

(1888) 02 PRI CK 0004

In the Privy Council

Girja Koer and Others

APPELLANT

Vs

Bhagbut Pershad Singh and others

RESPONDENT

Date of Decision : 15-02-1888

Acts Referred:

Citation : (1888) 15 ILRPC 717

Hon'ble Judges : Hobhouse, Macnaghten, B. Peacock, R. Couch, JJ.

Judgement

B. Peacock, J. 1. This is an appeal from a decree of the High Court in a suit brought by the widows of Baboo Jhaller Singh, Baboo Pertab Narain Singh, and Baboo Roghuburdial Singh, on behalf of themselves and the infant children of their respective husbands, to recover possession of property which had been purchased by the first defendant, Baboo Punnu Singh, under certain orders made in execution against the three husbands. The property which was the subject of this suit, namely, a five annas four pies share of Bazidpur Dhanki, was ancestral property governed by the Mitakshara. The husbands by four bonds had charged the five annas four pies share with certain debts. One of those bonds was given by one of the husbands alone, namely, Jhaller. The decree under which the first sale in execution took place was on a judgment upon a bond given by the three husbands to secure a certain sum of money lent to them, and by which they charged by way of mortgage, as security for the amount lent, the five annas four pies share. They were sued, not only to recover the money out of their general assets, but in the first place to have it realized out of the five annas four pies share. The decree was that the money should be recovered out of the property charged, and the five annas four pies share was attached in execution of the decree, and was sold in execution. The sale was confirmed by the Court, and the confirmation recites that the action had been brought for the recovery of a certain amount, and "as the right and interest of Baboo Jhaller Singh, and Baboo Pertab Narain Singh, and Roghuburdial Singh, judgment-debtors, in the undermentioned land, or immoveable property, were sold on the 6th October 1879, in execution of this decree through the bailiff of the Court of the Judge of Patna, and as seven days have elapsed and DO objection is filed, it is ordered

that the said auction sale be confirmed, and the said sale is confirmed by this order." Then at the foot of the certificate of confirmation the property is stated to be the five annas four pies share of the rnouzah Bazidpur Dhanki, so that there can be no doubt that by the bond under which the sale took place that property was charged, the debt was decreed to be recovered out of the property ; the property was attached ; the property was sold, and the sale was confirmed as to the property itself. Therefore it was not a mere sale of the right, title, and interest of the debtors. It was the sale of the property being the right; title, and interest of the debtors. 2. The suit was brought by the widows on behalf of themselves and the children to set aside the sale entirely, and they also prayed that possession might be awarded in respect of the whole five annas four pies share ; and secondly : "In case the purchase of defendant No. 1," --that is, the purchase of Punnu-- "in respect of the right and interest of defendants Nos. 3 to 5 (that is, the three husbands), be held valid, then your petitioners might be put in possession of their legal share by partition." 3. The case was tried by the Subordinate Judge, and he gave a decree in favour of the plaintiffs for the shares to which he considered the claimants would be entitled if a partition had been made. His judgment is in the Record, and his order is: "That the case of the plaintiff's be decided with this detail, that the claim of five of the plaintiffs" naming them--"be dismissed with costs." Those were five of the children who were not in existence when the bonds were executed. There is no appeal on the part of those children with regard to the dismissal of their claim. Then upon the claim of the widows and the other children he ordered that the property "be divided into fifteen sahams,"--which means fifteen shares,--"of which twelve sahams he declared to be the property of the plaintiffs, and three of Jhaller, Pertab, and Roghubur that each of the plaintiff's mentioned above do get possession of one sahams, and the remaining share, that is to say, the shares of the three husbands, remain in the possession of the defendants." 4. Upon that there was an appeal to the High Court, and the Court gave their judgment on the 21st of June 1883. For their reasons they referred to a judgment they had given in another suit. The effect of the judgment was that although the defendants had failed to prove that the loans in respect of which the bonds were executed were required for family necessities, still the plaintiffs had equally failed to establish that they were "applied to immoral purposes" that the lender did not make any proper enquiry which a prudent lender would make to satisfy himself as to the necessity of the loans. As to the evidence of immoral and extravagant conduct of the husbands, the High Court said: "Although the witnesses examined by the plaintiffs give a somewhat exaggerated account of it, yet we are on the whole satisfied that these persons were leading a life of debauchery and sensuality; and if the lenders had made proper inquiry they would have found that the necessities of the loan arose from their improper and immoral way of life. The lower Court seems also to be of this opinion. The Subordinate Judge in one portion of his judgment says. The mere bad conduct of Jhaller, Pertab, and Roghubur is not sufficient to resume the property. But the lower Court thinks that the evidence adduced is not sufficient to establish that the" amounts borrowed

