

(1937) 03 BOM CK 0019
In the Bombay High Court
Case No : First Appeal No. 322 of 1931

Madivalappa Irappa

APPELLANT

Vs

Subbappa Shankreppa Nadagauda

RESPONDENT

Date of Decision : 09-03-1937

Acts Referred:

Evidence Act, 1872 — Section 44

Citation : AIR 1937 Bom 458 : (1937) 39 BOMLR 895

Hon'ble Judges : Divatia, J; Barlee, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Barlee, J.—[After stating the facts, his Lordship proceeded :] Mr. G.N. Thakor who has argued this appeal on behalf of the defendants has challenged the findings of fact that Sangaraddi was a minor at the date of the bond in 1892, and that he died in 1895. It is not necessary to deal with this portion of the case in detail inasmuch as we think it is clearly shown by the evidence on the record that Sangaraddi must have been an minor in 1892. That evidence includes a statement made by Malkama, the: adoptive mother, when she applied for guardianship, a statement made by his natural father in 1883, and three entries from a school register. Very naturally there is a good deal of discrepancy between the results of these papers, but putting the case for the defence at its highest, Sangaraddi cannot have been more than eighteen in the year 1892. The learned Counsel has commented on the failure of the plaintiffs to procure a copy of the birth certificate of the boy, and their excuse that his name could not be found in the records in the village birth and death register between the years 1871 and 1876, or thereabouts, was obviously not a very convincing one. But we think that the plaintiffs certainly have made out a very strong case, prima facie, even though they have not proved it to the hilt, and if the village register could have given any other better information the defendants might have produced it.

2. It is also clear from the statement made in the suit register, to which I have

alluded, exhibit 126, that the suit was filed against Basligamma as the widow of Sangaraddi, the deceased, and in fact it was never denied in the lower Court that Sangaraddi was dead at the date of the suit, though that fact was specifically pleaded.

3. The other point of fact with which I would shortly deal before turning to the law are the findings of the learned Judge that there was no consideration for the bond, and, secondly, that there was no necessity for the bond. We entirely agree with Mr. Thakor that these findings can justly be termed fanciful. The only ground for the view that there was no consideration for the bond was that in the same year, or in or about the same year, Malkama herself executed a bond for Rs. 3,000. That seems to us at the most to justify suspicion, but it is not a fact which can be looked upon as evidence of failure of consideration, and the main reason, which the learned Judge has given, for holding that there could have been no necessity for the bond is still weaker, that the boy could not have needed this sum as he had a large income from his property. Many owners of properties are in need of money.

4. I come now to the decision of the learned Judge that the bond was a nullity, and that therefore the decree may be ignored by the reversioners. A decree is an adjudication of a civil Court and is binding on the judgment-debtor and all those claiming from or through that judgment-debtor until it has been set aside, or shown, to be void. A decree is void if the Court had no jurisdiction to pass it, or if it is passed against a dead person, or against a person who has never had an opportunity of appearing. It is voidable if it is obtained by fraud or collusion?see Section 44 of the Indian Evidence Act. With all respect to the learned Judge we have never heard of a decree being declared void because it was based on wrong principles. Such a decree can be corrected by a Court of Appeal, but once the opportunity for appeal is past, it is as binding as a decree which is passed on the most clear and correct principles of law.

5. I need not therefore refer to the learned Judge's discussion of this point, but will take up the more scientific argument put forward by Mr. Tyabji. His argument is based on Section 199, at p. 215 of Sir Dinshah Mulla's Hindu Law, 8th edn. The passage runs thus?

A widow or other limited heir represents the whole estate in legal proceedings relating thereto. Therefore, a decree passed against her and a sale of the estate in execution of such decree is binding not only on her, but on the reversioners, even though they were not parties to the suit, provided?

(1) the suit was in respect of a debt or other transaction binding on the estate, and

(2) the decree was passed against her as representing the estate, and not in her personal capacity,

"unless," as laid down by their Lordships of the Privy Council in the Shivagunga

case" [Katama Natchiar v. The Raja of Shivagunga], "it could be shown that there had not been a fair trial of the right in that suit.

