

(1939) 12 AHC CK 0006
In the Allahabad High Court

Kanjeshwar Nath and Others

APPELLANT

Vs

Benares Bank Ltd. and Others

RESPONDENT

Date of Decision : 18-12-1939

Acts Referred:

Citation : AIR 1940 All 196 : (1940) 10 AWR 128

Hon'ble Judges : Bajpai, J

Bench : Division Bench

Judgement

Bajpai, J.—The plaintiffs are the appellants before us. The facts giving rise to the suit out of which this appeal arises may be briefly stated. It appears that there were three brothers, Onkar Prasad, defendant 2, Piarey Lal, defendant 3, and Lachmi Narain who is not a party to the present suit. Lachmi Narain had certain dealings with the Benares Bank Ltd., Saharanpur, defendant 1, and Onkar Prasad and Piarey Lal, his two brothers, had given a letter of guarantee to the Bank guaranteeing the payment of such sums as might be due by Lachmi Narain to the Bank. There was a settlement of accounts and on 22nd July 1926, a "hundi" was drawn up. Lachmi Narain was the drawer of the "hundi." Onkar Prasad and Piarey Lal were the drawees of the "hundi" and the Benares Bank was the payee. Suit No. 164 of 1927 was brought by the Bank on the basis of this hundi against Onkar Prasad and Piarey Lal and a decree was obtained. The decree was put in execution and then a security bond was drawn up by Onkar Prasad and Piarey Lal. This was on 20th February 1930 and execution was stayed. The decretal amount not having been paid up the Benares Bank sought to sell the property mentioned in the security bond and then the present suit was instituted by the plaintiffs who are the sons of Onkar Prasad and Piarey Lal, plaintiffs 1 to 3 being the sons of Onkar Prasad and plaintiff 4 being the son of Piarey Lal. The suit was for a declaration that the property in dispute was not liable to be attached and sold in execution of the decree in Suit No. 164 of 1927. The Courts below have dismissed the plaintiffs' suit and hence this second appeal by them before us.

2. Three points were agitated before the lower Appellate Court and the same

three points are urged before us. In the first instance it is submitted that the sons of Onkar Prasad and Piarey Lal are not liable to pay the amount of the decree inasmuch as there was no consideration for the "hundi." There is no substance in this plea inasmuch as the "hundi" was drawn up in pursuance of the contract of guarantee by which Onkar Prasad and Piarey Lal had promised to reimburse the Bank for such sums as might be found due to the Bank from Lachmi Narain. The advance of moneys to Lachmi Narain was a sufficient consideration so far as Onkar Prasad and Piarey Lal were concerned. Under the Hindu law of the Mitakshara school a son is liable for the debts of his father on account of suretyship for the payment of money and there is no force in the contention that the son is not liable for such suretyship debts. In the Mayne's Treatise on Hindu law and Usage, Edn. 10, the following passage occurs:

According to Brihaspati, there are four different classes of sureties: (1) for appearance, (2) for confidence or honesty, (8) for payment of money lent, and (4) for delivery of goods or articles of the debtor. Yajnavalkya recognizes the first three classes alone. It is now settled that the obligation in regard to the first two classes is purely personal to the sureties and that the sons are not liable. But in the case of sureties for payment of money or for the delivery of the debtor's assets or goods, the sons are also liable.

3. A number of cases are cited in support of the proposition that in the case of suretyship for payment of money the sons are also liable. There is thus no force in the contention that the present plaintiffs are not liable for the suretyship debts of their fathers. The next contention is that the decree which is sought to be executed must be deemed to be satisfied by the execution of the security bond. We have the security bond before us and after having considered it carefully we have come to the conclusion that the security bond did not satisfy the decree, rather it was for the satisfaction of the decree that the security bond was executed. The words "digreedar ne matalba digree maskur ke liye zamanat talab kiya hai," and the words "matalba digree haza men bataur zamanat makful kardi," and again the words "matalba digree mai kharcha wa sood sarah maskoor bazariye nilam" clearly show that the decree was meant to be kept alive and the security bond was not executed in satisfaction of the decree, but in order to secure the payment of the decree which remained intact.

4. The third contention is that the property in dispute cannot be attached and sold in execution of the decree in Suit No. 164 of 1927, but that another suit should be instituted on the basis of the security bond and proceedings in execution are barred under Order 34, Rule 14, Civil P.C. This contention also seems to be without force in view of the decisions of this Court in Mukta Prasad Vs. Mahadeo Prasad and Others, and Mool Chand and Others Vs. Lalta Prasad, . No decree in the present case has been obtained for the payment of money in satisfaction of a claim arising under a mortgage. From what we have said above it would appear that the decree that has been obtained in the present case and which is sought to be executed was on the basis of a "hundi" and the mortgage

was created for the purpose of satisfying this simple money decree and the two oases mentioned above go to show that Order 34, Rule 14, Civil P.C., does not stand in the way of the defendant Bank. On the whole in our judgment there is no force in this appeal and we dismiss it with costs.