

(1914) 08 BOM CK 0027
In the Bombay High Court

Bhagwat Bhaskar Koranne

APPELLANT

Vs

Nivratti Sakharam Bhadule and Others

RESPONDENT

Date of Decision : 20-08-1914

Acts Referred:

Citation : (1915) ILR (Bom) 113

Hon'ble Judges : Hayward, J;Beaman, J

Bench : Division Bench

Judgement

Beaman, J.—The material facts are that in 1869 Appa, the original owner of this property, sold it to Ramchandra and Ramchandra passed a contemporaneous agreement, Exhibit 87, in the case, under which he agreed that if the vendor Appa paid him Rs. 100 every year for six years he would reconvey the land. So matters stood till after the death of Ramchandra. His son Dattatraya was sued in 1883 by the representatives in interest of the original owner Appa. The suit took the form of a redemption suit, because had it been upon the agreement, merely as an agreement, it is obvious that it would have been time-barred. Dattatraya resisted this suit. His written statement shows that he denied that the agreement had been complied with or could now be enforced, and at the same time alleged that the transaction was not a mortgage. The defence succeeded and the suit was dismissed.

2. In 1894 after the death of Dattatraya, Jankibai, who as a widow of Ramchandra and mother of the last male holder Dattatraya was in life enjoyment of the estate, was again sued by the representatives in interest of Appa for the redemption of this mortgage. The suit again failed on the very obvious ground that the claim was res judicata.

3. Immediately after this the widow Jankibai appears to have entered into what is called a compromise before the conciliator and allowed a consent-decree against herself for the sale of this land to the representatives of Appa for the sum of Rs. 650. It is this transaction which the plaintiff, who is the reversioner of Dattatraya's estate, seeks to have set aside.

4. The learned Judge of first appeal relying upon a current of authority, the effect of which simply is, that a Hindu widow is under a pious obligation to pay her deceased husband's debts, even though they may be time-barred, held, by what we suppose he meant to be a parity of reasoning, that the widow Jankibai here was under the pious obligation to do for the last holder of the estate what he had emphatically declined to do for himself. Now none of the authorities cited by the learned Judge in support of his proposition has the least bearing upon the facts we have to deal with nor is there any true analogy between the principle underlying those cases and any principle which could be applied here. Put upon purely ethical, not legal ground, the reasoning of those cases is clear. The Courts have held that a widow is entitled to sell part of the ancestral Immovable property to discharge the just debts of her husband even though those debts might be time-barred, and this is based doubtless upon the moral duty of discharging the debts of her husband; and again on the assumption that had the husband lived he would as a moral and upright man have discharged them himself. In not one of those cases is to be found the slightest indication that the deceased husband had ever repudiated the debts before his death which the widow paid after his death.

5. The case here is, therefore, totally different upon moral principle as well as upon its own facts. There is no question of any debt here at all; nor could it be seriously contended that in acting, as she did, the widow was doing what the last male holder would have done had he been alive, "nor can we say that there was the least moral obligation, upon the widow to restore" this property to the representatives in interest of Appa upon payment of the sum for which it had been sold in the year 1869. That, as soon as the terms of the agreement were exhausted, has been held by the Courts to have been an out and out sale. That was the view which Battatraya himself took of the transaction when he successfully resisted the attempt of the representatives in interest of Appa to redeem the property; and if that were so, we are unable to see that the bargain was originally an unfair one or that the last male holder Dattatraya was acting in any way dishonestly in insisting upon adhering strictly to the conditions of the original bargain. So that we are unable to find here the slightest ground for applying the principle upon which alone the learned Judge below appears to have thought that this alienation by the widow was justifiable and ought to be sustained against the reversioner.

6. It has never been contended that there was any legal necessity for this sale in the ordinary sense of those words; and but for a general expression used in the case of *Chimnaji Govind Godbole v. Dinkar Dhondev Godbole* (1886) 11 Bom. 320 that a widow may deal with the property finally, provided that she is dealing fairly by the expectant heirs, we do not think that the learned Judge would have been misled into the line of reasoning which he has finally adopted. A general expression of that kind can hardly take the place of the settled principles upon which the law governing this class of cases has long been established. Such terms as "dealing fairly by the expectant reversioners" are much too, loose and

general, in our opinion to be made the ground of law governing the widow's powers of disposition during her life-time, of ancestral Immovable property. The only solid ground upon which such alienations are justified and made good against reversioners will be found on analysis in every case to be what is known as legal necessity. Here there is nothing in the least like legal necessity. We are therefore forced to the conclusion that the learned Judge below who has, we think, written a very able and careful judgment has nevertheless entirely misconceived the law, and has, therefore, misapplied it to the facts of the case before him.

7. We must, therefore, reverse his decision on issue No. 1 and remand the case to the learned Judge below to dispose of upon the remaining points awaiting his decision in the light of the foregoing remarks. In doing so we must observe that the case of the 6th defendant has not been dealt with in the Court of first appeal. The learned Judge should inquire into and decide upon the alleged legal necessity of the mortgage under which the defendant No. 6 claims to hold the property from the widow Jankibai. Costs will abide the final result.