

(1963) 03 PAT CK 0008

In the Patna High Court

Case No : A.F.A.D. No's. 1467 and 1468 of 1958

Dhankisto Mandal and Others

APPELLANT

Vs

Ram Kisto Mandal and Others

RESPONDENT

Date of Decision : 20-03-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101, 11
Santhal Parganas Settlement Regulations, 1872 — Section 27

Citation : AIR 1964 Patna 254

Hon'ble Judges : Ramratna Singh, J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : Lalnarayan Sinha and S.R. Ghosal, for the Appellant; R.S. Chatterjee, G.P. Sanyal and Parmeshwar Prasad Sinha, for the Respondent

Judgement

Ramratna Singh, J.—These appeals by some of the defendants arise out of a suit for declaration of title to, and recovery of possession of, certain landed properties described in Schedules B, C and D appended to the plaint. These properties belonged to one Tonu Mandal, who died about 70 years before the institution of the suit, leaving behind him two daughters named Manoda and Nilmani Dasi, who died, respectively in 1940 and 1948. After the death of Tonu Mandal, these two daughters inherited, as limited owners, his properties; and by amicable settlement Manoda got ten annas share and Nilmani got six annas share in the properties. As Manoda died earlier without leaving an heir, Nilmani Dasi succeeded to her share of the properties also in accordance with the rules of Dayabhag law, by which the parties are governed and, consequently, Nilmani came in possession of the entire properties of Tonu Mandal as a limited owner. Nilmani had four sons, all of whom died in her life-time; but she had several grand-sons surviving at the time of her death. They are defendants first party in the suit; and the property described in Schedule D to the plaint was in their possession at the time of the institution of the suit. Nilmani Dasi had executed a sale deed on the 19th, Baisakh 1314 Bengali Sambat in respect of the property described in Schedule C to the plaint in favour of the predecessors-in-interest of

the defendants third party; and these defendants were in possession of this property at the time of the institution of the suit.

2. She had also executed a deed of exchange in favour of one Premmoyee Oasi on the 13th jeth 1295 Bengali Sambat, by which she gave the property described in Schedule B to the plaintiff in exchange for some landed property of village Gokrul described in Schedule E of the plaint; and the two ladies were, accordingly, recorded as raiyats of the exchanged lands. The defendants second party are the descendants of Premmoyi Dasi; and they were in possession of the property described in Schedule B, while the defendants first party were in possession of the properties described in Schedule E to the plaint at the time of the institution of the suit.

3. Tonu Mandal had two other brothers named Santusta Mandal and Bhim Mandal. Plaintiff No. 2 was the only surviving descendant of Bhim Mandal at the time of the death of Nilmani Dasi, while plaintiff no. 1 and defendants fourth party (namely, Kalipada and Gobind) were the only surviving descendants of santusra Mandal at that time. Hence, under the Dayabhag law the plaintiffs and defendants fourth party were the nearest reversioners of Tonu Mandal after the death of Nirmani and were entitled to succeed to his estate, me share of the plaintiffs and that of the defendants fourth party being equal that is, half and half. Gobind mandal one of the defendants 4th party, died during the pendency of the suit and his son and widow were substituted in his place. All these facts are now admitted.

4. Then the case of the plaintiffs was that the aforesaid sale deed in favour of the predecessors-in-interest of the defendants third party and the exchange in favour of Premmoyi Dasi were neither for legal necessity, nor for any benefit to the estate and that the defendants first party were mere trespassers on the properties in their possession after the death of Nilmani. Hence, the plaintiffs claimed title and possession (with mesne profits in respect of their eight annas share in the properties prescribed in Schedules B, C and D to the plaint jointly with the defendants fourth party. There was an alternative claim that, in case the exchange be Held to be valid, they were entitled to similar relief in respect of the property described in Schedule E in lieu of the property in Schedule B.

5. Paban Gorain, defendant No. 3 of the first party, filed a written statement which was adopted subsequently by Tribhanga Gorain, defendant No. 1. Their defence was that they were in possession of the properties described in Schedules D and E to the plaint, as Numani Dasi had given these properties to them in her life-time and they also acquired title thereto by adverse possession. Another written statement was filed by Dhan Krist Mandal, defendant No. 6 of the second party. He asserted that the exchange between Nilmani and his mother Premmoyi was for legal necessity and for the benefit of the estate of Tonu Mandal and that he and his mother had improved the lands that they got by exchange at great expense and built a House thereon, which entitled them to the relief provided for in Section 51 of the Transfer of Property Act. He also asserted

that a decision of the Settlement authorities-to make entries in the record of rights on the basis or the exchange operated as res judicata. A third formal written statement was filed on behalf of minor defendant Atul Gorain of defendants third party; and it was alleged on his behalf that the sale deed in respect of the property described in Schedule C to the plaint was for legal necessity,

