(1925) 05 PAT CK 0017

In the Patna High Court

Debi Prasad Dhandhania and Others		APPELLANT
	Vs	
Mahesh Lal and Others		RESPONDENT

Date of Decision : 22-05-1925

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 52, 53

Citation : 89 Ind. Cas. 32

Hon'ble Judges : Dawson Miller, C.J;Macpherson, J

Bench : Division Bench

Judgement

Dawson Miller, C.J.—The suit out of which this appeal arises was instituted on the 19th. September 1919, by Debi Prasad Dhandhania and other members of his family against a number of defendants, for the purpose of enforcing a bond dated the 5th July 1912, executed in favour of Debi Prasad Dhandhania by Sakhi Chand to secure the re-payment of a loan of Rs. 2,000, carrying compound interest at the rate of 9 per cent, per annum. The money was borrowed by Sakhi Chand, under circumstances somewhat peculiar and which 1 must refer to shortly in order to explain the nature of the questions which arise for decision in this case.

2. At the time when the loan. was taken litigation was pending between Sakhi Chand deceased, who is represented in this suit by the defendants fourth party'' and Darbari Lal who is now represented by the defendants first party. I may add that the other defendants in the suit, the second and third party defendants, are the farzidar of Darbari Lal and persons who are interested in the property which was the subject of the suit I am about to mention.

3. It appears that in the year 1897, a mortgage bond was executed by one Bulaki Lai. in favour of Bishun Chand, the predecessor-in-interest of Sakhi Chand and the defendants fourth party. On the 23rd July 1909, Bishun Chand entered into an agreement with Darbari Lal to assign to him his interest under the mortgage-bond of 1897. On the 29th March 1910, Bishun Chand having died, a suit was instituted by Darbari Lal against Sakhi Chand, Bishun''s brother and

legal representative, for specific performance of the contract of the 23rd July 1901. Sakhi Chand was contending that no binding agreement had been entered into. The Trial Court, however, in that suit delivered its judgment on the 20th February 1911 in favour of Darbari Lal and ordered an assignment of the mortgage to be executed by Sakhi Chand in favour of Darbari Lal upon the latter depositing the agreed purchase, price. The money was deposited in Court but was not taken out of Court by Sakhi Chand, for he entered an appeal to the High Court from the decision of the Subordinate Judge. Whilst that appeal was pending, an application was made to the Court by Sakhi Chand to appoint a Receiver of the mortgage interest in order that a suit might lie brought upon the mortgage against the mortgagors, because at that time the suit was about to become time-barred and unless action was taken by either Sakhi Chand who claimed to be the real owner of the mortgage-bond or by Darbari Lal in whose favour a decree had been passed ordering a conveyance to be executed in his favour, then the bond would become time-barred and nobody would receive the benefit of it.

4. It appears quite clear from the evidence in the. case which has been referred to in the judgments of the Subordinate Judge. and of the District Judge, whose judgment is now under appeal, that Darbari Lal, as might well be expected, was not prepared to take part In bringing a suit against the mortgagor, for although he was assignee of the mortgage he had in fact in the year 1909 himself purchased from the mortgagor the equity of redemption in the mortgaged property. The result, therefore, would be, so far as he was concerned, that he would be a party, if he assented, to a suit brought against himself, His case was that he being a purchaser, of the equity of redemption and also the purchaser of the mortgage-bond, the whole property was his and there was no object in bringing a suit to enforce the mortgage. He was, however, at all times apparently perfectly willing to pay the price, arranged. for the assignment of the mortgage interest and in fact that money had been paid into Court.

