

(1938) 02 CAL CK 0002
In the Calcutta High Court

Hira Lal Mandal

APPELLANT

Vs

Shankar Lal Mandal and Others

RESPONDENT

Date of Decision : 08-02-1938

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 17

Citation : AIR 1939 Cal 116

Hon'ble Judges : Panckridge, J

Bench : Division Bench

Judgement

Panckridge, J.—This suit for partition has been instituted in the following circumstances. One Kritti Bash Mandal died in January 1918. He was survived by his widow, Sm. Nistarini Dasi and by his two sons, the plaintiff Hira Lal, and Chuni Lal, who died in May 1933, leaving a widow and three sons. After the death of Kritti Bash the present plaintiff instituted partition proceedings against his brother, Chuni Lal and his mother, Nistarini. The subject-matter of the partition proceedings was the estate of Kritti Bash. In her written statement Nistarini claimed one-third of the properties left by Kritti Bash "according to the estate of a Hindu mother on partition amongst her sons." A preliminary decree for partition was made on 20th April 1928. The commissioner appointed in the partition suit duly made his award, which was confirmed on 18th July 1928. Under the award Nistarini was allotted certain of the immovable properties belonging to Kritti Bash "to be held and enjoyed by her as a Hindu widow during the term of her natural life."

2. On 25th June 1928, Chuni Lal mortgaged his interest in the properties allotted to Nistarini on partition, and the mortgagee's interest has now passed by assignment to a lady of the name of Manuja Bala Dasi, who is defendant 5 in this suit. On 5th October 1931 Chuni Lal was adjudicated an insolvent, and in May 1933 the plaintiff was also adjudicated. Chuni Lal had not obtained an order of discharge at the time of his death, but the plaintiff was discharged on 17th March 1936. Nistarini died in September 1936. Meanwhile, defendant 5, Mamija Bala,

had instituted a mortgage suit on the mortgage executed by Chuni Lal on 25th June 1928, and the mortgaged property was finally sold to Manuja Bala by the Registrar on 10th March 1937, the sale being confirmed on 11th November of that year. The present suit was filed on 8th April 1937, the defendants being the three minor sons of Chuni Lal, Chuni Lal's widow, and the mortgagee Manuja Bala. The property of which partition is sought is that which Nistarini obtained under the award in the partition suit, and the plaintiff submits that he is entitled to one half thereof, and the sons of Chuni Lal to the other half. The minor defendants, the sons of Chuni Lal, support the plaintiff, but the relief asked for is opposed by the defendant Manuja Bala. Her contention is briefly this, that the plaintiff has no interest in the properties which are sought to be partitioned, because his right, title, and interest therein vested in the Official Assignee, when he was adjudicated an insolvent, by reason of the provisions of Section 17, Presidency Towns, Insolvency Act.

3. The soundness of this contention depends on the nature of the estate which Nistarini obtained under the partition decree. According to the plaintiff, by reason of that decree she became the owner of the properties allotted to her, subject to certain restrictions on alienation due to the fact that she was a Hindu widow, and that the plaintiff obtained no interest in the properties until the death of Nistarini; in other words he had no interest in the properties on 23rd May 1933, when he was adjudicated insolvent, and, accordingly the properties never vested in the Official Assignee in any way. At the time of the death of Nistarini, the plaintiff's insolvency had come to an end as he had obtained his unconditional discharge six months before that date. The contention of the mortgagee defendant is that on the death of Kritti Bash his property passed to his sons, and his widow had no interest therein. The effect of the partition proceedings, however, was to give her certain properties in lieu of maintenance, such properties being temporarily excised as it were from the estate of her sons, to whom they would revert at her death. There are certain special circumstances in this case, which, according to the plaintiff, preclude the mortgagee defendant from raising these points. First, it is said that the partition decree itself declares Nistarini's estate in the property to be the estate of a Hindu widow, and that by this is meant that she was granted under the decree the same right as she would have had if she had inherited the estate of her husband as a childless Hindu widow. It is said that the so called reversioners to the estate of a childless Hindu widow have no more than a *spes successionis* to the estate inherited by her from her deceased husband, so long as she lives. In my opinion, the phraseology of the award and of the partition decree does not affect the matter. The decree must be read in the light of the proceedings in which it was passed. Having regard to the fact that the award is the award of a commissioner, and made *inter partes*, I do not think that the description of the interest awarded to Nistarini as that of a Hindu widow indicates that she was judicially given more extensive rights than those to which she is entitled under the law.

