
(1939) 08 CAL CK 0003
In the Calcutta High Court

K.K. Das, Receiver and Others

APPELLANT

Vs

Sm. Amina Khatun Bibi and Another

RESPONDENT

Date of Decision : 21-08-1939

Acts Referred:

Transfer of Property Act, 1882 — Section 51

Citation : AIR 1940 Cal 356

Judgement

1. Kazi Abdul Aziz (defendant 3) borrowed sums of money from Radha Bullav Saha (defendant 1), on different occasions from 24th April to 17th October 1928. The said defendant 1 brought a suit in 1931 to recover the same and got a decree for Rs. 3129 odd on 6th May 1932. Kazi Abdul Aziz had a running business with Shaikh Muhammad Hanif (defendant 2). The accounts were twice adjusted: once on 13th April 1931, when Rs. 1907 odd was found due from the former to the latter, and again on 17th October 1931 when a sum of Rs. 2304 odd was similarly found due. For both these amounts Abdul Aziz executed hatchittas in favour of Muhamed Hanif. Transactions between them however continued on till 5th April 1932. On that date the former was in debt to the latter to the extent of Rs. 2076 odd. The latter brought a suit and recovered a decree for the same on 10th March 1933. These two decree-holders executed their decrees and attached some properties as belonging to their judgment-debtor. The plaintiff-appellant, who is the wife of Abdul Aziz, preferred two claims. These claims were dismissed by the execution Court on 31st August and 4th October 1933 respectively. She then instituted this suit under the provisions of Order 21, Rule 63, Civil P.C., on 8th November 1933. In the suit she claims the properties described in three Schedules A(1), B(1) and C(1) as her own. On some of the plots included in Schedule A(1) stands a pucca dwelling house. She also claims the same on the ground that she constructed it with her own money after the lands had been conveyed to her in 1909 by her husband in consideration of the dower money then due to her.

2. The learned Subordinate Judge by his judgment and decree dated 12th December 1935 allowed her claim to the lands described in Schedule A(1) and to

the structures thereon, but has dismissed her suit in respect to the properties described in Schedule B(1) and C(1). This appeal is confined to the lands of Schedule A(1) and to the structures thereon. We are told that an appeal has been filed by her against that part of the decree of the Subordinate Judge which is against her. Nothing which we may hereafter say shall be taken to prejudice any of the parties in respect of the properties of Schedules B(1) and C(1). Defendants 1 and 2 have preferred this appeal in which they challenge the findings and conclusions of the learned Subordinate Judge in respect of the lands of Schedule A(1) and the buildings thereon. With regard to the lands of the said Schedule we hold that the learned Subordinate Judge is right in his conclusions. The said lands had been conveyed to the respondent by her husband by a registered kobala dated 25th May 1909 (Ex. I). The consideration recited is the liquidation of half the dower debt then due to her. The evidence is one-sided, that a dower of Rs. 1102 was fixed at the time of the marriage. There is no evidence that that debt had been discharged by the husband before May 1909 in any other way. There is also no evidence that the husband was involved in 1909. There is no reason why he should execute a fictitious deed as far back as 1909. We accordingly hold in agreement with the learned Subordinate Judge that Ex. 1 is a valid document and had passed to the respondent the lands described in Schedule A(1) of the plaint.

3. Some of the plots mentioned in Schedule A(1) constituted the homestead of the couple. The evidence is that at the time of Ex. 1 there were kutcha structures thereon. Thereafter valuable structures costing about Rs. 4000 have replaced those kutcha buildings. The respondent's case is that with her own money she built these structures in or about the year 1923. She and her witness Abdul Barik Mallik have said that these structures had been built with the sum of Rs. 2000 which had been given to her by her father, with Rs. 1500 being the sale proceeds of her ornaments and with Rs. 500 being the accumulated profits of her property. The learned Subordinate Judge has believed this story but we cannot. There is overwhelming documentary evidence that the pucca structures were built not in 1923, but the building operations commenced in 1927 at the earliest. The trades people who supplied the materials have been examined by the contesting defendants. They have proved that materials were supplied on credit to defendant 3 from 1927 to 1932. The account books produced by them (Ex. A to Ex. D series) corroborate their oral testimony. The evidence in support of the respondent's case that she got Rs. 2000 from her father and Rs. 1500 from sale of ornaments is of a flimsy character. Nor is there any corroborative documentary evidence to support the case that Rs. 500 had been saved from her income and applied to the building. On the evidence we hold that the building had been raised by defendant 3 with his money.

4. The suggestion of the appellants is that the money borrowed by defendant 3 was utilized by him in the building. This suggestion cannot be true in respect of the advances made by appellant 2. The debts of defendant 3 to him were trade debts (see defendant 2's plaint Ex. O (I)-II 132). There may be something in the

suggestion of appellant 1, but that suggestion rests on no evidence. It is at least clear on the facts that defendant 3 had tapped other resources also for completing the building. The loans given by appellant 1 to defendant 3 were in 1928 (Ex. O-II-117) but the documentary evidence establishes the fact that money was spent up to 1932 in completing the building. The conclusion we arrive at is that the building was raised by funds supplied not by the respondent but by her husband, defendant 3, though we cannot precisely trace the ultimate source.

