
(1972) 05 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Second Appeal No. 63 of 1968

Nagnoo and Others	Vs	APPELLANT
Gian Chand and Others		RESPONDENT

Date of Decision : 23-05-1972

Acts Referred:

Citation : AIR 1972 HP 101

Hon'ble Judges : Chet Ram Thakur, J

Bench : Single Bench

Advocate : R.K. Gupta, for the Appellant; D.P. Sud, for the Respondent

Final Decision : Dismissed

Judgement

Chet Ram Thakur, J.—This appeal is directed against the judgment and decree of the District Judge, Mandi, dated 23rd February, 1968, whereby the judgment and decree passed by the Senior Sub-Judge, Mandi was reversed and the suit of the plaintiffs was dismissed.

2. The relevant facts for the purposes of this appeal are:--

One Mehar Chand on the basis of a document Exhibit DK/1 obtained a decree for Rs. 150/- with costs on 3-5-1953 from the Court of Sub Judge, Sunder Nagar, against Bhawania Chugthu and Jeonu. The judgment-debtors failed to make payment of the decretal amount, hence the decree-holder in execution of the decree got 6 biswas of land out of khasra No. 3869/1731 measuring 2 bighas 7 biswas situate in Muhal. Sunder Nagar. attached and auctioned. The property was purchased in the court-auction by the decree-holder himself. He sold this land to Gian Chand for Rs. 200/-.

3. The present plaintiffs are the sons of Bhawania, one of the judgment-debtors in the previous suit and also one of the defendants in the suit out of which this appeal has arisen. The plaintiffs filed this suit through their mother as their next friend for a declaration to the effect that the suit property was the joint family

property of the plaintiffs and defendants 3 to 6 and it formed a coparcenary property, that the decree and the sale of the same was liable to be set aside as the consideration of the document on the basis of which the decree was obtained by Mehar Chand was not incurred for legal necessity and, that the debts were contracted for immoral purposes, and, therefore, they prayed that the sale be set aside and also prayed for injunction that the defendant, Gian Chand, be restrained from interfering with the possession of the plaintiffs.

4. The suit was opposed by the defendants on a number of grounds, giving rise to several issues. The issues which were finally contested and pressed before the trial Court are the following:

Issue No. 3: Whether State is a necessary party? (O. P. D.) Issue No. 5: Whether the suit is barred by the principles of res judicata? (O. P. D.) Issue No. 6: Whether the plaintiffs are estopped to file this suit? (O. P. D.) Issue No. 8: Whether the plaintiffs and defendants 3 to 6 are co parceners qua the land in suit? (O. P. P.) Issue No. 9: Whether the debt was im moral and not for legal necessity as set out in the plaint? (O. P. P.) Issue No. 10: Whether the plaintiffs are not bound by the decree, dated 17-1-1959? (O. P. P.) Issue No. 11: Whether the transfer in favour of Gian Chand is without consideration and its effect? (O. P. P.)

5. The trial Court held on Issue No. 3 that the State was not a necessary party. On Issue No. 5, it was held that the present plaintiffs being minors were not parties to the previous litigation between the defendants 1. 2, 3, 4 and Jeonu deceased, and as such they cannot be bound by the decree passed in the litigation. Moreover, the right of sons to challenge an alienation on the grounds of legal necessity and immoral debt cannot be taken away from them merely by reason of a decree having been passed previously, to which they were not a party at all. The other aforesaid issues were also found in favour of the plaintiffs. Hence the suit was decreed, as prayed for.

6. On appeal to the learned District Judge only the findings on Issues 8, 9, 10 and 11 were challenged. The learned District Judge concurred with the findings of the trial Court on Issue No. 8 that the suit property was a coparcenary property of the plaintiffs. On Issue Np. 9 it was held that the plaintiffs had failed to prove that the debt had been incurred for immoral and illegal purposes and that the findings of the trial Court on Issue No. 11 were simply based on surmises and conjectures. So, on this basis .he accepted the appeal, set aside the judgment and decree and non-suited the plaintiffs. Hence, this second appeal.

7. There are concurrent findings of both the courts below on the point that the plaintiffs were the members of the coparcenary with Bhawania, Chughu and Jeonu and the land in suit is a co-parcenery property and this concurrent finding of fact has also not. been assailed by the appellants. Hence this matter has become final.

8. The plaintiff-appellants have assailed the findings of the learned District Judge

on Issue No 9 and his second submission is that the findings that the sale of the coparcenary property was for consideration are wrong. In the first instance the consideration was non-existent and, secondly, it was tainted with immorality and as such could not bind the coparcenary property nor the plaintiffs were bound by that decree. Therefore, the only points that this Court is called upon to determine are (1) whether the document which was the basis of the suit was without consideration and (2) if it is found that the document was for a consideration, was the same tainted with immorality.

