

(1918) 07 BOM CK 0018
In the Bombay High Court
Case No : Second Appeal No. 506 of 1917

Paremeshwaribai Nagesh Ganpaya

APPELLANT

Vs

Raghavendra Chidanand Kaiken

RESPONDENT

Date of Decision : 09-07-1918

Acts Referred:

Citation : AIR 1919 Bom 141 : (1919) 21 BOMLR 203

Hon'ble Judges : Basil Scott, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Baseil Scott, C.J.—The plaintiff sues for possession of Immovable property of which the owner prior to 1901 was Shantraurti.

2. On his death his near relations were Laxmi his mother, the defendant his sister, and Padmavati his sister's daughter. The defendant was living an immoral life with a paramour and was outcaste.

3. On the 3rd of March 1903, Laxmi who had succeeded to her son's property made it over to Chidanand, father of the plaintiff, for the benefit, on their attaining majority, of Padma and the plaintiff who had been selected as her bridegroom. In consideration of the handing over of the property Chidanand agreed to pay (1) a debt of Rs. 100 due to one Radhabai on a deed passed by Shantmurti ; (2) the marriage expenses of Padma ; (3) the obsequies of Lakshmi on her death and certain anniversary and other ceremonies.

4. On the 19th of July in the same year the defendant reciting the document of the 3rd of March 1903 and the marriage of her daughter Padma to the plaintiff stated that in accordance with Shantmurti's wishes Lakshmi had given the property into Chidanand's possession on behalf of Padma and the plaintiff and that the arrangement being proper she (the defendant) agreed to it and if she possessed any rights over the property, resigned them in favour of Chidanand.

5. Padma died in 1911 and Lakshmi then in conjunction with the defendant disputed the plaintiff's right to the property. Padma's husband, as the surviving beneficiary, now sues to recover the property of which the defendant has got possession.

6. The defendant in her written statement alleged that the plaintiff's father after obtaining a deed of gift from her mother came to defendant and told her he had obtained a document from her mother so that her daughter who was plaintiff's wife would get the property on her (defendant's) death, that her consent was necessary in law, and he would get her maintenance also, that she consented, and that accordingly he obtained from her a document called a release deed and passed to her a deed of maintenance but it was never acted on.

7. It was contended at the hearing that the defendant's consent had been obtained by fraud and misrepresentation. This issue was found against the defendant.

8. The plaintiff obviously had a good title as against Laxmi since the deed was by a Hindu mother as heiress of her son for consideration. For the defendant however it is argued that the release executed by her does not operate to bar her claim as heiress of Shantmurti on the death of Lakshmi, which occurred before suit.

9. The learned Judge in the lower appellate Court held that as the life-holder and the reversionary joined together to confer a title on a third person the title so conferred was an absolute one.

10. The answer of the appellant's pleader to this line of reasoning is that the reversioner's right is only a spes successionis and, as she had not then inherited, the defendant released in July 1903 what was not transferable property : that in this Presidency the consent of reversioners to a widow's alienation does not combine with an acceleration of the reversioner's interest to vest an absolute estate in the transferee but is only rebuttable evidence of the propriety of the widow's alienation and that the assent of a Hindu female reversioner is worthless. For this last proposition reliance was placed on dicta in *Varjivan Rangji v. Ghelji Gokaldas* I.L.R.(1881) 5 Bom. 563 ; and *Vinayak v. Govind* ILR (1900) 25 Bom. 129, ; 2 Bom. I.R. 820. In the first of these cases Sir Charles Sargent observed: "'At all events, there should be such a concurrence of the members of the family as suffices to raise a presumption that the transaction was a fair one, and one justified by Hindu Law" (*Raj Lukhee Dabea v. Gokool Chunder Chowdhry* (1869) 13 M.I.A. 209,. In the present case the plaintiffs, although distant heirs, were the heirs presumptive of Narotam at the time of the sale, entitled to succeed in the event of Vakhat dying before her mother without issue, and, as such, clearly interested in disputing the sale. Nor can the mere concurrence of Bai Vakhat, albeit the nearest in succession, (having regard to the state of dependence in which all women are supposed by Hindu Law to have their being) be regarded as affording the slightest presumption that the alienation was

a justifiable one". The concluding remarks were quoted by Sir Lawrence Jenkins in *Vinayak v. Govind* I.L.R.(1900) 25 Bom. 129; 2 Rom. L.B. 820 as justifying the Court in holding that the consent of the nearest reversioner, if a woman, was unnecessary, and therefore the consent of the female reversioner's son, Venkatesh, was sufficient to validate the widow's alienation. The son Venkatesh who predeceased the alienating widow was held bound by his assent and the plaintiff as his son was held similarly bound. Ranade J. put it expressly on the ground of estoppel.

11. In the present case, as has been shown, the issue has been tried whether the consent of the defendant was not obtained by fraud and misrepresentation and it has been found that the consent was not so obtained. The facts, therefore, seem to negative the presumption, which, Sir Charles Sargent thought, would arise in the case of a female's consent.

12. It is well established that the consent to an absolute alienation by a Hindu widow or other female of the person or persons constituting the next reversion on the death of such female will be binding upon the person who eventually inherits. This result has been assigned to the operation of one or other of two doctrines : one being that a widow may relinquish her estate in favour of her husband's heirs for the time being, and if so, she may combine with the next heir to effect any alienation of the entire estate which they agree to make; the other being that the consent to a widow's alienation of the person or persons constituting the next reversion raises a presumption that the transfer was for legal necessity or that the transferee had made proper and bona fide inquiries and had satisfied himself of the existence of such necessity. Speaking generally the first mentioned doctrine has been adopted in the Calcutta and Madras High Courts and the second in the Bombay High Court: the first was affirmed by the Privy Council in *Behari Lal v. Madho Lal Ahir* Gyawal (1891) L.R. 19 IndAp 30; and the second in 2 CWN 729 (Privy Council) The two doctrines were stated and considered by the Privy Council in the later case of *Bajrangi Singh v. Manokarnika Bukhsh Singh* (1907) L.R. 35 IndAp 1; 9 Bom. L.R. 1348, when neither was expressly repudiated or approved, and the conclusion seems to be, as stated by Mookerjee J. in *Debi Prosad Chowdhury v. Golap Bhagat* I.L.R. (1913) Cal. 721, that both doctrines are well founded on principle. The latest Privy Council decision has special significance for the purpose of the present case, for there, as here, the consent of the next reversioners was not contemporaneous with, but some time subsequent to, the woman's alienation. Their Lordships however considered that circumstance immaterial for "*Omnis ratihabitio retro trahitur et mandato priori equiparatur.*" The act of transfer is thus treated as an act authorised by the reversioner as a principal, a result which can only be arrived at by acceptance of the Calcutta doctrine of renunciation and acceleration by a female combining with an actual alienation by the next heir. The Privy Council held that the claimants were bound by the consent of the reversioners whose sons they were. In the present case a fortiori the defendant is bound by her free consent. It has the effect of validating as an absolute

alienation the act of her mother.

13. This conclusion is, I think, supported by the following remarks of Sir Charles Sargent in *Varjivan Ramgji v. Ghelji Gokaldas* I.L.R.(1881) Bom. 563, . "As Bai Vakhat's interest... was contingent on her surviving her mother, which she failed to do, her joining in the conveyance could (if at all) only operate to give validity to it as importing the concurrence of the then nearest...heir...to the alienation." He there appears to recognize that the consent given by the nearest reversioner who actually inherits would be binding.

14. In my opinion the plaintiff is bound by her release. I affirm the decree and dismiss the appeal with costs.