
(1907) 02 CAL CK 0010

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 116 of 1905

Gora Chand Lurki

APPELLANT

Vs

Makhan Lal Chakravartty and others

RESPONDENT

Date of Decision : 19-02-1907

Acts Referred:

Citation : (1907) 02 CAL CK 0010

Final Decision : Allowed

Judgement

1. This is an appeal on behalf of the first Defendant in an action for recovery of possession of twenty-nine parcels of land, commenced against him by the Plaintiffs-Respondents, who claimed the disputed property as shebais of their family deity Sri Sri Iswar Damodarjee Thakur. The title of the Appellant is founded upon a conveyance executed in his favour on the 24th February 1894, by the father of the first Plaintiff, the father of the second and the third Plaintiffs, their mother who is one of the Defendants to the present suit, a mortgagee who had a charge on the property and Mr. Belchambers who was Receiver of the property in a litigation to which all these persons were parties. The circumstances under which the property was sold to the Appellant and the grounds upon which his title is now challenged do not admit of any doubt or dispute and may be briefly stated. The grandfather of the Plaintiffs, Damodar Charan Chakrabutty, died on the 20th September 1888, leaving behind him a widow, Monmohini and two sons, Radhika, the father of the first Plaintiff and Bonomali, the father of the second and the third Plaintiffs. On the 20th February 1889, Radhika instituted on the Original Side of this Court a suit against his brother and mother for partition of what he claimed to be ancestral joint properties. He alleged in his plaint that his brother claimed possession of certain properties as debutter properties of their family idol, that the alleged debutter was a mere pretence, and that the properties were secular and liable to be partitioned. He further prayed for the appointment of a Receiver during the pendency of the suit. The Defendant denied that the debutter was a fiction and contended that the property had been dedicated absolutely to the idol and could

not be dealt with as secular property. On the 21st August 1891, Mr. Belchambers was appointed Receiver with full powers under sec. 503, cl. (d) of the Civil Procedure Code, and was expressly authorized to sell, if necessary, any portion of the subject-matter of the litigation. On the 24th February 1894, Mr. Belchambers sold to the present Appellant some properties including the property now in dispute, for the purpose of meeting the costs of the litigation. Radhika, the then Plaintiff, Bonomali, the then Defendant and their mother Monmohani joined in the conveyance. Radhika and Bonomali have subsequently died and the Plaintiffs who are their sons commenced the present action on the 9th September 1903, for recovery of possession upon declaration that the property is debutter and the sale is invalid. The first Defendant, the purchaser, resisted the claim upon various grounds of fact and law; it is sufficient to state that he disputed the alleged debutter character of the property, denied that it was inalienable, and contended that the sale could not be cancelled by the Court in which the suit had been instituted. The Courts below have found that the property was debutter, that the sale was consequently void, and that the purchaser had not acquired any valid title. In this view of the matter they have made a decree in favour of the Plaintiffs. The purchaser has appealed to this Court and on his behalf the decision of the Subordinate Judge has been assailed on four grounds, namely, first, that having regard to the scope of the partition suit of 1889, it was not competent to the Courts below to question the validity of the sale made by the Receiver under the authority, of the High Court, secondly, that the dedication was not of the completes character and did not create a valid debutter, thirdly that as it was a private endowment it could be and was put an end to by the consent of the representatives of the founder, and, fourthly, that the Plaintiffs are not entitled to any relief until they refund the purchase-money with interest. In support of the first point it was argued by the learned vakil for the Appellant that the fathers of the present Plaintiffs were parties to the suit for partition, that the point in controversy between them was whether or not the disputed properties constituted valid debutter and were liable to be partitioned, that the order for sale of the properties was binding upon the parties to the suit, one of whom claimed them as his private property, while the other claimed to hold them as shebait, that the order for sale, so long as it stands unreversed, is binding upon the original shebait in whose presence it was made, as also upon their successors, and that consequently, the Plaintiffs were not entitled to any relief in the present action. In support of this argument, reliance was placed upon the case of Giridhari Lal Roy v. Dharendra Krista Mukherjee 11 C. W. N. 1: s. c. 4 C. L. J. 495 (1906). Which shows that under certain circumstances it is competent to a Court which has appointed a Receiver to authorise him to raise a loan which is to have priority over all existing liens, and that such an order cannot be treated as a nullity, so long as it is not set aside in an appropriate proceeding. It was contended, on the other hand, by the learned vakil for the Plaintiffs-Respondents, that the idol was not a party to the partition suit, that the shebait was made a party only in his personal capacity, and that to hold the order for sale binding upon the debutter estate, would be to allow the shebait to