5. We have now to consider the legal position. The land belonged to the respondent but the building was erected at the costs of defendant 3 who knew at the time that the land was not his but his wife's. Defendant 3 therefore does not come within the third proposition laid down in *Thakoor Chunder Poramanick v. Ramdhone Bhattacharjee* (1866) 6 W.R. 228 (F.B.) a proposition which has been approved by the Judicial Committee of the Privy Council in *Vallabhdas Naranji v. Development Officer Bandra* AIR (1929) P.C. 163. He, defendant 3, could not have claimed compensation from respondent as there was no equity in his favour. He spent money on the structures knowing that the land was not his. The question is whether he has the right to remove the structures. If he has that right, that right must have for its basis his ownership in the structures. If he had spent in the bona fide belief that he was the owner of the land or had the right to build he could have claimed compensation or the right to remove the structures. That is what has been laid down all along since *Thakoor Chunder Poramanick v. Ramdhone Bhattacharjee* (1866) 6 W.R. 228 (F.B.) and the principle entitling a person to compensation has now been given statutory recognition in the case of transferees (Section 51, T.P. Act). In the said case, *Thakoor Chunder Poramanick v. Ramdhone Bhattacharjee* (1866) 6 W.R. 228 (F.B.) three propositions are laid down: (1) buildings and other such improvements do not by the mere accident of their attachment to the soil become the property of the owner of the soil. (2) If he who constructs the building or makes the improvement on another's land is a mere trespasser he cannot claim compensation from the owner of the soil nor has he the right to remove them. (3) If however he was in possession of the land under a bona fide title or claim of title he can either remove them or obtain compensation for the value of the building or improvement if it is allowed to remain for the benefit of the owner of the soil, the option of retaining the building, etc., or of allowing removal remaining with the latter.

6. In *Vallabhdas Naranji v. Development Officer Bandra* AIR (1929) P.C. 163 the first and third propositions were approved but opinion was reserved by the Judicial Committee on the second proposition. The Indian decisions however lay down the proposition that in the case of wanton trespass the trespasser has no right to claim either compensation or the right to remove the materials. In the case before us in view of the relationship between defendant 3 and the respondent we cannot say that defendant 3 was a trespasser on the land within the meaning of the proposition so laid down in the cases.

7. The decision in *Thakoor Chunder Poramanick v. Ramdhone Bhuttacharjee* (1866) 6 W.R. 228 (F.B.) is that the building does not become the property of the owner of the soil by the mere accident of attachment. This proposition lends support to the view that if there be something more, the building would become the property of the owner of the soil. The fact that the husband constructed the building on his wife's land knowing it to be his wife's is in our judgment such an additional and special circumstance which takes the case out of the first general proposition laid down by that Pull Bench. The husband never intends in such a case to reserve any right in the structures. He intends to make the habitation, both of himself and of his wife, more comfortable. In *Ramsden v. Dyson* (1865) 1 H.L. 129 a case between landlord and tenant, Lord Cranworth L.C., laid down a principle which can be dissected into two broad propositions and from those two propositions he deduced a third proposition. The first two propositions are: (i) if a stranger builds supposing the land to be his own and the real owner perceiving the mistake of the former knows at the time of the expenditure that the land belongs to him and stands by, the Court of equity will not allow the latter to insist on his legal title, (ii) if however the stranger builds upon the land of another knowing it to be the latter's there is no principle of equity which will prevent the latter from claiming his land with the benefit of all the expenditure made on it.

8. The third proposition deduced is that if a tenant so builds, in the absence of special circumstances, the land and the building belongs to the lessor. This last-mentioned proposition must be taken subject to the provisions of Section 108(h), T.P. Act. The principles laid down in *Ramsden v. Dyson* (1865) 1 H.L. 129 was applied by the Judicial Committee in a case from India, *Lala Beniram v. Kundanlal* (1899) 21 All. 496. In our judgment that decision lends authority to the view that the principle formulated in the second proposition in *Ramsden v. Dyson* (1865) 1 H.L. 129 is a principle applicable to Indian cases. This view of ours receives support from the observation of Eampini and Mookerjee JJ., in *Dharmadas Kundu v. Amulyadhan Kundu* (1906) 33 Cal. 1119. 1129 and of Darwood and Mya Bu JJ. in *Maung Aung Ba v. Ma Nyum* AIR (1928) Rang 141 at pp. 142 and 143, We accordingly hold that the building also belongs to the respondent. The appeal is accordingly dismissed with costs, hearing-fee three gold mohurs.