

(1888) 02 PRI CK 0005

In the Privy Council

Mussumat Girja Koer and Others

APPELLANT

Vs

Bhagbut Pershad and others

RESPONDENT

Date of Decision : 15-02-1888

Acts Referred:

Citation : (1888) 15 IndApp 99

Hon'ble Judges : Barnes Peacock, Macnaghten, Hobhouse, Richard Couch, JJ.

Judgement

Barnes Peacock, J. 1. This is an appeal from a decree of the High Court in a suit brought by the widows of Babu Jhaller Singh, Babu Pertdb Narain Singh, and Babu Roghuberdyal Singh, on behalf of themselves and the infant children of their respective husbands, to recover possession of property which had been purchased by the first Defendant, Babu Punnu Singh, under certain writs of execution against the three husbands. The property which was the subject of this suit, namely, a five annas four pies share of Bazidpore Dhanki, was ancestral property governed by the Mitakshara. The husbands by four bonds had charged the five annas four pies share with certain debts. One of those bonds was given by one of the husbands alone, namely, Jhaller. The decree under which the first sale in execution took place was on a judgment upon a bond given by the three husbands to secure a certain sum for money lent to them and by which they charged by way of mortgage, as security for the amount lent, the five annas four pies share. They were sued, not only to recover the money out of their general assets, but in the first place to have it realised out of the five annas four pies share. The decree was that the money should be recovered out of the property charged, and the five annas four pies share was attached in execution of the decree, and was sold in execution. The sale was confirmed by the Court, and the confirmation recites that the action had been brought for the recovery of a certain amount, and "as the right and interest of Balm Jhaller Singh, and Babu Pertab Narain Singh, and Roghvhurdial Singh, judgment debtors, in the under-mentioned land, or immoveable property, were sold on the 6th of October, 1879, in execution of this decree through the bailiff of the Court of the Judge of Patna; and as seven days have elapsed and no objection is filed, it is ordered that the

said auction sale be confirmed, and the said sale is confirmed by this order." Then at the foot of the certificate of confirmation the property is stated to be the five annas four pies share of the mouzah Bazidpore Bhanhi, so that there can be no doubt that by the bond under which the sale took place that property was charged; the debt was decreed to be recovered out of the property; the property was attached; the property was sold, and the sale was confirmed as to the property itself. Therefore it was not a mere sale of the right, title, and interest of the debtors. 2. The suit was brought by the widows on behalf of themselves and the children to set aside the sale entirely; and they also prayed that possession might be awarded in respect of the whole five annas four pies share; and secondly : "In case the purchase of Defendant No. 1, - "that is the purchase of Punnu - "in respect of the right and interest of Defendants Nos. 3 to 5 (that is the three husbands), be held valid, then your Petitioners might be put in possession of their legal share by partition." 3. The case was tried by the Subordinate Judge, and he gave a decree in favour of the Plaintiffs for the shares to which he considered the claimants would be entitled if a partition had been made. His judgment is recorded, and his order is : "That the case of the Plaintiffs be decided with this detail; that the claim of five of the Plaintiffs "- naming them -" be dismissed with costs." Those were five of the children who were not in existence when the bonds were executed. There is no appeal on the part of those children with regard to the dismissal of their claim. Then upon the claim of the widows and the other children he ordered that the property" be divided into fifteen saham, "which means fifteen shares, -" of which twelve saham be declared to be the property of the Plaintiffs, and three of Jhaller, Pertab, and Boghubur; that each of the Plaintiffs mentioned above do get possession of one saham, and the remaining shares, that is to say, the shares of the three husbands, remain in the possession of the Defendants." 4. Upon that, there was an appeal to the High Court, and the Court gave their judgment on the 21st of June, 1883. For their reasons they referred to a judgment they had given in another suit. The effect of the judgment was, that although the Defendants had failed to prove that the loans in respect of which the bonds were executed were required for family necessities, still the Plaintiffs had equally failed to establish that they were" applied to immoral purposes." That the lenders did not make any proper inquiry which a prudent lender would make to satisfy himself as to the necessity of the loans. As to the evidence of immoral and extravagant conduct of the husbands the High Court said, "although the witnesses examined by the Plaintiffs give a somewhat exaggerated account of it, yet we are on the whole satisfied that these persons were leading a life of debauchery and sensuality; and if the lenders had made proper inquiry they would have found that the necessities of the loan arose from their improper and immoral way of life. The Lower Court seems also to be of this opinion. The Subordinate Judge in one portion of his judgment says: " The mere bad conduct of Jhaller, Chiler, and Boghubur, is not sufficient to resume the property." But the Lower Court thinks that the evidence adduced is lot sufficient to establish that the amounts

