

(1897) 07 CAL CK 0022
In the Calcutta High Court

Dharam Chand Lal

APPELLANT

Vs

Bhawani Misrain and Another

RESPONDENT

Date of Decision : 09-07-1897

Acts Referred:

Citation : (1898) ILR (Cal) 189

Hon'ble Judges : R. Couch, J;Morris, J;Macnaghten, J;Hobhouse, J

Bench : Full Bench

Judgement

R. Couch, J.—The facts in this case are that one Sobh Nath Misser died about twenty years ago---the precise date of his death does not appear---and left two widows, one Saraswati Misrain and the other Bhawani Misrain After his death disputes arose between the widows as to their rights, and a compromise was come to, the terms of which are stated in a previous judgment which is set out in the proceedings and which seems to have been taken admittedly as correct. The statement is this: "And in respect of our respective shares each party has obtained absolute proprietary right of every sort and division has been made and will be made as below, and, except in respect of the matter noted below, neither party has any claim against any other." This compromise could only apply to the shares to which the two widows were entitled as widows. They had no power, by a compromise between themselves, to affect the rights of the successor to the estate on their death, and so far under the compromise they simply were entitled to their shares as for what is called the widows" estate.

2. Saraswati died in 1890, and the suit is brought against her executor and the surviving widow Bhawani upon two mortgage bonds amounting together to Rs. 11,000, but the amount now claimed, including the arrears of interest, being Rs. 22,748. The prayer of the plaint is that an order may be given that if the defendants do not pay within a certain time, the properties mortgaged and pledged in the bonds may be sold, seeking to charge, not only the interest of the widows who made these mortgages, but the whole estate, and to affect the right of the persons who on the death of the surviving widow would be entitled to the

estate, and also to deprive Bhawani, the surviving widow, of her interest during her life.

3. The issues were framed raising expressly the two important questions in the case. The first was whether the bonds were duly executed, as to which there was no question. The second and third raised the real questions: "Do the bonds, by reason of legal necessity or other cause, bind the estate of the late Sobh Nath Misser, or only the personal estate of the executant? Is Mussamat Bhawani Misrain liable for the claim, and to what extent?" Upon these issues the District Judge found very expressly. He says: "Here plaintiff fails to show that there was any real necessity for the advances or that any one told him that there was such real necessity, and that the tenures could not be saved without the loans" Upon that finding he dismissed the suit as against Bhawani and made a decree against the executor of Saraswati, and if Saraswati left any property it may be available to pay the claim of the plaintiff.

4. From that decree there was an appeal to the High Court, and in their judgment, after saying that it had been urged that legal necessity had been fully established, from which it is plain the learned Judges had that present to their minds, they say: "There is nothing to show that at the time these sums were borrowed there was no money in the coffer or what had become of the large amount Saraswati had admittedly received upon the death of their husband." Then they go on to consider the question whether an inquiry had been made by the plaintiff, and they find that he did not make the inquiry which it was necessary for him to make in order to establish his right to recover the money in case there had been in fact no necessity. Both questions are distinctly found by the High Court against the plaintiff, and the decree of the District Judge dismissing the suit is affirmed.

5. That disposes of the whole of the questions in the case. It is unnecessary to say anything about any other question that might arise with regard to the competency of Saraswati to mortgage the whole of the property in the way in which she did. The case is clearly one in which upon the material questions of fact both Courts concur in finding against the plaintiff and very properly discuss the suit.

6. Their Lordships will therefore humbly advise Her Majesty to dismiss the appeal, and the appellant will pay the costs of it.