6. Both the Courts below found that Nilmani Das was herself in possession of the properties described in Schedules D and E to the plaint and, though they came in possession of the same after her death, the defendants-first party were mere trespassers on the date of the institution of the suit in 1950 and did not acquire any title to the same. The plea of limitation set up by the defendants was also rejected, in view of Article 141 of the Limitation Act, which enabled the reversioners to bring a suit for possession within twelve years of the death of Nilmani. It was further held by both the Courts that the sale deed in favour of defendants 3rd party and the exchange in favour of the mother of defendant No. 5 were neither for legal necessity nor for the benefit of the estate of Tonu Mandal, and that the claim of the plaintiffs was not barred by res judicata. Hence, a decree was passed in favour of the plaintiffs declaring their title to their -/8/- share over the properties described in Schedule B, C and D and joint possession over the same with the defendants fourth party. A decree for mesne profits was also passed against the defendants first party in respect of the properties described in Schedule D. But the learned District judge made some modifications in the decree of the that Court in respect of the properties described in Schedules B and D to the plaint, because of certain discrepancies in the area as contained in the old Jamabandi and Amin Commissioner's report. In view of these discrepancies, as explained in paragraphs 29 and 30 of his judgment, the learned District Judge reduced the areas of the land in these two schedules for the purpose of the decree granted to the plaintiffs. He also observed that, in view of the finding regarding exchange, Dhan Kristo Mandal (defendant No. 6) was entitled to fall back on the land described in Schedule E to the plaint.

7. Now, Dhan Kisto Mandal has preferred S. A. No. 1467 and Tribhanga Gorain and Pawan Gorain have preferred S. A. No. 1468.

8. In Second Appeal no. 1468, the claim of the appellants, who are the grandsons of Nilmani, is concluded by findings of fact; and Sri Lal Narayan Sinha could not point out anything to justify interference, u/s 100 of the Code of Civil Procedure, with the findings of the Courts below against the claim of the appellants in respect of the properties described in Schedules D and E to the plaint.

9. But in Second Appeal No. 1467 Mr. Sinha challenged the findings of the Court below regarding the exchange. He argued that certain circumstances mentioned by the Court were sufficient to prove that the exchange was for the benefit of the estate of Tonu Mandal, premmoyee Dasi, the mother of the appellant, possessed 11 bighas and odd land in village Gogrol, and her husband possessed 5 bighas

and odd land in the same village. By exchange, Nilmani gave 18 bighas of and in villages Babupur, Ranchanpar, Socahara and Kundabit in Jamtara sub-division to Premmoyee Dasi in lieu of the aforesaid 16 bighas and odd of village Gogrul which she took from Premmoyee Dasi and her husband. Nilmani was married at Gogrui, and, therefore, it was advantageous for her to have land there. Between the exchanged areas, there was difference of less than 2 bighas and the learned District Judge lightly observed that this difference would not be sufficient to hold that the transaction was not to the advance of the estate. He has also observed that the land described in Schedule E to the plaint, being nearer to the house of Nilmani's husband, where she was permanently residing, could have been more conveniently and profitably enjoyed than the land described in Schedule B which was at a long distance from her house. The necessity for the exchange mentioned in the relevant documents is mutual convenience of the parties, because Nilmani was living in village Gogrui, while Premmoyee was living in the locality where the land described in Schedule B was situated. But he has observed that the convenience alone is not sufficient to justify a transfer by a limited owner. He has then discussed the power of a widow or other limited heir to alienate the estate inherited by her and observed:

"Therefore, in order that a transaction of a limited owner may be justified, it is not sufficient to show that it conferred a benefit upon the estate but also to show that it was necessary for its good management. In this case no doubt, the transfer may be said to be an act of a good management to certain extent, because the land could be more effectively managed by Nilmani Dasi being nearer to it, but it cannot certainly be said to be beneficial to the estate. Other lands were still left at Babupur and other villages which she had to manage from Gogrul. Therefore, the exchange for part of her father's estate, though was convenient to her to certain extent, was certainly not of such a character as to bind the reversioners."

He disbelieved the case of the appellant that he or his mother had made any improvement on the land in Schedule B so as to create any equity in his favour; and, ultimately, he found that the said exchange could not be said to be either for legal necessity or for benefit to the estate of Tonu Mandal.

