
(1938) 04 PAT CK 0001

In the Patna High Court

Bindeshwari Prasad

APPELLANT

Vs

Shiva Sutt Singh and Others

RESPONDENT

Date of Decision : 01-04-1938

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 26
Co-operative Societies Act, 1912 — Section 42

Citation : AIR 1938 Patna 315

Hon'ble Judges : Courtney-Terrell, C.J;James, J;Fazl Ali, J

Bench : Full Bench

Judgement

Fazl Ali, J.—These appeals arise out of a suit instituted by seven out of eight members of a Hindu joint family (the eighth member being defendant 2 in the suit) under the following circumstances.

2. In village Rajpur where the plaintiffs and defendant 2 reside there was a Co-operative Society established under the Co-operative Societies Act of 1912 which consisted of about 251 members including Lachhmi Narain Singh, defendant 2. Lachhmi Narain, to use the words of the Subordinate Judge who has tried the suit, occupied a unique position in this organization, because he was at once the Secretary of the Society and the Guarantee Union, a Director of the Central Co-operative Bank and a member of the managing committee of the Bank. He had thus no difficulty in securing large loans for his own family from the Society with the result that its course of time the Society became indebted to the Central Cooperative Bank to the extent of Rs. 34,922 and as it could not repay the debt, the Registrar had to cancel its registration in 1927 and place it in the hands of a liquidator. Defendant 1 who was appointed the liquidator of the Society then proceeded to determine the contribution to be made by the various members of the Society u/s 42, Co-operative Societies Act, and fixed the liability of Lachhmi Narain at Rs. 20,510-5-9. The order of the liquidator which is on the record shows that Lachhmi Narain owed to the Society Rs. 18,645-12-2 and to this was added a comparatively small sum of Rs. 1800 as the cost of liquidation. The liability of the other twenty-four members who had to contribute among

themselves a little less than Rs. 16,000 was also fixed on the same principle. The figures quoted above are sufficient to indicate that the downfall of the Society was due largely to the continued borrowings of Lachhmi and a further example of his unscrupulous conduct is furnished by the fact that he subsequently made away with the papers of the Society and did not return them to the Liquidator until after a criminal prosecution had been started against him.

3. The Liquidator's contribution order being approved by the Registrar, the latter submitted a requisition to the Certificate Officer of Gaya for realising Rs. 20, 510 odd from Lachhmi Narain through certificate proceedings under the Public Demands Recovery Act. The certificate was duly issued but when the Certificate Officer proceeded to execute the certificate by the sale of certain properties belonging to Lachhmi Narain and other members of his family, defendants 2 and 3, two brothers of Lachhmi Narain, came forward and objected to the sale on the ground that the properties sought to be sold belonged to the entire joint family and could not be sold in execution of a certificate against Lachhmi Narain alone. This objection was upheld by the Certificate Officer and the Collector, but the Commissioner to whom the matter was taken in revision directed the Certificate Officer to enquire whether Lachhmi Narain was a member of the Rajpur Co-operative Society in his personal capacity or as karta or representative of the joint family composed of himself, his father, brothers and sons. The Certificate Officer after considering the evidence adduced before him, which included the evidence of plaintiff 1 father of Lachhmi Narain, found that Lachhmi Narain represented the family and had borrowed money in that capacity from the Society for family purposes. This finding was accepted by the Commissioner and he dismissed the objection of Lachhmi Narain's brothers on 18th February 1931. Sometime later a similar objection was preferred before the Certificate Officer by Shiva Dutt, father of Lachhmi Narain and the other plaintiffs namely two brothers and four sons of Lachhmi Narain but it was rejected by the Certificate Officer on 29th June 1931.

4. The present suit was instituted by the plaintiffs on 30th June 1932 in which they asked for the following reliefs:

- (1) A declaration that the right, title and interest of the plaintiffs in the properties mentioned in the schedule to the plaint were not liable for the contribution money levied from defendant 2 and that they were fit to be released from sale.
- (2) A permanent injunction restraining defendant 1 from proceeding against the right, title and interest of the plaintiffs in the joint family properties and getting them sold in the execution of the contribution order against defendant 2.