under the aforesaid bonds were actually applied to immoral purposes. In this opinion we also concur." It therefore appears that the High Court thought that, although the bonds were not proved to have been given for monies advanced for improper purposes, still the lenders of the money who had sued and recovered their judgments had not made proper inquiries to ascertain whether there was an actual necessity for the loans. But it must be borne in mind that this was not a case of a joint family consisting of brothers, but it was one consisting of fathers and children; and it has been held that sons are liable to pay the debts of their fathers, unless incurred for immoral or illegal purposes. 5. That principle was laid down by the Judicial Committee in the case of *Sura Bunsu Koer v. Sheopershad Singh* 6 I.A. 104 : 5 C. 148, where a ruling of Chief Justice Westropp 11 B.H.C.R. 83 was referred to with approbation, in which he said; "Subject to certain limited exceptions (as, for instance, debts contracted for immoral or illegal purposes) the whole of the family undivided estate would be, when in the hands of the sons or grandsons, liable to the debts of the father and grandfather." *Colebrooke's Dig.*, Book I, cap. I, par. 167, and *Girdhari Lal v. Kantoo Lal* 1 I.A. 321 : 14 B.L.R. 187, were cited as authorities for the proposition, and in a subsequent part of their Lordships' judgment the decision in the case of *Kantoo Lal* is summed up in the words following; "This case then, which is a decision of this tribunal, is undoubtedly an authority for these propositions: First, that where joint ancestral property has passed out of a joint family, either under a conveyance executed by a father in consideration of an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons, by reason- of their duty to pay their father's debt, cannot recover that property unless they show that the debts were contracted for immoral purposes, and that the purchasers had notice that they were so contracted." 6. Now, although at the time of the sale notice was given on behalf of the children that the property was joint ancestral property, and that the fathers had no right to mortgage it, still the question arises whether, under the execution of the decree under which the property was ordered to be attached, it was for the purchaser to show that there was a necessity for the loan, or whether it was not necessary for those who claimed on behalf of the children to show that the debt was contracted for an immoral or illegal purpose. If it was necessary to show that the debt was so contracted, the plaintiffs failed to prove the fact, and that is so found by the High Court; It appears to their Lordships that according to the decision in the case of *Suraj Bunsu Koer v. Sheopershad Singh* 6 I.A. 104 : 5 C. 148 it was necessary for the plaintiffs to show that the debt was contracted for an immoral or illegal purpose. 7. In the case of *Nanomi Babuasin v. Madun Mohun* 18 I.A. 1 : 13 C. 21 the principle laid down in the previous case was adopted ; and at page 17, L.R., 13 I.A., in the judgment of their Lordships, it is said : "Destructive as it may be of the principle of independent co-parcenary rights in the sons, the decisions have, for some time, established the principle that the sons cannot set up their rights against their father's alienation for an antecedent debt, or against his creditors' remedies for their debts if not tainted with immorality. On this important question of the liability of the joint estate their Lordships think that

there is, no conflict of authority." appears, therefore, from the decisions that now in a cases like the present where sons claim against a purchaser of an ancestral estate under an execution against their father upon a debt contracted by him, it is necessary for the sons to prove that the debt was contracted for an immoral purpose, and it is not necessary for the creditors to show that there was a proper inquiry, or to prove that the money was borrowed in a case of necessity. 8. Under these circumstances their Lordships think that the judgment of the High Court was an erroneous one, and they will humbly advise Her Majesty that that judgment and the judgment of the Subordinate Court, in so far as it was adverse to the appellants, should be reversed, and that the suit be dismissed with costs in both those Courts. The respondents will pay the costs of this appeal.