10. It is well settled that the power of a widow or other limited owner to alienate the estate inherited by her for purposes other than religious or charitable is analogous to that of a manager of an infant's estate as defined by the Judicial Committee. In the case of *Hunooman persaun v. Mt. Babooee*, 6 Moo Ind App 393 (PC). That power is a limited and qualified one; It can only be exercised rightly in a case of need or for the benefit of the estate but where the alienation is one that a prudent owner would make, in order to benefit the estate, the bona fide alienee is not affected by the previous mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded.

The significance of the expression "benefit to the estate" was considered in the

case of Palamappa Cherry v. Devasikamony ILR 40 Mad 709: AIR 1917 PC 33. The Judicial Committee observed in the case that it was impossible to give a precise definition of the expression "benefit to the estate" applicable to all cases, and their Lordships of the Committee did not attempt to do so. But they observed:

"The preservation, however, of the estate from extinction, the defence against hostile litigation affecting it, the protection of it or portions from injury or deterioration by inundation, these and such like things would obviously be benefits. The difficulty is to draw the line as to what are, in this connection, to be taken as benefits and what not"

This observation gave rise to two conflicting views. One view was that a transaction cannot be said to be for the benefit of the estate, unless it is of a defensive character calculated to protect the estate from some threatened danger or destruction. Another view was that for a transaction to be for the benefit of the estate it is sufficient if it is such as prudent owner, or rather, a trustee, would have carried out with the knowledge that was available to him at the time of the transaction. In the case of Jagat Narain and Another Vs. Mathura Das and Others, a Full Bench of the Allahabad High Court said that a transaction to be for the benefit of the estate need not be of a defensive nature, and that the real test was whether the transaction was one which a prudent owner would have carried out with the knowledge then available to him. As to the case of Palaniappa ILR 40 Mad 709 : AIR 1917 PC 33 the Full Bench observed that, though the instances given by their Lordships of the Judicial Committee were all instances where the transaction was of a defensive nature, there was no justification for the suggestion that their Lordships meant to say that the transactions justifiable on the principle of "benefit to the estate" were limited to transactions which were of a defensive nature. The views expressed in the cases decided under the head "benefit to the estate" appear in the following notes to Section 243A of Mulla's book on Hindu Law (12th edition):

"The manager of a joint family is not entitled to sell joint family land solely for the purpose of so investing the price of it as to bring in an income larger than that derived from the probably safer and certainly more stable property, that is, the land itself. Such a sale is not for the benefit of the estate. A mortgage of family property for the purpose solely of purchasing another property, or for the payment of premium for a lease of another property, is not for the benefit of the estate. But a sale of a house in a dilapidated condition, in respect of which a notice has been issued by the Municipality to pull it down, is for the benefit of the estate. Whether a transaction is beneficial to the estate must depend on the facts and circumstances of the particular case. A sale of Joint family property which is inconveniently situated and is unproductive, the purchase-money being invested in another property which is a sound investment, or in family business, is for the benefit of the estate. A sale of such property will be upheld even if the price was subsequently lost to the family owing to the failure of the bank in which it was

invested, provided the intention was to invest the price in another more productive immovable property which the manager could look after. Similarly, a mortgage of family property for the payment of price for the purchase of a share in a village in which the family already possessed a share is for the benefit of the estate.

* * * * * It is submitted that a transaction to be binding on the family must be one which not only confers a benefit upon the estate, but is necessary for its good management."

11. In the case of Jaisri Sahu Vs. Rajdewan Dubey and Others, the Supreme court discussed the powers of a Hindu widow to alienate the estate of her husband. In this connection, their Lordships referred to certain decisions and said:

"Her powers in this regard are, as field in a series of decisions beginning with 6 I A 393 those of the manager of an infant's estate or the manager at a joint Hindu family. In Venkaji v. Vishnu, 18 Bom 534 at p. 536 it was observed that "A widow like a manager of the family, must be allowed a reasonable latitude in the exercise of her powers, provided,"she acts fairly to her expectant heirs"

And more recently, discussing this question, it was observed in Boda Viraraju Vs. Vetcha Venkataratnam and Others, :

"How exactly this obligation is to be carried out, whether by a mortgage, sale or other means, is not to be determined by strict rules or legal formulae, but must be left to the reasonable discretion of the party Bound. In the absence of mala fides or extravagance, and so long as it is neither unfair in character nor unreasonable in extent, the Court will not scan too nicely the manner or the quantum of the alienation."