5. The Liquidator who was defendant 1 in the suit contested it on the same grounds, on which he had contested the objection, preferred by the plaintiffs in the course of the certificate proceedings and after framing several issues the learned Subordinate Judge who tried the suit held (1) that. Lachhmi Narain was not the karta of the family and he became a member of the Society not in his representative capacity; but in his individual capacity, (2) that out of the total

principal sum of Rs. 12,878 borrowed by Lachhmi Narain from the Society a sum of Rs. 8800 had been borrowed by him for family necessity. Having arrived at these conclusions, the learned Subordinate Judge declared that the right, title and interest of the plaintiffs Were liable only to the extent of Rs. 8800 but he disallowed the plaintiffs' prayer for a permanent injunction on the ground that the properties which were the subject-matter of the suit had in any event to be sold as; the plaintiffs were liable to repay Rs. 8800.

6. The plaintiffs as well as the Liquidator have now appealed against the decision of the Subordinate Judge. The Liquidator's contention is that the plaintiffs' suit should have been wholly dismissed, whereas the plaintiffs contend that the suit should have, been decreed in full.

7. It appears that the principal point of controversy between the parties both in the Certificate Court and in the Court below was whether Lachhmi Narain became a. member of the Society in his individual capacity or as a representative of the joint family to which he belongs. Now as the bye-laws of the Society do not expressly state that the membership of the Society is open to a joint family, it was somewhat strenuously contended on behalf of the plaintiffs that under these bye-laws a joint, family can in no event become a member of the Society. This contention however; appears to us to be untenable, because there is also no provision in the bye-laws to preclude a joint family from becoming a member of the Society through one of its members and indeed if the contention is upheld, the very object with which the Co-operative Societies have been started in this part of the country where the majority of the population consists of Hindu joint families will be frustrated. It must however be pointed out that a good deal of unnecessary litigation may be avoided, if the Co-operative Societies functioning in this province insert in their bye-laws an express provision that a Hindu joint family may join a Society through one of its members chosen by all the other adult members of the family and that loans to such a family will be granted only on clear and complete proof that the money is required for some legal necessity of the family.

8. Coming now to the facts of the present case, there appears to be ample evidence here to support the conclusion that Lachhmi Narain joined the Society in a representative capacity with the consent of all the adult members of his family, though he may not have been the karta of his family for general purposes. Ali Raza (D.W. 1) an officer of the Co-operative department stated definitely that he was a member on behalf of his whole family and the statement of this witness seems to be based on his personal knowledge, because he has deposed that before enquiring into the fitness of Lachhmi Narain to become a member of the Society he had conversations with the other members of his family about him. It is also to be borne in mind that the Society was located in a house which is admittedly the common residence of all the plaintiffs and the properties mentioned in the Haisiat Register describing the means of Lachhmi Narain Singh are admittedly joint family properties, there being no reference in

the register to the undivided share of Lachhmi Narain in the properties mentioned therein.

9. There is further evidence to the effect that although Shiva Dutt, father of Lachhmi Narain, also wanted at one time to become a member of the Society, yet he withdrew from the membership on an objection being raised to the effect that two persons belonging to the same family could not be members of the Society at the same time. It was then noted that "he does not want to be a member as his son is a member." What however appears to me to clinch the matter is that the entire debt which was contracted by Lachhmi Narain was contracted for family necessity and indeed no less than 12 out of 14 properties which the plaintiffs want to be exempted from sale were purchased in the name of Shiva Dutta Singh (plaintiff 1) out of the money borrowed by Lachhmi Narain from the Society.