5. On the 11th March 1912, the application of Sakhi Chand to appoint a Receiver was granted and he himself was appointed Receiver of the interest in the mortgage-bond in order that he might, on behalf of the person interested, bring a suit for its enforcement. In order to carry on the suit he applied to the High Court for power to raise a loan of Rs. 2,000 to provide funds to prosecute the suit Having obtained the leave of the Court, he accordingly borrowed the money from the plaintiff a banker of Bhagalpur, and instituted a suit on the 5th July 1912 as Receiver to enforce the mortgage bond. At some time which has not been, definitely stated but after the suit on the mortgage-bond was instituted, the appeal by Sakhi Chand. Against Darbari Lal in the suit brought to enforce specific performance of the contract of; the. 23rd July 1909, was decided in favour of Darbari Lal. Thereupon, as there was no further appeal from that decision, there was no object in Sakhi Chand as Receiver proceeding any further with the mortgage suit, and accordingly, he made up his mind to make the best of matters and to take out of Court the money, which had been deposited to his

credit as consideration for the assignment of the mortgage-bond, and the suit which he had brought on that bond on the 5th July 1912 was dismissed on the 10th February 1914 without prejudice to. the rights of Debi Prasad, the plaintiff in the. present suit.

6. The question. that now arises-is whether the plaintiff is entitled to recover either from Darbari Lal or from any of the other defendants the amount borrowed unfertile bond in suit. Both the Subordinate Judge and the District Judge on appeal considered that the plaintiff had no remedy against either of the defendants. The bond hypothecates the interest in the mortgage-boad of 1897 as security for re-payment of the loan, but even if a decree were, passed in favour of the plaintiff upon the bond in suit as against the interest hypothecated, that would be a barren decree because the mortgage bond of 1897 which was hypothecated has long since become time-barred and no suit could now be brought to enforce it.

7. There remains, however, the question of the personal liability of the defendants. In the bond in suit Sakhi Chand recites that he is a Receiver appointed by the High Court at Calcutta. He then refers to the making of the mortgage-bond of 1897 and to the litigation which was pending with regard to the agreement to assign that bond to Darbari Laland states that in the capacity of Receiver ho has borrowed Rs. 2,000 from Debi Prasad at 9 per cent, per annum interest agreeing to pay back the principal within a period of two years. Then it goes on to state that for security of the aforesaid amount borrowed with interest, "the amount due under the mortgage-bond, (that is the bond of 1912) will be an incumbrance over the aforesaid mortgage-bond dated 9th April 1897, that is to say from the amount realized under the aforesaid mortgage-bond dated 9th April 1897 the amount principal with interest and compound interest due under the aforesaid present mortgage-bond will be first paid up."

8. It will be seen that in addition to the charge upon the mortgage-bond itself, there is a personal covenant to repay the loan, and the question is, whether Sakhi Chand or Darbari Lal or any other of the defendants is liable upon that contract. Sakhi Chand entered into the contract as a Receiver, and it is contended that in the circumstances of this case he is under no personal liability as Receiver. The ordinary rule is that a Receiver put in charge of property for the purpose of managing it is ordinarily personally responsible to any persons with whom he may contract liabilities for the purposes of managing the property, looking to be reimbursed from the estate itself. There are, however, certain cases in which the principle does not operate so as to render the Receiver personally liable in respect of sums which have been advanced to him. Those cases are where the sums have been advanced pursuant to an express order from the Court and where re-payment has been made a charge upon" the assets only. It was laid down by Mr. Justice Sale in the case of Mohari Bibi v. Shyama Bibi 80 C.937 : 7 C.W.N. 799. that the Receiver even if personally liable may create a liability upon the estate of the person for whose benefit the loan was made. In

that case Sale, J., after pointing out the difference between the position of trustees and Receivers in acting on behalf of an estate, says in his judgment: " In the latter case creditors deal with the Court through its Receiver, and the Court imposes obligations on the estate through the Receiver for protection of creditors dealing with the Receiver. It doubtless is the law, as appears from the case already cited, that in carrying on a business under directions of the Court a Receiver must necessarily incur personal obligations, but in incurring these personal obligations it seems to me that he necessarily and under the authority of the Court imposes obligations on the estate for the benefit of those, creditors with whom he has dealt, and which obligations the Court ought and does give effect to and it is in this respect that a Receiver occupies a position towards an estate in his hands different from that of an executor or trustee." And in a latter part of the judgment he points out that, the right to maintain such a suit is founded on the just and equitable principle that as the acts of the Receiver are the acts of the Court, the estate cannot be permitted to enjoy the benefit of those acts without being held responsible, for the obligations arising out of them.