convert debutter property into their private property through the intervention of the Receiver. In order to determine which of these arguments ought to prevail, it is necessary to advert for a moment to the scope of the previous litigation. The father of the first Plaintiff claimed the whole of the ancestral properties as secular estate liable to be partitioned, and challenged the right of the father of the second and the third Plaintiffs to hold it as debutter. This position was controverted by the latter, and although the idol was not by name made a party to the litigation, the only person who was competent to act as shebait, if the property was really debutter, was on the record, and the substantial question in dispute between the parties was as to the true character of the estate. As was pointed out by their Lordships of the Judicial Committee in *Prasanno Kumari v. Golab Chand* L. R. 2 I. A. 145 at p. 152 (1875). and *Jagadindra Nath v. Hemanta Kumari* 8 C. W. N. 809: s. c. L. R. 31 I. A. 203 at p. 210 (1904)., it is only in an ideal sense that property can be said to belong to an idol regarded as a juridical person and that possession and management of the dedicated property belong to the shebait. If, therefore, we look not merely to the form but to the substance of the previous litigation, we must hold that the debutter estate was represented in the only manner in which it could have been possibly represented. It follows, consequently, that it was quite competent to the Court to appoint a Receiver for the protection of the subject-matter of the litigation, and the subject-matter of the litigation was not merely the share which was claimed by the then Plaintiff, but the whole joint estate which was drawn into controversy, *Poresh Nath Mookerjee v. Omerto Nath Mitter* I. L. E. 17 Cal. 614 (1890). If, therefore, the Court had jurisdiction over the subject-matter of litigation, took it into its own custody, placed it in the hands of a Receiver, and authorized him to sell a portion of the property, the order was operative on the parties to the suit. It was binding on them whether they were willing or unwilling and the sale would be good as against them, *Wilkinson v. Gangadhar Sirkar* 6 B. L. R. 486 at p. 494 (1871). No doubt, a purchaser at a sale by a Receiver can take only such interest in the property as is possessed by the parties to the action in which he is appointed; but his title, though it may be challenged by a person who is not a party to the suit and who does not claim under any of the parties to the litigation, is binding upon all parties who are concluded by the order. [Beach on Receivers, secs. 732-725; Alderson on Receivers, sec. 604]. It was argued, however, by the learned vakil for the Respondents, that although the order for sale might be binding upon persons who were parties to the previous litigation, it is not binding upon the present shebaits. In our opinion this contention is entirely unfounded. As was pointed out by their Lordships of the Judicial Committee in *Prasanno Kumari v. Golab Chand* L. R. 2 I. A. 145 at p. 152 (1875). a judgment obtained against a former shebait is binding upon succeeding shebaits who in fact form a continuing representation of the idol's property. To the same effect are the decisions in *Maharanee Shibeswaree Debia. v. Mathura Nath Acharjo* 13 M. I. A. 270 at p. 275 (1869) and *Kissnonund v. Nursingh Doss* 1 Marshall 485 at p. 489 (1863). This doctrine is based upon a perfectly intelligible principle: although one shebait can hardly be said to claim under his predecessor, yet as the shebait for