10. The learned Subordinate Judge went into minute details in dealing with the various loans contracted by Lachhmi Narain and he ultimately came to the conclusion that some of those loans were not taken for family necessity and that only a sum of Rs. 8800 can be regarded as borrowed for such necessity. The flaws in his reasonings on this subject were fully exposed by the learned advocate for the Liquidator and in this Court at least the plaintiffs did not seriously dispute that the entire sum which had been borrowed by Lachhmi Narain must be held on the evidence as it stands to have been borrowed for the necessity and benefit of the entire joint family. The learned Subordinate Judge in dealing with the question has entirely overlooked the evidence of Ali Raza who has definitely stated that on each occasion when a loan was applied for, an enquiry used to be made about the necessity for the loan and even after a particular loan had been advanced, the inspecting clerk had to enquire whether the loan had been properly utilized. His evidence is fully confirmed by bye-law 28 of the Society which runs to this effect:

Loans will be advanced for meeting all kinds of necessary expenses but not for meeting unnecessary expenses. The person applying for loan shall specify clearly the object for which he intends to take it, and the money must be spent on the object for which it has been taken. Whenever any officer of the Bank calls for evidence of proper expenditure of the amount of loan, the debtor shall have to furnish sufficient and complete evidence of it. If it is proved that the money was not spent on the purpose for which it was taken, and that it was spent on any other purpose, the Society has the power to realize the entire amount principal with the interest as well as penal interest at the rate of one anna per rupee.

11. I have no doubt that in the present case this rule was fully complied with and it would, in my opinion, be unreasonable to disallow the various sums of money which were taken expressly for payment of rent, purchasing bullocks, paying wages to labourers and construction of a house which the plaintiffs were admittedly engaged in building about the time of the loan and which Ali Raza himself found to be under construction. I also find no justification for holding that

the loan which was taken "for the cloth shop" should be regarded as a loan taken by Lachhmi Narain for his personal requirement, because there is evidence that Lachhmi Narain dealt in cloth as "a karbari" (manager) of the family and the shop is mentioned as one of the assets in the Haisiat Register along with the other properties which admittedly belonged to the entire joint family.

12. Now, once it is held that Lachhmi Narain represented the entire joint family in his dealings with the Society, there is not much difficulty in dealing with the so-called questions of law raised on behalf of the plaintiffs. The first question raised on their behalf is that the liability of Lachhmi Narain under the contribution order does not arise by reason of any debts which he owed to the Society but by reason of a distinct provision of law which makes each member of the Society liable to contribute to the assets of the Society upon its liquidation. This view, it is contended, leads to a two-fold result, firstly that the question as to whether the debts contracted by Lachhmi Narain were for legal necessity of the joint family or not becomes irrelevant for the purpose of this suit and secondly that even if Lachhmi is assumed to have become a member of the Society as a karta or a representative of the family, the family is not bound under the law to shoulder the liability which is sought to be thrown upon it in the present case, because a karta is not entitled to enter into any speculative transaction or any transaction in which there is a possibility of the family being involved in monetary liability. Learned Counsel for the plaintiffs has supported his proposition as to the nature of the contribution order by reference to certain English cases but the order is before us and it shows clearly that out of Rs. 20,510 which the Liquidator is seeking to realise from Lachhmi a sum of Rupees 18,645 represents the actual debts which Lachhmi owed to the Society.

13. It has also been contended on behalf of the plaintiffs that as Lachhmi Narain is not described in the registers of the Society as a representative of the joint family and the certificate is based on the order of the Liquidator who was not called upon in the proceedings before him to determine whether Lachhmi Narain was a member of the Society in his individual capacity and as a representative of the family, the certificate can be executed only against the personal property of Lachhmi only. It would seem however that as a matter of fact none of the parties concerned could have entertained any doubt as to the capacity in which Lachhmi was a member of the Society. The co-villagers of Lachhmi who as members of the Society sanctioned the loan as well as Lachhmi and the other members of his family must have known that when the money was borrowed it was borrowed for the purpose of the family and on behalf of the family. In these circumstances too much importance cannot be attached to the absence of any note in the registers which were all written by Lachhmi himself, that he represented his family. The same remark will apply to the order of contribution passed by the Liquidator.

