

(1901) 05 CAL CK 0018

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1381 of 1899

Protap Narain Singh Deb

APPELLANT

Vs

Roghu Ram Hazra

RESPONDENT

Date of Decision : 16-05-1901

Acts Referred:

Citation : (1901) 05 CAL CK 0018

Judgement

1. This second appeal arises out of a suit brought by the Plaintiff to enforce a mortgage-bond for Rs. 999, executed on the 6th of Chait 1296 by a lady of the name of Rani Shiromoni, who was in possession of her husband's estate as a Hindu widow. The Plaintiff alleged that the bond was given to him for a sum of Rs. 400 which was due upon an old decree, and for Rs. 599 taken by her at different times to meet legal necessities in the shape of Collector's revenue and deb-sheba expenses. The Defendant No. 3, the adopted son of the first Defendant, who is a minor appearing by a guardian, objected to the Plaintiff's suit so far as the estate of which the lady was in possession, was concerned. He alleged that the mortgage-bond was not bona fide and that there was no consideration therefor, and that if any debt had been incurred by the executant it was not for legal necessity.

2. The first Defendant filed a written statement in which she admitted the execution of the bond. The Subordinate Judge, an officer of experience, framed the following issues in the case "(1) whether the bond is genuine and bond fide, (2) whether it was executed for a legal necessity. Whether the mortgaged property will be liable," and, after a careful consideration of the evidence given in the case he held substantially that the bond was not executed bona fide, that the relations between the lady and the Plaintiff were such as to give rise to the inference of undue influence, that the Plaintiff occupied a fiduciary relationship and that not having satisfied the Court that the document was executed bona fide and for purposes such as would bind the estate, he was not entitled to the relief he asked. The learned Subordinate Judge accordingly dismissed the suit.

3. On appeal the learned District Judge has decreed the Plaintiff's claim. In second appeal it is contended that the learned Judge has misdirected himself in leaving out of consideration the facts found by the Subordinate Judge, which gave rise to the inference that the transaction put forward by the Plaintiff was not a real one : and, that in coming to the conclusion that the minor Defendant, as representing the estate of the late husband of the first Defendant, was bound to satisfy the debt of the Plaintiff, he has simply relied upon the statement of the Rani, the executant of the deed, and the allegation that the bond was executed for legal necessity.

4. The learned pleader for the Respondent contends that having regard to the findings of the learned District Judge we are precluded in second appeal from considering the facts of the case. No doubt under the law, this Court cannot rest upon a consideration of the evidence in the case. But the provisions of sec. 584 of the CPC abundantly show that this Court has the power of considering whether the procedure adopted by the lower Appellate Court in dealing with the facts is proper or not ; and whether the inferences of fact or law derived by that Court from facts established to its satisfaction are well-founded or not.

5. The first Court has, in this case, found upon the evidence adduced by the Plaintiff himself that the relations between the Plaintiff and the Defendant No. 1 were of an extremely intimate character and that he was in fact managing her property and looking after her affairs, that he used to exercise considerable influence over her and was in reality what is called her protector. The learned Subordinate Judge also found that if there was any mismanagement or extravagance on the part of the lady, the Plaintiff was in a position to set things right, but that he neglected to do so. He further found upon the evidence that the income of her estate was more than double her ordinary expenses ; and upon the letters produced by the Plaintiff himself the Subordinate Judge held that the moneys required from time to time by the Defendant No. 1 from the Plaintiff were for theatrical performances, for payments to relatives, and so forth, none of which could, by any possible construction, be called legal necessities. He also referred to a letter, Exhibit 6, which showed the relations of the Plaintiff to the Rani. Upon those facts the learned Subordinate Judge came to the conclusion that the Plaintiff occupied a fiduciary position towards the estate of which the lady was in possession as a Hindu widow. And having regard to the influence which he exercised over her, the Subordinate Judge did not feel himself justified in making a decree in favour of the Plaintiff, the learned Subordinate Judge was also of opinion that it was not shown to his satisfaction how the Plaintiff became entitled to the sum of Rs. 400, which was due upon a decree made many years ago in favour of his brother or that it had not been satisfied. He further held that it had not been shown that any portion of the moneys borrowed as alleged was really expended for a legal necessity. And towards the end of his judgment he observed as follows : "The Rani's income was more than sufficient for her expenses, and any loan was uncalled for and unnecessary : and when the Plaintiff was in a position to set things right, he cannot hold the estate liable ;

and having regard to the relation which subsisted between the Rani and the Plaintiff the items of Rs. 400 and Rs. 599 were collusively included in a bond, on the eve of Defendant's adoption, to cast the liability on the estate of the executant's deceased husband," The learned District Judge has not considered any of these facts. He thinks that as the adoption took place some time after the bond was executed, there is no reason to suppose that it was fraudulent : and he seems to hold that inasmuch as the lady admits the borrowing in the absence of any rebutting evidence, its execution must be accepted to be bona fide. We think there was abundant rebutting evidence in the circumstances to which the Subordinate Judge has referred. The learned District Judge has not in any way displaced the findings arrived at by the first Court upon the evidence produced by the Plaintiff himself. If those facts are well-founded and there is nothing in the judgment of the District Judge to show that they are not the inference drawn from them by the Subordinate Judge that the relations between the first Defendant and the Plaintiff were such as would impress fiduciary character upon the Plaintiff in connection with estate of which the lady was in possession must be regarded as sound. And as the Plaintiff was in a position to exercise undue influence over her and inasmuch as he could control her action, in the absence of any evidence regarding the actual application of the money it would follow he could not maintain his claim against the estate. In the well-known case of Hanuman Pershad Pandey their Lordships of the Privy Council laid down the principle applicable to these cases. The position of a Hindu widow in possession of her husband's estate is somewhat anomalous. Although in some respects she is regarded as the owner, she cannot bind the estate except for legal necessity ; and she is bound not to mismanage the property in which she has a limited interest. In this case, the adoption was about to be made and the person who alleges himself to have been lending her money was moreover acting as her adviser and protector and actually taking part in the management of the estate. It was, therefore, his duty to see to the application of the money. We have carefully considered the question whether we should deal with the case in this Court or remand it for reconsideration by the District Judge. Having regard, however, to the fact that the District Judge has in no way disaffirmed the findings of the lower Court, we think it would be only harassing the parties to send the case back for a re-hearing before the Appellate Court. The Plaintiff has obtained a decree for the money against the Rani : We do not think he has made out a case for a mortgage decree. We accordingly set aside the decree of the District Judge and restore that of the Subordinate Judge with costs.