4. Another point taken is that, as the Official Assignee never made any attempt

to make the plaintiff's interest in Nistarini's properties available to his creditors it was not affected by the insolvency. I have been referred to Section 45(3), Presidency Towns Insolvency Act, but I do not think that sub-section throws any light upon the matter. That sub-section runs:

An order of discharge shall be conclusive evidence of the insolvency and of the validity of the proceedings therein.

5. I cannot construe this to mean that any property owned by the insolvent which is not mentioned in the insolvency proceedings must be regarded as falling outside their scope. In my opinion, the operation of Section 17 is automatic, and if the plaintiff had an interest in these properties at the date of his adjudication, that interest vested in the Official Assignee by operation of law. It is not suggested here, as has been suggested in certain other cases, that the Official Assignee took any step which can be construed as a relinquishment or abandonment of these interests, and thereby divested himself of what had become vested in him u/s 17. The result is that these preliminary points taken by the plaintiff fail.

6. With regard to the general question, the plaintiff very rightly points out that it has been laid down more than once that a Hindu widow or mother is not a tenant for life, in the sense in which that term is familiar to English lawyers. Subject to certain conditions she is the absolute owner of the property in that she can effectively alienate the corpus, a power which I need hardly say is not generally among those possessed by a life tenant. In spite of these submissions however I have come to the conclusion that the case is covered by authority. I have been referred to Sorolah Dossee v. Bhoobun Mohun Neoghy (1888) 15 Cal. 292 a decision of Petheram C. J. and Wilson and Tottenham JJ. The point for decision in that case was whether, on the death of a widow, who had been given a share in partition proceedings instituted by her sons and relating to the estate of her deceased husband, the property passed to the heirs of her husband at his death or to those who would have been his heirs if his death had synchronized with that of his widow. It will be observed that the question here is not the same, but there are observations in the judgment which are, in my opinion, of great assistance in elucidating the principles to be applied. At page 314 the following passage occurs:

The conclusion which I draw from the Bengal authorities is, that a wife's interest in her husband's estate given to her by marriage ceases upon the death of her husband leaving lineal heirs in the male line; that such heirs take the whole estate; and that the share which a mother takes on a partition among her sons she does not take from her husband, either by inheritance, or by way of survivorship in continuation of any preexisting interest but that she takes it from her sons in lieu of or by way of provision for, that maintenance for which they and their estates are already bound. I think it follows as a necessary inference that, on her death, that share does not descend as if she had inherited it from her husband, but goes back to her sons from whom she received it. And this is

the conclusion drawn by Shama Churn Sircar and by Ghose J. in the passages already cited.

7. This case was referred to and followed by Rankin J. in *Shashi Bhusan Shaw Vs. Hari Narain Shaw*, The contention of certain parties in that case is thus summarized by Rankin J. and seems to me identical with the contention of the plaintiff here:

The first question is as to the nature during her lifetime of the right of her sons to take her share among them at her decease. It is contended by the eldest son that until her death there was no more than a mere *spes successionis* as regards her share, that no son of hers in her lifetime had an interest in the reversion of her share but only a chance or possibility within the meaning of Section 6, Sub-clause (a), Transfer of Property Act.

8. On the following page the learned Judge observes:

...the effect of authority binding upon me is that the share in question in an interest in lieu of the right to maintenance which upon partition amongst sons is carved out of the son's shares and at the death of the mother goes back to and becomes part of the shares out of which it came. I accept as the law upon this question the decision in *Sorolah Dossee v. Bhoobun Mohun Neoghy* (1888) 15 Cal. 292 and I think it inconsistent with the contention that is now put forward on behalf of the eldest son.

9. In the face of these pronouncements, it is, in my opinion, impossible to hold that from the date of the partition until the death of Nistarini, the sons of Kritti Bash had only a *spes successionis*. The properties allotted to Nistarini were not inherited by her from Kritti Bash. The effect of the partition decree however was to make them available for her maintenance, for which purpose she was entitled in certain circumstances to alienate them, but the interest which the two sons had obtained by inheritance on the death of their father was never divested. It follows that that interest was subsisting at the date of the adjudication of Hira Lal, and that u/s 17, Presidency-towns Insolvency Act, it passed to the Official Assignee. The defence accordingly succeeds and the suit must be dismissed with costs.