10. It seems to me, therefore, that a Receiver appointed in the circumstances in which the Receiver in this case was appointed is entitled to, and does, in incurring obligations of this sort, create a liability upon the estate of the person for whose benefit the obligations were incurred.

11. What are the circumstances here? Sakhi Chand was suing t<4 enforce a mortgage, a mortgage which in fact he had assigned, to Darbari Lai. He was disputing that assignment; he had failed in the Trial Court and he had been ordered to execute a conveyance in favour of Darbari Lai. The purchase price had been deposited in Court but he refused. to take it out and lie was bringing an appeal to the High Court from that decision. If he succeeded in that appeal then obviously he would be entitled to prosecute the mortgage suit and would probably recover more than the consideration for the assignment deposited in Court. Darbari Lai, on the other hand, was the proprietor of the equity of redemption and was contending that he was the assignee of the mortgage interest a matter still sub judice. It was, therefore, obviously not in his interest or for his benefit that any suit should be brought on the mortgage-bond. In the circumstances Sakhi Chand himself was appointed a Receiver of the interest in the mortgage-bond in order to prosecute the suit, and I may add, to prosecute the suit entirely for his own benefit. In these circumstances the appeal which he had taken to the High Court failed and, therefore, it was quite obvious after that, that he had ceased to have any interest in the mortgage-bond beyond the amount deposited and that the assignment to Darbari Lal was good and valid. Had he succeeded in his appeal against Darbari Lal and gone on with the suit on the mortgage-bond, he would presumably have recovered the amount due there under. It became, however, no longer practicable for him to prosecute the suit as Receiver of the mortgage interest for that had then passed to Darbari Lal who also held the equity of redemption. The result was that instead of getting into his hands the proceeds of the mortgage-suit which would have been charged with re-

payment of the loan he was eventually content, and in fact bound, to accept instead the consideration for the assignment which had been paid into Court. It is true that that money was not the proceeds of the mortgage-suit ''and it is contended that it was not charged with the re-payment of the loan under the bond now sued on, but in the circumstances, it represented Sakhi Chand''s interest in the mortgage-bond which was the interest charged and I think he was bound to pay there out the loan taken from the plaintiff. Moreover the money was borrowed entirely in his own interest to put him in a position to prosecute the mortgage-suit, and if that is so, it seems to me that his liability to re pay that sum undoubtedly arises as the person for whose benefit he borrowed the money, namely, himself. Assuming that he could not be sued as a Receiver because the transaction was made under the express directions of the Court, still I think, the principles of justice and equity require that he should re-pay that which he borrowed as Receiver, and used for his own benefit and covenanted to repay, and that the defendants fourth party, as representatives of Bakhi Chand, the person for whose benefit the money was, in fact, borrowed, are liable to the extent of his assets coming into their hands.

12. The result will be that the decree of the District Judge will be set aside and a decree in lieu thereof will be entered in favour of the plaintiffs for the sum of Rs. 2,000 together with interest at the bond rate from the date of the bond up to the date of this. decree and further interest at 6 percent. per annum until realization.

13. The plaintiffs are entitled to their costs in this appeal and in both the lower Courts from the defendants fourth party. The appeal as against the other defendants in the suit will be dismissed. The defendants first and third party are entitled to one set of costs in each Court to be divided between them. The defendants second party did not appear and is not entitled to costs.

14. The decree of this Court will be subject to the provisions of Sections 52 and 53 of the C.P.C.

Macpherson, J.

15. I agree.

