

(1952) 10 PAT CK 0003
In the Patna High Court
Case No : A.F.A. D. No. 1708 of 1948

Bujhawan Kuer and Others	Vs	APPELLANT
Hanuman Rai and Others		RESPONDENT

Date of Decision : 29-10-1952

Acts Referred:

Limitation Act, 1908 — Article 142, 144

Citation : AIR 1953 Patna 173

Hon'ble Judges : Narayan, J

Bench : Single Bench

Advocate : Mehdi-Imam and Murtaza Fazl Ali, for the Appellant; Lal Narain Sinha and G.C. Banerji, for the Respondent

Final Decision : Dismissed

Judgement

Narayan, J.—The defendants are the appellants, and the appeal, arises out of a suit for declaration of title and recovery of possession with regard to 8 bighas 2 kathas 1 dhur of land situate in village Ghosrama alias Subhankar-pur Madho. This land was the property of three brothers named Banjar Kuer, Kishun Kuer and Bishun Kuer. Kishun died issueless, and the defendants first party, the appellants before this Court, are the sons of Banjar. The branch of Bishun is not represented in this litigation.

2. The case which the plaintiffs had set up was that Kishun had died in a state of joint-ness with his two brothers Banjar and Bishun, both of whom as members of the Co-operative Society used to borrow loans from that Society. The Society obtained a decree against Bishun, and in execution of that decree purchased this property at an auction sale which was held on 20-12-1932. Possession of the land was delivered to the Society on 6-12-1933, and thereafter the Society sold the land to one Ram Narayan by a registered sale-deed dated 21-4-1942. Ram Narayan in his turn sold the land to the plaintiffs by another registered sale-deed dated 7-4-1943. The contention of the plaintiffs is that Bishun had been sued as the karta or the manager of the joint Hindu family consisting of his own

branch and Banjar's branch, and they allege that they were dispossessed by the defendants from the land in Chait 1352 Fasli.

3. The defendants first party who are the sons of Banjar resisted the plaintiffs' claim their allegation being that the three brothers were separate from one another, that Bishun was not a member of the Society and no decree had been obtained against him, and that they had all along been in possession of the disputed property. They did not admit that there was an auction sale or a delivery of possession with regard to the disputed property.

4. The defendants second party also contested the suit, the pleas set up by them being that plot No. 1277 is their ancestral kasht land and that they are the bharnadars of plots nos. 1244 and 1245, under a bharna bond dated 24-5-1941 executed in their favour by the defendants first party.

5. The Court of first instance held that the Society had purchased the land in execution of a decree against Bishun only and that the suit was barred by limitation, because the Society did not obtain possession of the property. According to the findings of the learned Subordinate Judge Banjar and Bishun were separate from each other, and plot No. 1277 was the ancestral land of the defendants second party. The suit was accordingly dismissed by the learned Subordinate Judge.

6. On an appeal having been preferred by the plaintiffs, the decision of the learned Subordinate Judge was reversed by the learned Additional District Judge who declared the title of the plaintiffs and directed that they would obtain khas possession of the land.

7. The defendants first party alone are the appellants before this Court, and Mr. Mehdi Imam who has appeared on their behalf in this Court has contended that Banjar being no party to the decree or the execution proceeding his and his sons' interest in the property had not been affected by the decree or the sale and that the claim as against Banjar's branch was barred by limitation.

8. Even according to the findings of the learned Additional District Judge the Society did not obtain actual possession of the property on 6-12-1933 which is the date of the delivery of possession. As the learned Additional District Judge says, the Society had obtained only formal "dakhil dehani". Even if, however, the possession delivered to the Society was only symbolical possession, it will be deemed equivalent to actual possession as against the judgment-debtor or his representative's, and the suit will be deemed to have been brought within time if it has been brought within twelve years from the date of the symbolical possession. This position in law is now very well settled, and I may cite a recent Division Bench decision of this Court in -- "Ramanand v. Bindhachal AIR 1943 Pat 416 (A), the judgment of which case had been delivered by me. So far as the sons of Banjar are concerned, the material point will be whether they are bound by the decree and the sale or not. If the decree and the sale are binding on them, then it will not be open to them to contend that because only symbolical

possession had been delivered, the claim as against them is barred by limitation. The whole question, therefore, in this case is that whether the decree and the sale are binding on these appellants.

