
(1914) 04 AHC CK 0003
In the Allahabad High Court

Dakhnidin

APPELLANT

Vs

Bhawani Prasad and Others

RESPONDENT

Date of Decision : 09-04-1914

Acts Referred:

Citation : 24 Ind. Cas. 88

Hon'ble Judges : Tudball, J;Chamier, J

Bench : Division Bench

Judgement

1. The facts of this case are stated fully in the judgment of the Court below. A short summary of them will be sufficient to explain the question which we have to decide.

2. One Rahat Husain in 1883 and 1890 mortgaged some property to Bhawani Prasad (respondent) and his step-brother, Raja Ram. Rabat Husain died leaving four sons and three daughters. In 1895 two of the sons mortgaged the same property to the same two persons and in 1905 the same two sons and another son sold the property to the appellant's mother, Nidhao Koer, leaving in her hands so much of the price as was required to discharge the vendor's proportionate liability under the mortgages of 1883 and 1890 and the mortgage of 1895 made by two of them. In August 1905 Nidhao Koer through the appellant, her son and agent, paid to Bhawani Prasad Rs. 23,453-14-3 in satisfaction of the claims of Bhawani Prasad and Raja Ram under the three mortgages of 1883, 1890, and 1895. Rs. 9,000 odd being paid in cash and a village being transferred in lieu of Rs. 14,000 odd. Before the payment was made the two brothers had fallen out and Raja Ram had published a general notice in several newspapers and had sent a special notice to each debtor, including Nidhao Koer, to the effect that Bhawani Prasad had no authority to receive monies due to the family or firm.

3. Meanwhile Ali Ashraf, the fourth son of Rahat Husain, had mortgaged his interest to the appellant and the latter now proceeded to pay to his mother the amounts due on the interests of three sons and the three daughters under the

deeds of 1883 and 1890. Two of the daughters ultimately redeemed their interests from the appellant. In 1908 the appellant brought two suits against Ali Ashraf and the third daughter to recover the amount due on the mortgage made by Ali Ashraf and the amounts which he had paid on their account to his mother. Among the defendants were Bhawani Prasad, Raja Ram and Nidhao Koer. The last named died during the suits and her interest passed to the appellant. In both suits Raja Ram pleaded that the payment made by Nidhao Koer in August 1905 was ineffective as regards his share of the mortgage money payable under the deeds of 1883 and 1890. The Subordinate Judge accepted this plea and required the present appellant to pay Rs. 9,400 odd to Raja Ram before bringing the property to sale. The appellant appealed to this Court in one case (No. 13) but did not appeal in the other and it was held that the decision in" the latter case rendered the question *res judicata*. The result was that the appellant had in course of time to pay the sum mentioned to Raja Ram. While the suits of 1908 were pending, Raja Ram brought a suit on the mortgage of 1895 and ultimately recovered over Rs. 8,000 from the appellant on account of his share of the mortgage money.

4. In the present suit the appellant seeks to recover from Bhawani Prasad the two sums, which he has been required to pay to Raja Ram on account of the mortgages of 1883, 1890 and 1895. The Subordinate Judge has rejected the claim, holding that the appellant has himself to think for what has" happened. It seems to us that the decision is right.

5. There is nothing to show that in August 1905 Bhawani Prasad and Raja Ram had become separate in estate, there seems to have been no real separation till some years later, but they had fallen out, Raja Ram had refused any longer to allow Bhawani Prasad to represent the family and the appellant and his mother admittedly had been warned not to pay the money to Bhawani Prasad. They took the risk, which, however, was probably not so great as it appears if the evidence of Raja Ram in the Suit of 1908 is true, and they must take the consequences. Bhawani Prasad may not have been entitled to receive payment for the family, but that cannot avail the appellant. The appellant has, no doubt, been compelled to pay over again amounts already paid to Bhawani Prasad, but in the circumstances it is impossible to hold that Bhawani Prasad is under an implied contract to reimburse the appellant. Nor is it by any means certain that Raja Ram did not desire any benefit from the payment made to Bhawani Prasad. The latter purported, as the inclusion of the name of Raja Ram in the deed of sale shows, to act on behalf of the family. There has been some kind of partition or separation between the brothers and it is impossible to say that Bhawani Prasad appropriated to his own use the whole sum paid to him by Nidhao Koer We are not at all sure that this Court would have allowed the appellant's appeal in Suit No. 13 of 1908 even if it had found itself competent to entertain the appeal, and we do not desire to rest our decision upon the failure of the appellant to appeal in both cases and so avoid the decisions of the Full Bench which were followed in the appellant's case.

6. It was suggested that the appellant might be entitled to recover upon the ground that the money paid to Bhawani Prasad was paid under a mistake of fact, but, in our opinion, there is no force in the suggestion. The appellant was warned of the true state of facts, namely, that Bhawani Prasad was no longer entitled to represent the family.

7. We think that the suit was rightly dismissed and we dismiss this appeal with costs including fees on the higher scale.