It is conceded by the learned Counsel that in a suit against a minor widow in respect of a transaction which has been entered into by her husband, she represents the estate of her husband, and that the decree against her would bind his reversioners if the other conditions are satisfied. But his case is that the other conditions are not satisfied inasmuch as this suit was in respect of a debt, which was not in law binding on her husband's estate.

6. If this first proviso in Section 199 were a correct statement of the law, the case for the plaintiffs would no doubt be very strong. But we have referred to the authorities which the learned author cites for this proposition and we cannot find any justification for it. We can find no authority for the words " binding on the estate " in the passage which I have quoted.

7. The authorities cited are, the Privy Council decisions in Jugul Kishore v. Jotendro Mohun Tagore ILR (1884) Cal. 985 and the Shivagunga case?Katama Natchiar v. The Rajah of Shivagunga (1863) 9 M.I.A. 539. In the former we find the following passage (p. 991):?

It was held in the Shivagunga case, that although a widow has for some purposes only a partial interest, she has for other purposes the whole estate vested in her; and that in a suit against the widow in respect of the estate the decision is binding upon the reversionary heir.

And later on (p. 991):?

...there are many cases in which when the right, title, and interest of the widow is sold the whole interest in the estate passes. In other cases the whole interest does not pass. The case depends upon the nature of the suit in which the execution issues. There are many authorities to that effect... If the suit is simply for a personal claim against the widow, then merely the widow's qualified interest is sold, and the reversionary interest is not bound by it. If, on the other hand, the suit is against the widow in respect of the estate, or for a cause which is not a mere personal cause of action against the widow, then the whole estate passes.

The other case, Katama Natchiar v. The Raja of Shivagunga, is reported in 9 M.I.A. 539, and the passages we were referred to are at pp. 601, 603 and 604. At the bottom of p. 603 we find this paragraph?

It seems, however, to be necessary, in order to determine the mode in which this appeal ought to be disposed of, to consider the question whether the decree of 1847, if it had become! final in Anga Mootoo Natchiar's lifetime, would have bound those claiming the Zemindary in succession to her. And their Lordships are of opinion that, unless it could be shown that there had not been a fair trial of the right in that suit?or, in other words, unless that decree could have been successfully impeached on some special ground, it would have been an effectual

bar to any new suit in the Zillah Court by any person claiming in succession to Anga Mootoo Natchiar. For assuming her to be entitled to the Zemindary at all, the whole estate would for the time be vested in her, absolutely for some purposes, though, in some respects, for a qualified interest; and until her death it could not be ascertained who would be entitled to succeed. The same principle which has prevailed in the Courts of this country as to tenants in tail representing the inheritance, would seem to apply to the case of a Hindoo widow; and it is obvious that there would be the greatest possible inconvenience in holding that the succeeding heirs were not bound by a decree fairly and properly obtained against the widow.

8. These are the principal cases on which the learned author has relied for his statement of the law in paragraph 199 and there is nothing in them to suggest that a reversioner can challenge a decree against a Hindu widow as representing the estate of her husband, on the ground that the contract of her husband on which the claim was based was not binding on the estate because it was void, for any reason. I would add that if this be the legitimate extension of the rule laid down by their Lordships of the Privy Council, it would have justified the reversioners in claiming that they were not bound by a decree which had been obtained against the husband himself. But, in our opinion, it is not a legitimate extension. It is a fundamental rule of procedure that, where a decree has been made in a fair trial by a Court which has jurisdiction, it binds the judgment-debtor and every one who claims under him until set aside by a Court of Appeal. Neither the judgment-debtor nor his successors can ignore it, whether it be right or wrong, for, in the words of the Privy Council, a Court has jurisdiction to decide right or wrong. The so-called exception is no exception at all, for a decree against a Hindu widow arising out of a claim against her personally in respect of her own act does not bind the reversioner, because he does not claim through her but binds her estate only which is a life interest in her husband's estate plus the right to dispose of the estate in perpetuity for necessity. On the other hand a decree made against her for an act of her deceased husband binds the reversioner inasmuch as she represents her deceased husband.