Their Lordships also approved the following observations of Das, J. in the case of Lala Ram Asre Singh and Others Vs. Ambica Lal and Others, .

"This, in my view is an impossible argument. The debt was there; it was subsisting debt, only the creditor was in possession of a part of the estate and was unable to recover it by instituting a suit in the Civil Courts. But the result was that a considerable portion of the income was withdrawn from Basmati Kuer who had succeeded her husband. It is well established that where a case of necessity exists, an heiress is not bound to borrow money, with the hope of paying it off before her death. Nor is one bound to mortgage the estate, and thereby reduce her income for life. She is at liberty, if she thinks fit, absolutely to sell off a part of the estate."

Keeping In view the above principles, which were approved by the Supreme Court, we have to see whether the exchanged In question was for the benefit to the estate of Tonu Mandal. In view of the admitted fact, it was convenient for Nimani to gat the land at village Gogrul in lieu of the land situated in Jamtara subdivision. She could more conveniently manage the land at Gogrul than the

other lands. There is not even a suggestion that the land at Gogrul was inferior in quality to the other land; and, as observed by the learned Additional District Judge, the difference in area was immaterial. It is, therefore, clear in the circumstances that the exchange was beneficial to the estate.

The only reason given by the learned District Judge against this view was that Nilmani had, even after the exchange, some lands left at Babupur, but that is not a sound reason. There can be no doubt that Nilmani could manage more effectively the land which she got at Gogruj than the land she gave away in Jamtara subdivision. Of course, she had still the difficulty of managing the remaining lands in Jamtara subdivision; but by the exchange she did overcome this difficulty in respect of the area which she got at Gogrul, if a person has got 100 bighas of land at a distant place, he cannot manage: the same as effectively as he would do at his native village, if he can get some area at his native village in exchange for almost equivalent area out of the said 100 bighas, he can more effectively manage the exchanged area and thus the estate is benefited on the whole. Exchange of lands calculated to ensure more effective management and control and consequential better outturn constitutes without doubt benefit to the estate. I am, therefore, of the opinion that the exchange was for the benefit of the estate of Tonu Mandal

12. Mr. Lalnarain Sinha also challenged the finding of the learned Judge regarding *res judicata*. As stated earlier, the exchanged areas were recorded in the record of rights in the names of Nilmani and Premmoyee, respectively, in accordance with the exchange which had been acted upon. During the preparation of the record of rights, one of the sons of Nilmani had raised a dispute alleging that his mother had exchanged the land during his minority and, therefore, it was not binding against him. The settlement authorities overruled this objection and gave effect to the exchange. The learned Judge was, however, of the opinion that this decision could not operate as *res judicata* inasmuch as no issue had been raised regarding legal necessity or benefit to the estate, and the dispute was confined only to the allegation that the objector was a minor when the exchange was made. In support of this view, he relied on a bench decision of this Court in *Parmeshwari Devi and Others Vs. Khusali Mandal and Others*, . But the decision is an authority only in support of the view that (a) the statutory conclusiveness provided in Section 25 (1) of the Santal Parganas Settlement Regulation, 1872, which I shall reproduce presently attaches to the character of the land and not to the nature of the title of the female recorded as a raiyat and, therefore, a civil court is competent to determine the nature of the title, and (b) the suit of the reversioner for possession within twelve years from the death of the female is not time-barren. And Shri L. N. Sinha did not challenge these propositions.

He, however, relied on Sections 5, 11, 25 of the Sonthal Parganas Settlement Regulation, 1872 and two decisions of this Court. Section 5 (1) lays down that after a notification by the State Government declaring that the settlement shall

be made, no suit shall lie, until the completion of the settlement, in any civil court established under the Bengal, Bihar and Assam Civil Courts Act, 1887 in regard to any land or any interest in, or arising out of, land. Section 11 enacts:

"Except as provided in Section 25-A, no suit shall lie in any civil Court regarding any matter decided by any Settlement court under these rules; but the decisions and orders of the Settlement Courts made under these rules, regarding the interests and rights above mentioned, shall have the force of a decree of Court."

Section 25 (1) provides:

"After a period of six months from the date of the publication of the record of rights of any village, such records shall be conclusive proof of the rights and customs therein recorded, other than the rights mentioned in Section 25A, except so far as concerns entries in such record regarding which objections by parties interested may still be pending in the Original or Appellate courts, or may still be open to appeal."