9. The learned counsel for the appellants has taken me through various provisions of the Hindu Law by Mulla, to show as to what is coparcenary property and how a coparcenary is formed and whether the sale of coparcenary property by one of the members of the coparcenary is binding on the other members of the coparcenary. I need not refer to those various provisions of the Hindu Law as in the first instance there is a concurrent finding that the property is coparcenary property and the plaintiffs and the defendants 3 to 6 formed a coparcenary. It is also not disputed that if the debts are contracted for immoral purposes the same are not binding on the sons. The sons, however, are under pious obligation to discharge the debts of their father incurred for a legal necessity and for a moral purpose. So, here in the instant case we have to see whether there was any debt, because the contention raised on behalf of the appellants' learned counsel is that the document Exhibit DK/1 which formed the basis of the previous suit was without consideration. I have gone through the documents Exhibits DW6/A, DW5/A and DK/1. According to the learned counsel for the appellant the document Exhibit DK/1 was executed for the considerations of the previous two documents and the debts, as stated therein, were also tainted with immorality. After having gone through these documents. I find that these three documents are executed for different amounts and they are independent debts and have got no link with each other. Exhibit DW/6/A is dated 25th Jaith. 2003 BK, corresponding to June, 1946. It is a bond for Rs. 20/- executed by Chughu and this amount is stated to have been borrowed for meeting the expenses of the marriage of his brother, Chet Bam, and Ex. DW5/A is a bond for Rs. 35/-dated 1st Chet, 2003. BK, corresponding to March 1947 executed by Chughu and Chaudhry and the amount was stated to have been incurred for meeting the Chobarkha (performance of obsequies after four years) of their father. Exhibit DK/1 is dated 17th Magha, 2006 BK, corresponding to 29-1-1950. The amount mentioned therein is Rs. 95/- and this amount is stated to have been borrowed for meeting the expenses of mutation of succession pertaining to the property of their aunt Smt. Hira Mani. A close scrutiny of all these documents would reveal that they are quite independent documents and the purposes for which the debt amounts have been incurred are also quite different and the debt in Exhibit DK/1 has got no connection with the previous debts nor is it possible to draw any inference that this amount of Rs. 95/- of the bond Exhibit DK/1 was constituted of the previous bonds Exhibits DW6/A and DW5/A. If the amounts with interest are calculated, even then, this amount cannot make it Rs. 95/- for which the new

document was executed. So, it is futile on the part of the appellants to contend that the document Exhibit DK/1 was, in the first instance, without consideration and, secondly, it was for the past two bonds. These three documents are, therefore not correlated to each other and they are separately executed by different persons at different times and none of these documents forms the basis of the other.

10. Now the second question that arises for consideration is whether these debts which are mentioned in these three bonds were tainted with immorality. There is no evidence on the record to establish if the executants of the documents were addicted to drinking or had any bad habits. It is conceded by the counsel for the appellants half-heartedly that the immorality on the part of the executants for having contracted the debts is not proved on the record. If that is so. it is the bounden duty of the sons to repay the debts of their father. Exhibit DK/1. it would appear, has been executed by Bhawania, the father of the present plaintiff-appellants, and Chugu brother of Bhawania. Therefore, from the aforesaid, it would be apparent that the document was for a consideration and it was not tainted with immorality and as such the sons cannot recover this property.

11. The "learned counsel for the appellants has cited Kathaperumal Pillai Vs. Rajendra and Another, to show that the debts contracted for meeting the marriage expenses of one of the members of a coparcenary cannot bind the shares of others and it would bind only the shares of those others (sic). In this behalf, I may say that this authority has got no relevancy, inasmuch as the property in suit was not attached and sold for payment of the debt incurred for that purposes but the decree was on the basis of the document Exhibit DK/1, which was altogether a new and different purpose to the one stated in Exhibit DW6/A. The case Rajeshwar Dube Vs. Ram Sanmukh Misir and Others has also got no bearing on the facts of the present case, as I have already stated above, that the debt contracted, vide Exhibit DK/1, which formed the basis of the previous suit was not contracted for immoral purposes, but was contracted for a purpose which was to secure the mutation of the succession of Smt. Hira Mani, who lived in village Kao, Tehsil Karsog and it was admittedly a far off place where the executants had to go. The executants were the uncle and father of the present plaintiff-appellants and this succession enured for the benefit of all the coparceners and, therefore, this debt, which was taken by them for the benefit of the entire family or was an accretion to the coparcenary property, by no stretch of imagination could be termed as illegal and this authority will, therefore, not apply.. For a similar reason the authority reported as Firm Pirthiraj Ganesh Das Vs. Kishun Lal and Others, has got no applicability to the facts of the present case. The authority Bhagat Ram Kirpa Ram v. Ajudhia Parkash, (AIR 1960 Punj 261) also will not apply because this authority says that when the sons are called upon to discharge a decree passed against their father on the basis of an alleged personal debt of his, they are entitled to show that the debt aforesaid was non-existing, fictitious or illusory. The mere fact that the father had suffered a decree being passed against himself, cannot be a ground for denying the sons this right.

