
(1910) 01 CAL CK 0047
In the Calcutta High Court

Pura Sundari Dasi

APPELLANT

Vs

Bijraj Nopani

RESPONDENT

Date of Decision : 25-01-1910

Acts Referred:

Citation : (1910) ILR (Cal) 362

Hon'ble Judges : Lawrence H. Jenkins, C.J.; Woodroffe, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Lawrence H. Jenkins, C.J.—There is no dispute as to the facts in this case: the question is, whether the conveyance under which the defendants claim, displaced the title the plaintiff would otherwise have possessed.

2. The plaintiff claims a moiety of the property in suit subject to a charge of Rs. 20 a month, and her title is made out as follows: Premchand Bysack died on the 23rd of June 1886 leaving a will, whereby he left his house, No. 8 Sobharam Bysack's street, to his daughter Sreemati Katyani Dasi absolutely subject to two charges of Rs. 20 each. Probate, of this will was granted on the 12th of July 1887 to the executors Shambhunath Bysack, Hemendranath Bysack, and Ratan Lal Bysack. Sreemati Katyani Dasi died on the 8th of April 1891, leaving her surviving five sons, including Hemendra Nath Bysack, and three daughters, Maya Sundari Dasi, who was then married, and Kanak Manjari Dasi and the plaintiff, who were then unmarried and minors.

3. On the 6th of October 1888 Shambhu Nath Bysack, Hemendra Nath Bysack and Ratan Lal Bysack, as the executors of Premchand Bysack's will, mortgaged the property in suit to Dwarka Nath Dutt, but on the 12th of December 1900 a re-conveyance was executed in favour of Hemendra Nath, the sole surviving executor.

4. On the same 12th of December a conveyance was executed by Hemendra Nath and his surviving brothers in favour of the defendants Bijraj and

Dowlatram. The deed proceeded on the assumption that Hemendra Nath and his brothers were absolutely entitled to the property: it is, however, now admitted that this was not so, but that on Katyani's death it devolved, as her stridhan property, on the unmarried daughters, so that the present plaintiff became entitled to the moiety she now claims in this suit. It is, however, urged by way of defence to her claim that Hemendra Nath, as the surviving executor of Premchand's will, was in that capacity enabled to create a title that would defeat the plaintiff's, and in this connection special reliance was placed on the general words whereby the vendors purported to convey all their estate, right, title, interest, claim and demand in the property. Cases were cited to us in support of this contention, but the law is clear: it is the true interpretation of the deed that has to be ascertained. Hemendra Nath is not expressed to be a party to the deed as executor; on the contrary, he was made a party of the first part together with his surviving brothers, and they were together described as vendors, and the recitals point to the theory that he and his brothers were regarded as together absolutely and beneficially entitled to the property. Then the consideration money is expressed to be paid not to him alone, as would have been the case had he been selling as executor, but to him and his co-vendors. And, finally, not only are the covenants for title such as are appropriate to a conveyance by absolute owners, but the vendors undertook to keep the purchasers and their heirs indemnified against all claims and demands by Sonamoni as annuitant under the will, or by their sisters, of whom the present plaintiff was one. This all goes to show that Hemendra Nath and his brothers joined in the transfer as beneficial owners. But matters do not rest there, for there are indications in the deed which go to negative the theory that Hemendra Nath was conveying as executor. Thus it is recited that all debts and legacies mentioned in the will had been paid, and, as I have already said, the consideration money is expressed to be paid to the three vendors. If Hemendra Nath was selling as executor, his hand alone should have received the purchase money, and it was the purchasers' duty to have paid it to him and him alone. And this is more than a technical objection, for the money having been paid, as it was, to the three vendors as though it was their own, it is not unreasonable to assume that they dealt with it as such, and what has now become of it does not appear. Certainly there is nothing to suggest the inference that any part of it has reached the plaintiff, so that it might be a serious detriment to her to regard the transaction as one carried out by Hemendra Nath as executor.

5. It comes then to this, that not only is the defendants' contention opposed to the natural meaning of the document, but it involves a payment of the purchase-money in a mode not sanctioned by the relationship that this contention assumes. It in no way helps the solution of this case to cite decisions in which it has been held that by virtue of general words an interest may pass that is not specifically mentioned in a deed, as they merely proceed on the principle that a document should be so interpreted as to carry into effect the intention of the parties. But from a general consideration of the present conveyance, it is to my

mind clear that Hemendra Nath did not intend to join, and did not in fact join, in it as an executor.

6. It follows from this that the defendants' title cannot prevail against the plaintiff, and that her suit should not have been dismissed.

7. Though the suit, as originally framed, was for recovery of possession, it was subsequently so amended as to include a prayer for partition, and, in the circumstances, there must be a decree for partition. There must be an account of rents and profits by the defendants and their predecessors in title, and also of the money expended by them in permanent improvements since the 10th of December 1903, the date of the decree passed in suit No. 88 of 1901. There must also be an inquiry as to the extent to which the present value of the property has been increased by the expenditure. Further consideration will be reserved, and there will be liberty to apply. This is very necessary in the circumstances of this case, as the result of the account and enquiry may make it necessary to obtain further directions from the Court.

8. Each party will bear his or her own costs up to the 18th of January 1909. From the 18th of January the defendants must bear the plaintiff's costs including the costs of this appeal, except the costs of the 17th of January last. The defendants are entitled to the costs of the 17th of January, and those costs will be set off against those directed to be paid by the defendants respondents.

Woodroffe, J.

9. I agree.