the time being completely represents the debutter estate, a decision against one shebait binds successive shebaites by reason of the jural relation between the office and the land. To put the matter in another way the successors of the parties, that is, those who succeed to their rights, are regarded the same, as the original parties, and it is on this ground that a judgment for or against the original parties has the same effect with respect to those who have succeeded them. [Harman on Estoppel, sec. 171, Vol. I, p. 185]. The principle is analogous to that upon which reversioners have been held to be bound by decisions obtained against a Hindu widow in possession of her husband's estate. [Kata-manachier v. Raja of Shivagunga 9 M. I. A. 589, 608 (1863)]. The rule is of course subject to the qualifications, that the previous order or judgment was obtained in good faith and without collusion. It follows consequently that the order for sale which was made in the previous litigation can not be questioned or attacked collaterally in the present action; the Plaintiffs are quite as much bound by the order for sale as their father in whose presence the order was made. If they seek to challenge the propriety or validity of the order, they must take their chance before the Court which made it, and no new or independent action can be entertained to set aside the order and the sale made by virtue thereof. On these grounds, we think that the rule that a sale by a Receiver, made under the order of Court, cannot, in the absence of fraud, be attacked collaterally by persons who were parties to the proceedings or by their representatives, is based on sound principle. [Meller v. Moline. 131 U. S. 352. Farmer v. Central 5 Mearns 421, 70 Fed. Rep. 758., Bradley v. Marine 3 Hughes 26, 3 Fed. Cas. 1172.

2. The position of the Plaintiffs might have been different, if they had alleged and proved that the order had been obtained by fraud, for in such a case, a suit might lie, upon well established principles, to declare that the order is tainted with fraud and is inoperative. [See the decision in Nistariney Dassee v. Nundo Lal Bose 3 C. W. N. 670: s. c. I. L. R. 26 Cal. 891 (1899). affirmed on appeal by this Court, Nunda, Lal Bose v. Nistarini Dassee 7 C. W. N. 353 : s. c. I. L. R. 30 Cal. 369 (1902)., and by the Judicial Committee, Benode Behari v. Nistarini 9 C. W. N. 961: s. c. I. L. R. 32 I. A. 193; 2 C. L. J. 189 (1905). see also Huckle v. Draper 15 Sickels 88. Tierman v. Wilson 6 Johnson 411. Dobson v. Pearce 2 Kernan 156. Bloch on Receivers, sec. 729; Alderson on Receivers, sec. 599]. If, however, any attempt had been made by the present Plaintiffs or their predecessors to challenge the validity of the order for sale before the Court which made the order, they could not possibly get it reversed unless they offered to re-imburse the purchaser of the money paid by him. [Drake v. Goodridge 6 Baltchford 531, 7 Fed. Cas. 1051 this however would not suit them, as the obvious object of the present litigation is to take away the property from the purchaser, and at the same time retain the benefit of his money. It may further be observed, that so far as the facts have been found, there does not appear to be any substantial ground upon which the propriety of the order for sale can be successfully questioned. The sale was effected to meet the costs of a litigation in which the title to the debutter property was in controversy. As has been

repeatedly held there is no absolute prohibition against the alienation of endowed property by the manager for the time being, and alienation of endowed property for the necessary purposes of preservation or maintenance of the endowment is lawful. [Doorganath v. Ram Chunder L. B. 4 I. A. 52 (1876). Parsotam Gir v. Dat Gir I. L. E. 25 All. 296 (1903).

3. Under these circumstances, it was quite competent to the Court to authorise the Receiver to sell a portion of the subject of litigation, as such a measure became necessary to preserve the interest of the parties. [Crave v. Ford Hopkins 114. It is not necessary in support of this view to rely upon the principle which underlies the case of Girdhari Lal v. Dhirendra Krista 11 C. W. N. 1: s. C 4 C. L. J. 495 (1906) that case does appear to raise a question of some nicety as to how far the appointment of a Receiver vests in the Court absolute control over the property or general authority to displace vested liens. [Alderson on Receivers, sec. 313]. That the Court has power under exceptional circumstances to create prior liens appears to be the view adopted by the learned Judges of the Supreme Court of the United States. [Kneeland v. American Loan Co. 136 U. S. 89. This question however need not be further pursued. The first point taken on behalf of the Appellant must be answered in her favour. In this view of the matter, it is unnecessary to examine the other grounds upon which the decision of the Court below was sought to be assailed. The result, therefore, is that this appeal must be allowed, the decree of the Subordinate Judge reversed and the suit dismissed. The Appellant will have his costs in this Court but each party will pay his own costs in both the Courts below.