

(1945) 11 BOM CK 0023
In the Bombay High Court

Motilal Sarupchand

APPELLANT

Vs

Shamsundar Radhakisan and Others

RESPONDENT

Date of Decision : 22-11-1945

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1947 Bom 160

Hon'ble Judges : Chagla, J

Bench : Division Bench

Judgement

Chagla, J.—The plaintiff lent and advanced a certain sum of money to the father of the defendant and the father passed a promissory note in respect of this amount. The father died and his widow, after making up the accounts, passed a promissory note for the amount lent by the plaintiff to her husband. As she could not pay the amount of the promissory note, the plaintiff filed a suit against her. She died during the pendency of the suit and the plaintiff brought the defendant on record as her heir and legal representative. A decree was passed in favour of the plaintiff against the defendant as the legal representative of her mother and to the extent of the assets of her mother come to her hands. The plaintiff had attached before judgment a property of the defendant's father of which the widow was in possession. The attachment was confirmed when the decree was passed and the plaintiff attempted to bring the property to sale. In the execution proceedings the defendant urged that the property belonged to her as the heir of her father, that it did not belong to the estate of her deceased mother and that the property could not be brought to sale. Her contention succeeded both in the executing Court and in the Court of appeal and finally in the High Court in second appeal. Then the plaintiff filed the present suit for a declaration that property was liable to attachment and sale in execution of the decree which he had obtained. Both the Courts have held against the plaintiff and have dismissed the suit.

2. Mr. Pendse for the appellant has argued that the debt incurred by the widow

was for legal necessity and as such binding on the next reversioner who was the daughter, the defendant in the suit. He has further contended that the property that can come to the hands of the next reversioner after the death of a Hindu widow is the property subject to the payment of debts properly incurred by the widow; and in support of this proposition, he has relied on 60 Bom. 311.1 Now it is to be noted that in that case a promissory note was executed by the widow, but the suit was filed not against the widow but against the next reversioner. The next reversioner denied his liability on the ground that the debt was not incurred for legal necessity and it was held that it was so incurred. On that a Full Bench of our High Court held that the estate in the hands of a reversioner is bound by an unsecured debt contracted by a Hindu widow as representing the estate, if the debt is for legal necessity. It is perfectly true that if the plaintiff had filed the suit against the daughter and claimed the amount as representing a debt incurred by the widow for legal necessity, then perhaps the defendant might have had no answer to that. But the suit filed by the plaintiff against the widow was for a personal decree against her. It was not in respect of a debt incurred by the husband nor was it a suit asking for a decree against the estate of the husband in the hands of the widow. A more direct authority on the point is the one in 42 Bom. L.R. 600.2 There a Hindu widow, who had inherited her husband's property, passed a promissory note in favour of the defendant to secure certain debts contracted by her for legal necessity. The defendant filed a suit to recover the amount due under the promissory note basing her claim entirely on the promissory note. A personal decree was passed against the widow, in execution of which the property inherited by her from her husband was attached and sold. The plaintiff was subsequently adopted by the widow and it was held by Sir John Beaumont, C.J. and Sen J. that the decree being merely a personal decree against the widow, nothing except her right, title and interest could be sold in execution of it and that, therefore, the decree was not binding on the plaintiff and the sale consequent on it was invalid as against him; and at p. 604 the learned Chief Justice observed as follows:

In my opinion, therefore, although the debts here were for legal necessity and were binding upon the estate of Basavva's husband, the decree being merely a personal decree against her nothing can be sold in execution of the decree except her right, title and interest.

Now in this case the decree which the plaintiff has obtained is against the estate of the widow. It is not against the estate of her husband. The short question therefore that arises is: Does the property which the plaintiff seeks to attach belong to the estate of the widow? The only answer to that question can be in the negative. On the death of the widow who merely enjoyed a widow's estate, the property which she held in that capacity passes to her husband's heirs and it is her husband's estate that the next reversioners inherit. The only estate left by a Hindu widow is her own personal absolute property. It is not true to say that in Hindu law when a Hindu widow dies the property which she had inherited from her husband and of which she is not the absolute owner and not a full heir can

be said to be her estate when she dies. It is the estate of her husband and not her own estate. 1947 B/21 & 22 Therefore the defendant, the daughter, has a perfect answer to the plaintiff's suit when she says:

You cannot attach this property because it does not belong to the estate of my mother but it belongs to the estate of my father and you have got a decree not against the estate of my father but against the estate of my mother.

3. It is unnecessary to deal with the other question whether the suit is barred by reason of Section 47, Civil P.C., or barred by res judicata or barred under Order 2, Rule 2, Civil P.C. The appeal, therefore, fails and must be dismissed with costs.