There can be no dispute with the principle as laid down. The sons do have a right to challenge any decree passed against their father on the ground that the debts for which the decree was passed was non-existent, fictitious and illusory. But in the instant case, as would be obvious, the learned counsel for the appellants himself concedes that he has not been able to prove the immoral purposes behind the debts. If that is so there is no point in multiplying the authorities for this proposition. The Supreme Court authority *Faqir Chand v. Sardarni Harnam Kaur* (AIR 1967 SC 727) does not assist the appellant. In this authority it has been laid down that where a father as manager has incurred debt for discharging his debt by mortgage of joint family property but the debt is neither for legal necessity nor for payment of antecedent debt, the creditor can, in execution of mortgage decree for realisation of a debt which the father is personally liable to repay, sell the estate without obtaining a personal decree against him. The son is liable not only after but also before the sale is held. It is well settled that the son is liable in the case of money decree for payment of the debt before the sale is held. So also he is liable in case of mortgage decree for payment of the debt by the sale of the property. If there is just debt owed by the father, it is open to the creditor to realise the debt by the sale of the property in execution of the mortgage decree. The son has no right to interfere with the execution of the decree or with the sale of the property in execution proceedings, unless he can show that the debt for which the property is sold is either non-existent or is tainted with immorality or illegality. I have already stated that the debt is not tainted with immorality or illegality, or it was not incurred for any illegal purposes but the same had been incurred for a legal purpose, that is, for meeting the expenses of the attestation of mutation of succession of Smt. Hira Mani. This was not for the personal benefit of the two executants, rather, this was an accretion or addition to the joint family property and, therefore, it must be held for the benefit of the coparceners and the members of the joint family. Hence this alienation cannot be challenged by the sons who are bound by the decree passed against their father for which the coparcenary property has been sold.

12. It had also been contended by the learned counsel for the appellants that any debt incurred by a member of the joint family cannot be binding on the members of the coparcenary unless that member was the Karta of the joint Hindu family. But in the instant case, as already stated, the two documents Exhibit DW6/A and Exhibit DW5/A do not form the basis of the previous suit nor the consideration of these two documents was taken over in the document Exhibit DK/1. The last document was an independent document executed for a separate purpose and which was beneficial for the interest of the coparcenary body and it was the father of the present plaintiffs, who was one of the executants of that document. Therefore, the plaintiff-appellants cannot question this sale, which was done in execution of a decree obtained by Mehar Chand against the father of the plaintiffs for a debt which had been secured for meeting the expenses of succession which was an act beneficial for the coparceners. Moreover, from the evidence on the record, it is clear that Bhawania was the

seniormost member of the family and. therefore, he could in law be treated as a Karta of the joint Hindu family, and in this behalf I draw support from Ram Ekbal and Others Vs. Smt. Khira Devi and Others, which says that in joint Hindu family there is presumption that the senior-most member would be regarded as the Karta of the joint family. That being the case, the sons are bound by this transaction. It would also be clear from Bhagbut Pershad Singh v. Girja Koer ILR (1888)5 Cal (PC) 717 that in a suit on behalf of the sons against the purchaser at the sale to recover their shares, it was for the plaintiffs to show affirmatively that the debts were contracted for illegal or immoral purpose, and that to establish general extravagance against the father was insufficient. It was not necessary for the purchaser to show that there had been a proper inquiry as to the purpose of the loan, or to prove that the money was borrowed for family necessities. Here in the instant, case, the sale, therefore, cannot be set aside when the plaintiffs have failed to establish the non-existence of any debt or any immorality for the contraction of the debt by their father and other members of the coparcenary.

13. The learned counsel for the appellants has also in reply cited Sidheshwar Mukherjee Vs. Bhubneshwar Prasad Narain Singh and Others, But this authority in my opinion is not of any assistance to the appellants because this authority lays down that the question whether the sons of the judgment-debtor who are junior members of a coparcenary are liable in law to discharge the decretal debt due by their father can be answered only with reference to the doctrine of Mitakshara law which imposes a duty upon the descendants of a person to pay the debts of their ancestor provided they are not tainted with immorality. I have already held that the debt was not tainted with immorality and further that it was for the benefit of the entire coparcenary body.

14. Hence on the basis of the aforesaid discussion, I come to the irresistible conclusion that the debt contained in Exhibit DK/1 which was the basis of the decree was not tainted with immorality and it was a debt which was contracted for a legal purpose, i. e. for the benefit of the coparcenary and the document was also executed by the senior-most member of the family, who was presumed to be the Karta. Therefore, the sale of a portion of this coparcenary property in execution of the decree against their father cannot be challenged by the sons, because they have failed to prove their averment that the debt was non-existent, it was contracted for immoral purposes and that a joint member of the coparcenary could not bind their share in coparcenary property. I therefore, affirm the judgment and decree dismissing the suit, passed by the learned District Judge and dismiss this appeal, leaving the parties to bear their own costs.