
(1924) 03 AHC CK 0005
In the Allahabad High Court

Chandrika Ram Tiwari and Others

APPELLANT

Vs

Narain Prasad Rai and Others

RESPONDENT

Date of Decision : 25-03-1924

Acts Referred:

Citation : AIR 1924 All 745 : (1924) ILR (All) 617 : 79 Ind. Cas. 1036

Hon'ble Judges : Daniels, J; Dalal, J

Bench : Division Bench

Judgement

Daniels and Dalal, JJ.—The three plaintiffs are the sons of one Ram Nandan against whom a money decree was passed, in execution of which an ancestral house and grove were sold. The house and grove were purchased by the defendant Narain Prasad Kai, who was also the decree-holder. The purchase was made for a sum of Rs. 86. The suit which gave rise to the decree was brought against Ram Nandan and his two brothers for damages in respect of cutting trees and for demolition of a building which was alleged to be an encroachment. The plaintiffs were not parties to the suit. The decree was executed in 1914 and the sale took place on 16th of January, 1916. On the defendant Narain Prasad Rai not being able to obtain possession, he brought a suit for possession and obtained a decree in 1920. The plaintiffs thereupon brought the present suit for a declaration that the sale of 16th of January, 1916, and the subsequent decree for possession of 1920, to which they were no parties were not binding on them.

2. The defence was (1) that the debt of the father was not incurred for illegal or immoral purposes arici that, therefore, the sons were bound under the decree, and (2) that the suit of the sons was time-barred. Both these defences were accepted by the two subordinate courts and the plaintiffs' suit was dismissed. This is a second appeal from the appellate decree of the learned District Judge of Gorakhpur.

3. We are of opinion, that the learned Judge was correct in holding that the debt was not incurred for illegal or immoral purposes. The father had cut certain trees which did not belong to him and the value of those trees was assessed at Rs. 50.

The rest of the damages he had to pay for breach of a civil duty in demolishing a house. It is apparent that the family had benefited to a large extent by the action of the father. On behalf of the appellants the authority of *Durbar Khachar v. Khachar Harsur* ILR 1908 32 Bom. 348 was quoted. It was held there that the sons were not liable under the decree obtained against the father for a wrongful act and for a liability incurred for an illegal purpose when the estate that had come into the hands of the sons did not derive any benefit from the act of the father. As we have already pointed out, the present case is distinguishable because the family estate did benefit by the act of the father. This ruling of the Bombay High Court was considered by the Calcutta High Court in *Chhakauri Mahton v. Ganga Prasad* ILR 1911 Cal. 862. In that case the decree was passed against the father for damages caused to another person by the father closing a channel of water and thereby causing injury to the crops which used to be irrigated by that water. In that case it was held that the sons were liable to pay the money due under the decree as it could not be said that the decree obtained was due to an act of the judgment-debtor which was a wanton interference with the rights of the decree-holder and that the liability imposed thereby on the judgment-debtor was an illegal or immoral debt. At page 874 of the report, the Judges pointed out the distinction suggested by the Madras High Court between, a debt which follows as the result of an offence under the criminal law and a debt for which one is made liable on the ground of a breach of civil duty. In the former case the debt incurred by the father would be immoral and illegal, but not in the latter case. In the present case damages were due in consequence of a breach of civil duty by the father. At page 875 of the report the Judges quoted with approval the observations of the Calcutta High Court in *Peari Lal Singh v. Chandi Charon Singh* (1906) 5 C.L.J. 80:

The son is not bound to do anything to relieve his father from the Consequence of his own vicious indulgences, but he is surely bound to do that which his father himself would do were it possible, namely, to restore to those lawfully entitled money he had unlawfully retained. Upon any intelligible principle of morality, a debt due by the father by reason of his having retained for himself money which he was bound to pay to another would be a debt of the most sacred obligation, and for the non-discharge of which punishment in a future state might be expected to be inflicted, if in any.

4. We think that the law is correctly laid down here.

5. In *Gursarn Das v. Mohan Lal* ILR 1922 Lah 93, a Bench of the Lahore High. Court held that it was incumbent on a Hindu son. to discharge a debt of his father which consisted of money improperly retained by him when dealing with the property of a third person. A decree passed in such a case against the father to indemnify the person with whose property he had improperly interfered was held to create a debt for which the ancestral property in the hands of the sons may justly be held to be liable. We think that the view of law taken by the lower appellate court was correct.

6. When the debt is held by us to be legal and binding on the plaintiff sons, it is not necessary to decide the question of limitation. We dismiss this appeal with costs.