The finding of fact arrived at by the learned Addl. Dist. Judge is that Banjar & Bishun were joint and that they were also in possession of the interest which had once belonged to their third brother Kishun who had died long ago. It has further been found that Bishun had acted as the head of the family. (After considering the evidence his Lordship proceeded) The findings of fact to the effect that Banjar and Bishun were the members of a joint Hindu family and that this loan had been taken by Bishun as the Karta of the joint family and for family necessity appear to me to be unassailable. The only point which deserves a serious consideration is as to whether the members of Bahjar's branch can be bound by the decree and the sale when they were not impleaded as party defendants in the suit which the Society had instituted for the recovery of the amounts advanced by them.

Though I received little assistance from the Counsel appearing for the parties for the determination of this point, on an examination of the relevant authorities I find that the point is now very well settled. A decree passed against the manager of a joint family as representing the family with regard to a debt which had been contracted by him for family necessities is binding upon all the members Of the family, and the creditor can recover the amount payable to him by a sale of the entire co-parcenary property without impleading the other members of the family. It also appears to be well settled that a karta effectively represents the other members of the family even though he is not described as such in the records of the case. The Judicial Committee in -- AIR 1914 136 (Privy Council) observed as follows:

"There seems to be no doubt upon the Indian decisions (from which their Lordships see no reason to dissent) that there are occasions, including foreclosure suits when the managers of a joint Hindu family so effectively represent all other members of the family that the family as a whole is bound. It is quite clear from the facts of this case and the findings of the Courts upon them that this is a case where this principle ought to be applied. There is not the slightest ground for suggesting that the managers of the joint family did not act in every way in the interests of the family itself".

This observation of their Lordships of the Privy Council has been referred to in two Division Bench decisions of this Court,--"Ranjit Prasad v. Ramjatan AIR 1917 Pat 352 (C) and -- Lalchand Thakur and Others Vs. Sheogobind Thakur, . So far as this Court is concerned the point appears to me to be concluded by these decisions.

In --"Daulat Ram v. Mehr Chand 15 Cal 70 (P. C.) (E) their Lordships of the Judicial Committee held that although some of the members of the joint family had not been made parties to a suit upon a mortgage effected by the managing

members, the entire family estate, was bound by the act of the latter, and could pass at the sale in execution of a decree upon the mortgage. In -- "Sripat Singh v. P. K. Tagore AIR 1916 P. C. 220 (F) Lord Buckmaster L. C. observed that in cases of this kind it is of the utmost importance that the substance, and not the mere technicalities, of the transaction should be regarded, and he held that except in a case in which the debt has been incurred for illegal or immoral purposes, it is open to the execution creditor to sell the whole of the estate in satisfaction of the judgment obtained against the father alone. In -- AIR 1927 56 (Privy Council) their Lordships of the Judicial Committee held that a decree obtained by or against the managing member of a joint Hindu family is binding upon minor members of the family, if it appears to the Court that the manager was acting in the former litigation on behalf of the minors in their interests. Lord Phillimore observed in this case as follows:

"In the case of a Hindu family where all have rights, it is impossible to allow each member of the family to litigate the same point over and over again, and each infant to wait till he becomes of age, and then bring an action, or bring an action by his guardian before; and in each of these cases, therefore, tho, Court looks to the explanation 6 of Section 11, Civil P. C., 1908, to see whether or not the leading member of the family has been acting either on behalf of minors in their interest, or if they are majors, with the assent of the majors. In this case there is no question of majors. It seems clear that the plaintiff in the previous suit was acting on behalf of himself and his minor children to try to exclude a collateral branch from a share of the family property. If he had succeeded the judgment would have inured for the benefit of the children, and as he has failed, they must take the consequence".

Though the case of -- "Deendyal Lal v. Jugdeep Narain Singh 4 Ind. App. 247 (H) was not cited by me, I should like to refer to it in this context. That was a case in which the rights and proprietary and mokarrari title and share of Toofani Singh, the judgment-debtor, in the joint family property which was the subject of the suit, had been put up to sale. But though the rights and the share of Toofani Singh had only been put up to sale possession of the whole estate was delivered to the, auction-purchaser. In such circumstances, their Lordships held that the whole estate could not be sold in execution without proof of legal necessity for the debt. The criterion, therefore, is whether the debt is a family debt binding on the ground of necessity on all the members of the family.