9. Thus we are unable to accept the lower Court's argument that the decree against her, a Hindu widow as representing the estate of her husband, can be ignored by the reversioner.

10. The next question is whether it has been shown that this decree was not fairly obtained. The learned Counsel has contended that it was for the defendants to show that it had been fairly obtained, but we cannot accept this view. The defendants are the auction-purchasers, who can be expected to have no knowledge of the facts of the suit in which the decree was obtained, and in any case it was for the plaintiffs to show reasons why a decree, which apparently is in order, should not bind them. The arguments which found favour with the learned Subordinate Judge for his finding that the decree has not been fairly obtained do not appear to us to have much weight. He has held that the decree was passed

ex parte and that the defendant Sangaraddi's widow was not represented properly. Neither of these reasons appears to be justified by the record. The only document we have in connection with this suit is exhibit 126, to which I have already alluded. It is a suit register, and it shows that the minor widow was represented by her father, and that he briefed a pleader, who put in an appearance. Technically, then, it was not an ex parte decree. The learned Subordinate Judge has laid stress on the fact that only one-fourth of the costs were allowed as showing that the decree was passed ex parte. But that order appears to be mistaken. It may be conceded that the suit was not defended, but that is not a reason for saying that the trial was not fair.

11. The other point also lacks substance. Malkama, as guardian of her son Sangaraddi, would have been the proper guardian ad litem for him had he been alive, but on her death her guardianship ceased, and we cannot say that the girl's father with whom she was living was not the proper person to be appointed. In fact we are not convinced that there is anything unfair about this decree.

12. The learned Counsel has suggested that the defence was grossly negligent inasmuch as the guardian neglected to urge that the bond on which the suit was based was a nullity, or that there had been no consideration, but it is impossible at this stage for us to say that the defence would have been successful. At that date, in 1897, the view held by this Court was that a contract by a minor was voidable and not void and could be sued on if the loan had been for a necessary purpose. Thus, without knowing what the object of the loan was, we are unable to criticise the action of the defendant or her legal adviser. As I have said we are not convinced by the argument that there was no consideration at all. In fact the absence of that defence to this suit must point to the fact that there must have been some consideration.

13. The decision of these issues is sufficient to dispose of this case.

14. Mr. Thakor on behalf of the appellants has argued that the plaintiffs had no title to sue alone. The property had come to Kalyanappa as separate property, and on his death went by inheritance to his sons, Ayappa and Doddappa, and learned Counsel has argued that both should have been joined in the sale to plaintiff No. 1 and both should have been joined in the suit. But Mr. Tyabji has referred us to Section 31 of Sir Dinshah Mulla's work, where it is stated?

According to the Mitakshara school two or more persons inheriting jointly take as tenants-in-common except the following four classes of heirs who take as joint tenants with rights of survivorship :?

(a) Two or more sons, grandsons, and great-grandsons succeeding as heirs to the separate or self-acquired property of their paternal ancestor.

It would follow from this that the property was joint family property in the hands of Ayappa and Doddappa and therefore the sale by Ayappa, who was the

manager, was good, and no other member of the family was a necessary party.

15. Mr. Thakor's argument on the point of limitation is that the article applicable was 144 and not 141. This argument is based on the assumption that the decree was passed against Sangaraddi himself, and not against his widow. As, however, he died before the decree and before the defendants obtained possession, their possession was adverse to the widow, and according to the rulings of this Court, adverse possession against a widow is not adverse possession against the reversioner, see Mulla's Hindu Law, Section 201 at page 218. This point, however, is now academic.

16. But as we differ from the learned Judge on the main issue, we must set aside his decree.

17. The result is that the appeal is allowed and the suit is dismissed with costs throughout.

Divatia, J.

18. I agree