14. It is true that Section 26, Bihar and Orissa Public Demands Recovery Act of 1914 provides that where a property is sold in-execution of a certificate there

shall vest in purchaser merely the right, title and interest of the certificate debtor at the time of the sale even though the property itself be specified. But in the present case, in the certificate proceeding itself, it had been made clear upon the plaintiffs' own application that the certificate-debtor had incurred liabilities as representing the entire joint family.

15. The Certificate Act has a procedure of its own according to which as soon as a certificate is signed by the Certificate Officer it becomes a decree and then may follow certain enquiries as a result of which the decree may either be cancelled, varied or may be proceeded with. The decree may be varied or cancelled u/s 10, on objection by the certificate-debtor or u/s 11 it may, subject to the law of limitation be amended at any time by the addition, omission or substitution of the name of any certificate-holder or certificate-debtor or by the alteration of the amount claimed therein. The plaintiffs therefore are not justified in asking us to ignore the decision of the Certificate Court which was pronounced upon their claim.

15. It is contended on their behalf that the Certificate Court had no jurisdiction to decide the question which it proceeded to decide, but I find it difficult to accept this contention. However that be, in the suit which is before us the plaintiffs themselves raised the point that

Lachhmi Narain had contracted debts on his own account and not in his representative capacity for any necessity or benefit of the said joint family: vide para. 10 of the plaint:

and that

any liability that he may have incurred as a member either by reason of his having contracted any debt from the Rajpur Society or by reason of his being liable for the debts of the Rajpur Society is only personal to him and cannot bind them or their properties or their interest in any property: vide para. 13 of the plaint.

17. In view of these statements in the plaint the Court proceeded to frame Issues 7 and 8 in which the questions directly raised were "whether defendant 2 was a member of the Rajpur Society in his individual capacity" and

are the right, title and interest of the plaintiffs in the properties in suit liable for the contribution money levied from defendant 2 or they are liable to be released from sale.

18. Both the parties having gone to trial and adduced evidence upon these issues, the plaintiffs cannot at this stage ask us to dismiss them from our consideration. It is contended on their behalf that the matters pleaded by them in paras. 10 and 13 of the plaint were outside the scope of a suit u/s 25, Public Demands Recovery Act. The fact however remains that they were pleaded and the result of the investigation discloses a state of facts upon which it will be unjust to grant the plaintiffs the reliefs which they have claimed in the plaint.

19. As I have already stated the suit is for an adjudication that fourteen properties belonging to the plaintiffs are not liable to be sold, but as has been pointed out by the learned Subordinate Judge and is conceded on behalf of the plaintiffs themselves twelve out of the fourteen properties were purchased by the money borrowed by Lachhmi from the Society. I find it difficult to hold in the circumstances of the present case that the Liquidator cannot proceed against the properties which were purchased by Lachhmi out of the money lent by the Society to him.

20. The learned advocate for the Liquidator has pointed out that the plaintiffs are faced with certain further difficulties in the case. It is the case of both parties before us that the properties which are the subject matter of the suit have all been sold since the institution of the suit and defendant 1 has obtained possession of them through Court. That being so, the plaintiffs' suit becomes infructuous so far as their prayer for a permanent injunction is concerned and it is a matter for serious consideration whether a Court should grant the plaintiffs the mere declaration sought by them when no consequential relief is asked for. It is also contended on behalf of the Liquidator that the suit is barred by limitation so far as the claim of plaintiffs 2 and 3 is concerned, because it was brought more than a year after the disposal of the plaintiffs' objection u/s 21, Public Demands Recovery Act. These matters however need not be pursued because in my opinion the plaintiffs' suit fails on merits.

21. In the result I would allow the appeal of the Liquidator (Appeal No. 44) with costs and dismiss the appeal as well as the suit of the plaintiffs with costs throughout.

Courtney-Terrell, C.J.

I entirely agree.

James, J.

I agree.