Section 25A is not relevant. It is plain from, the language of these provisions that, except in certain cases which are not relevant for the present case, no suit shall lie in any civil court regarding any matter decided by any settlement court. This view is supported by a bench decision of this court in *Birjis Mahal Begum Vs. Humayun Reza Chaudhury and Another*, wherein it has been laid down that the effect of Sections 11 and 25A is that, where there has been a decision or order of the Settlement Court, it will have the force of a decree of court, and no suit will be in the civil court to contest such decision or order, unless it relates to the rights of zamindars or other proprietors as between themselves, in which case a suit will lie in the civil court, subject to the limitations laid down in Section 25A which is an enabling and not a disabling section and is an exception to Section 11. *Shri Lalnarain Sinha* also relied on a bench decision in *Madan Rai v. Khelu Rai*, 1957 B. L. J. R. 461. It appears from this decision that under the rules for the conduct of settlement proceedings framed by the Governor General-in-Council on the 5th Dec., 1925, Assistant Settlement Officers were vested with all the powers of a Santal parganas civil court. Certain other rules were quoted in that case, and it was held that, inasmuch as the disputed lands were held by the Settlement court to be Ghatwali lands and the appellants were held to be only in permissive possession therefore, it was not open to the appellants to re-agitate the matter in the Civil Court and plead that the lands are not Ghatwali lands, but their raiyati lands. Thus it is now well settled, so far as this court is concerned, that the civil court has no jurisdiction to entertain any suit regarding any matter decided by any Settlement court in Santal Parganas. But, in the instant case, the question whether the exchange was for legal necessity or for benefit to the estate was never raised and, therefore it was not decided by the Settlement court. It is true that one of the sons of Nilmani Dasi challenged the validity of the exchange on the ground that he was a minor when it took place and this plea was rejected by the Settlement court; but such a plea for decision would not cover the question whether the exchange was for legal necessity or benefit to the

estate. In my opinion, therefore, the learned District Judge was right in holding that this question is not barred by *res judicata*.

13. Apart from this, however, I have already held that the exchange was for the benefit to the estate of Tonu Mandal, and, therefore, the exchange was binding on the reversioners of Tonu Mandal at the time of the death of Nilmani Dasi.

14. Mr. R. S. Chatterji, appearing for the contesting respondents, however relied on section 27 of the aforesaid Regulation, as it stood before its repeal by Section 3 of Bihar Act 14 of 1949, read with the schedule thereto, which came into force on the 13th of April, 1949. This section provided that no transfer by a Raiyat of his right in Ms holding or any portion thereof, by sale, gift, mortgage, lease or any other contract or agreement, shall be valid unless the right to transfer has been recorded in the record-of-rights and no transfer in contravention of this provision shall be registered, or shall be in any way recognized as valid by any court, whether in the exercise of civil, criminal or revenue jurisdiction. In view of this provision Mr. Chatterji argued that the exchange was void *ab initio*, and, therefore, not binding upon the reversioners. But this plea u/s 27 was taken for the first time during the arguments in this court, and it will require investigation facts; for instance, the appellants could have shown that the record of rights of the village to which the exchanged lands appertained contained a right of transfer as contemplated in the section. Secondly, the appellant could have taken the plea of acquisition of title by adverse possession and prescription, because the exchange took place under three registered documents in 1888 A.D., that is, about sixty years before the death of Nilmani Dasi. It has been held by a bench of this court in *Thakur Hansda v. Raju Mian* 1961 B L J R 714 that a lessee who is in possession of a piece of land, under a lease which is invalid on account of the prohibition contained in section a acquires the right of a permanent tenant by prescription on account of his possession for more than twelve years as a trespasser. The same principle would apply to the ex-change which became invalid on account of the provisions contained in Section 27. As the plea now taken by Mr. Chatterji involves investigation of the aforesaid facts, it cannot be entertained at this stage and it is, therefore, rejected.

15. In consequence of the foregoing findings, appellant Dhankisto Mandal of Second appeal No. 1467 is entitled to keep the property described in Schedule B to the plaint which Premmoyee Dasi got in exchange irony Nilmani Dasi; and the plaintiffs shall in lieu thereof get a decree in respect of the property described in Schedule E to the plaint which Nilmani Dasi got in exchange and therefore, the plaintiffs are not entitled to any relief against defendants second party; and the judgment and decree or the court below shall be modified accordingly.

16. In the result, second appeal No. 1467 is allowed with costs against the contesting respondents, while Second Appeal No. 1468 is dismissed with costs to the contesting respondents.

Kanhaiya Singh, J.

17. I agree.