borrowed under the aforesaid bonds were actually applied to immoral purposes. In this opinion we also concur." It therefore appears that the High Court thought that although the bonds were not proved to have been given for moneys advanced for improper purposes, still the lenders of the money who had sued and recovered their judgments had not made proper inquiries to ascertain whether there was an actual necessity for the loans. But it must be borne in mind that this was not a case of a joint family consisting of brothers but it was one consisting of fathers and children; and it has been held that sons are liable to pay the debts of their fathers, unless incurred for immoral or illegal purposes.

5. That principle was laid down by the Judicial Committee in the case of *Suraj Bansi Koer v. Sheo Proshad Sing* Law Rep. 6 Ind. Ap. 104, where a ruling of Chief Justice Westropp was referred to with approbation, in which he said : "Subject to certain limited exceptions (as, for instance, debts contracted for immoral or illegal purposes) the whole of the family undivided estate would be, when in the hands of the sons or grandsons, liable to the debts of the father or grandfather." Colebrooke's Dig. Book 1, cap. 1, par. 167, and *Girdhari Lal v. Kantoo Lal* Law Rep. 1 Ind. Ap. 321, were cited as authorities for the proposition, and in a subsequent part of their Lordships' judgment the decision in the case of *Kantoo Lal* is summed up in the words following : "This case, then, which is a decision of this tribunal, is undoubtedly an authority for these propositions : 1st. That where joint ancestral property has passed out of a joint family, either under a conveyance executed by a father in consideration of an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debt, cannot recover that property unless they shew that the debts were contracted for immoral purposes, and that the purchasers had notice that they were so contracted." 6. Now, although at the time of the sale notice was given on behalf of the children that the property was joint ancestral property, and that the fathers had no right to mortgage it, still the question arises whether, under the execution of the decree under which the property was ordered to be attached, it was for the purchaser to shew that there was a necessity for the loan, or whether it was not necessary for those who claimed on behalf of the children to shew that the debt was contracted for an immoral or illegal purpose. If it was necessary to shew that the debt was so contracted the Plaintiffs failed to prove the fact, and that is so found by the High Court. It appears to their Lordships that according to the decision in the case of *Suraj Bansi Koer v. Sheo Proshad Singh*, it was necessary for the Plaintiffs to shew that the debt was contracted for an illegal or immoral purpose.

7. In the case of *Mussumat Nanomi Babuasin v. Modun Mohun and Ors.* Law Rep. 13 Ind. Ap. 1, the principle laid down in the previous case was adopted ; and in the judgment of their Lordships At page 17 it is said : "Destructive as it may be of the principle of independent co-parcenary rights in the sons, the decisions have, for some time, established the principle that the sons cannot set up their rights against their father's alienation for an antecedent debt, or against his creditors' remedies for their debts if not tainted with immorality. On this important question of the liability of the joint estate, their Lordships think that there is now

no conflict of authority." It appears therefore, from the decisions, that in a case like the present, where sons claim against a purchaser of an ancestral estate under an execution against their father upon a debt contracted by him, it is necessary for the sons to prove that the debt was contracted for an immoral purpose, and it is not necessary for the creditors to shew that there was a proper inquiry, or to prove that the money was borrowed in a case of necessity. 8. Under these circumstances, their Lordships think that the judgment of the High Court was an erroneous one, and they will humbly advise Her Majesty that that judgment and the judgment of the subordinate Court in so far as it was adverse to the Appellants should be reversed, and that the suit be dismissed with costs in both those Courts. The Respondents will pay the costs of this appeal.