The Full Bench of the Allahabad High Court held in -- "Ram Narain Lal v. Bhawani Prasad 3 All 443 (F. B.) (I), as early as in the year 1881, that when a member of the joint Hindu family is sued for a family debt it may be assumed that he is sued for the same as the representative of the family; and when the decree in such a suit is substantially one in respect of the family debt and against the representative of the family, the decree may properly be. executed against the family property.

Another Full Bench of the Allahabad High Court held in -- "Hori Lal v. Munman

Kunwar 34 All. 549 (J) that where in a suit for sale on a mortgage the defendants mortgagors were the managing members of a joint Hindu family, the family was sufficiently represented by the managing members and that the suit would not fail by reason of the non-joinder of the other members of the family. The following observation of Banerji J. was quoted with approval by this Court in " Lalchand Thakur and Others Vs. Sheogobind Thakur, :

"I do not think that it is essential that the manager, when he brings his suit, should state in distinct terms that he is suing as manager, or that the plaintiff in a suit against the family should describe the defendant as the manager of the family. All that is essential is that the manager is in fact suing or is being sued as such in respect of a family debt".

Banerji J. had further pointed out in this case that it had been held by all the High Courts that a decree obtained against the Manager of a joint Hindu family binds the other members though they were not impleaded in the suit in which the decree was passed. Richards C. J. who delivered the leading judgment also observed as follows:

"It seems to me to be impossible to dispute the proposition that it is a general rule of Hindu Law that the manager represents the family in all transactions with the outer world, provided these transactions are family matters. Indeed, if it were not so, it is difficult to understand how the affairs of the family could be carried on. If this proposition is correct, I can see no good reason why, in a case like the present, the manager should cease to represent the family when the family has to institute or defend a suit in a court of justice. Before suit, the manager can pay and be paid the family debts and take and give a valid discharge for the same".

A Division Bench of the Madras High Court held in -- "Jijamba Bai v. Sagniram Jathai 22 Mad. LJ 45, (K) that if a suit is brought against a de facto managing member of a Hindu family to enforce a debt binding on the family property and a decree is passed, the decree will bind the other members of the family who are not parties to the suit. Their Lordships further held that the mere fact that a person was not described as the managing member does not necessarily show that he was not so in fact. In -- AIR 1927 27 (Oudh) also it was held that where the circumstances of the case show that the person sued happened to be the manager of the joint family, the natural and legitimate inference to be drawn should be that the defendant had been sued in the capacity of the manager and that it is not necessary that the plaintiff should state in distinct terms that he is suing as manager or the defendant is being sued as manager. In this case a decision of this Court in -- Jag Sah and Another Vs. Ram Chandra Prasad and Others, on the same point was followed.

In a very recent case -- "Mulgund Co-operative Credit Society v. Shidlingappa Ishwarappa AIR 1941 Bom. 333 (N) the Bombay High Court has taken the same view, and has hold that in order that a decree against a manager of a joint Hindu

family should bind coparceners not parties to the litigation, it is not essential that the pleadings should expressly state that he was being sued as manager. Broomfield J. further pointed out that there is good authority for the view that when the manager has contracted debts for family purposes and is sued in respect of those debts there is a presumption that he is sued in his representative capacity, so that a decree against him will be binding on all the coparceners. It is unnecessary to cite more authorities on the point, and with respect I have to state that the decision "in -- "Chippagiri Nagireddi v. Venkadari Somappa A. I. R. 1943 Mad. 1 (F. B.) (O) has no bearing on the facts of this present case, and the question of estoppel as raised by the learned Counsel Mr. Mehdi Imam does not at all arise in this case. The findings, as already pointed out, are that the loan was contracted for family necessity, that the two brothers after the death of Kishun were living joint and that with some ulterior motive the two brothers had got themselves separately recorded as members of the Society. I do not understand how estoppel can be pleaded against the respondents. The entire facts and circumstances have to be looked into, and the facts unmistakably go to show that Bishun had incurred the loan as the karta of the family and for paying off previous mortgage bonds executed by all the three brothers. Undoubtedly, therefore, it was a loan contracted for family necessity, and when the clear finding of fact is that there was no separation in the family, the other members of the family must be bound by the actions of Bishun.

9. The defendants second party are not the appellants here, and the lower appellate Court has found that the plots claimed in the plaint are the correct plots. There is nothing in the grounds of appeal submitted by these appellants so far as the identity of the plots is concerned.

10. For the reasons given above, I am of opinion that the learned Additional District Judge was justified, in passing a decree in favour of the plaintiffs. In the result, therefore, this appeal fails and is dismissed with costs.