentioned in the bond sued on was paid on account of family expenses and that the defendants, the sons of Jang Bahadur, were not benefited thereby and are not liable. We may observe that the mortgage-deed, on which the claim is founded, recites the various debts which are alleged to have been antecedent debts discharged out of the amount secured by it and only two sums amounting to Rs. 5,491-11-11 are alleged to have been paid in cash to the mortgagors at the time of the mortgage. The Court

below has found that Raja Bahadur was not a person addicted to immorality but as regards Jang Bahadur the learned Subordinate Judge was of opinion that he led an immoral life that he was addicted to gambling and drinking and that most of the money which he borrowed from 1892 to 1895 was required to satisfy his immoral propensities and his craving for liquor and gambling. With the exception of a sum of Rs. 23,044-12-6 and another sum of Rs. 2,101-12-6 which he holds were debts incurred for family necessity, he was of opinion that the minor sons of Jang Bahadur were not liable for any of the other debts. He has accordingly made a decree declaring the minor sons to be liable for one-third of the amounts stated above and he has directed foreclosure of their one-third share in the event of their failing to pay a third of the amounts aforesaid. As against the mortgagors he has made a decree for foreclosure in respect of the whole of the amounts borrowed. The decree we notice is very carelessly drawn. In the opening part of it, it declares all the defendants to be liable and directs all of them to pay the amount due upon the mortgage in suit and orders foreclosure of the whole of the property mortgaged in the event of the said amount not being paid. But lower down there is a direction for payment of one-third of the two items mentioned above by the sons of Jang Bahadur.

3. The plaintiff has preferred this appeal and it is contended on his behalf that the Court below was wrong in holding that from the mere fact of Jang Bahadur being a man of immoral habits it may be reasonably presumed that the debt in question was incurred for immoral purposes. It is urged on his behalf that the whole amount borrowed was taken with the exception of Rs. 5,491-11-11 to pay off antecedent debts which were properly incurred and for which the minor defendants, the sons of Jang Bahadur, were liable equally with their father. The mortgage bond in favour of the plaintiff sets forth the various items of debts which were discharged by the plaintiff out of the amount secured by the bond. The first item is a sum of Rs. 55,175-14-9 paid to the Allahabad Bank in discharge of a mortgage decree and of a simple decree for money. As regards the amount due to the Bank on foot of these decrees there is no evidence to show that it was borrowed for purposes of immorality. On the contrary it appears that Raja Bahadur and Jang Bahadur were carrying on business as commission agents and they borrowed Rs. 25,000 from the Bank on the 13th of April, 1892, for the purposes of their business. It was what is called a cash credit bond and the amount secured by it was drawn from time to time as occasion arose for the purposes of the business carried on by the two mortgagors.

4. As regards the amount of the simple money-decree there is nothing to show that the debt in respect of which it was passed was incurred for any immoral purpose. As regards the second item mentioned in the mortgage-deed namely Rs. 26,305-14-1, this, as we have said above, has been held by the Court below to be binding on the minors with the exception of a small sum of about Rs. 1,000. The learned Subordinate Judge has not explained the reason for disallowing this small sum and we fail to find any reason which justifies his action. There were decrees in favour of Lakshmi Bai and the amount was paid in

discharge of those decrees. The next item is one of Rs. 5,000 and it has been fully proved that this sum was paid to Harnand Rai Phulchand and to Sri Nath and Shanker Nath on account of moneys borrowed from them by the mortgagors with the exception of Rs. 525 which was paid to Jang Bahadur in cash. The next item is one of Rs. 8,026-7-3 for which Rani Kishori held a money decree against the mortgagors. There is no evidence whatever to prove that any of these debts was incurred for purposes of immorality. The learned Advocate for the respondent whilst conceding that there is no evidence to prove that any one of these debts was incurred for immoral purposes contends that from the fact that Jang Bahadur was a man of immoral habits it may be presumed that he incurred the debts for purposes of immorality. He urges that Jang Bahadur had abundant means to satisfy all his legal requirements and that the debts were the result of his extravagance and immorality. We are unable to agree with him that the mere fact of one of the mortgagors being a person of immoral habits would raise any inference connecting the particular debts incurred by him with his immoral conduct. It has been repeatedly held that some connection must be shown between the debt and the father's immorality. All that the defendants have attempted to prove in this case is that Jang Bahadur, the father of the minor defendants, was a debaucher, a gambler and a man given to drink but as has been conceded on behalf of the respondents there is no evidence what ever to connect the debts with the immorality of Jang Bahadur. On the contrary the nature of the debts, the dates at which they were incurred and the previous transaction to which they relate clearly indicate that they were not debts incurred for immoral purposes. The decree obtained by Lakshmi Bai which was discharged by the plaintiff was a decree in a suit in which the minor sons of Jang Bahadur then in existence were made parties. In that suit no plea of immorality was raised. In the present suit, as we have pointed out above, it was not stated in the written statement that any of the debts discharged by the plaintiff was actually incurred for immoral purposes. All that the defendants allege is a general charge of immorality and they say that the debts must have been incurred to defray the expenses of drink and debauchery. We are, therefore, unable to agree with the conclusions at which the learned Subordinate Judge arrived. As regards the items paid in cash the sum of Rs. 491-11-11 has been proved by the witness Babu Ram to have been taken for the purchase of a stamp paper for the bond in suit. The sum of Rs. 5,000 which was paid in cash in the presence of the Sub-Registrar has also been proved by Babu Ram to have been taken to carry on the business of the defendants' Indigo Factory. So that it is clear that these items were taken for the necessities of the joint family of which the mortgagors and their sons are members. The debt is, therefore, one for which the whole of the joint family property mortgaged by Raja Bahadur and Jang Bahadur is liable and the decree in favour of the plaintiff should have been a decree for foreclosure of the whole of that property. We may point out that the learned Subordinate Judge was clearly wrong in directing that the minor sons should pay only one-third of the amount which he found to be an antecedent debt for which the family was liable. For the whole of that debt the family property could be validly mortgaged

and the mortgage would be binding on the members of the family.

5. The result is that we allow the appeal, vary the decree of the Court below and decree the plaintiffs' claim in full with interest at the contractual rate up to the date of payment and costs in both Courts including in this Court fees on the higher scale. We fix the 31st of May, 1910, as the date on or before which the amount found to be due shall be paid.