
(1936) 11 PAT CK 0005
In the Patna High Court

Ram Chandra Bhagat and Others

APPELLANT

Vs

Lala Jagdishwari Prasad and Others

RESPONDENT

Date of Decision : 18-11-1936

Acts Referred:

Transfer of Property Act, 1882 — Section 19, 24

Citation : AIR 1937 Patna 247

Hon'ble Judges : Varma, J; Dhavle, J

Bench : Full Bench

Judgement

Dhavle, J.—This is an appeal by the defendants-first party in a suit for recovery of possession of certain properties that were given to one Mt. Jaiwanti Kuar for a life estate under a taksimnama executed in 1870 by her husband Bajrangi Sahay. Jaiwanti Kuar died in June 1924, and the claim of the principal plaintiff was that upon that event he was entitled to the properties under the taksimnama. The defence (so far as is material in the appeal) was that this property a share of two annas 13 gandas odd in Khochkipur, old Tauzi No. 2508, had been purchased in execution of a mortgage decree obtained by a predecessor in title of the defendants first party in a suit to which Jwala Prasad (father of the principal plaintiff) and Chandrika Prasad (brother of Jwala Prasad) were parties; and that the execution sale had therefore conveyed not merely the life interest of the mortgagor but the entire interest in the property to the auction-purchaser, leaving nothing for the plaintiff to take on the death of the widow. This defence was overruled by the trial Court, and the same view was taken by the lower appellate Court.

2. Sir Sultan Ahmad, who appears on behalf of the appellants, has contended before us that what passed in the execution sale must be determined from the sale certificate, and that as this sale certificate refers to the property itself and not merely to Mt. Jaiwanti Kuar's interest in it, the entire interest in the property passed under the execution sale. That Jaiwanti Kuar had only a limited life-interest in the property is not disputed, nor is it disputed that she could not have

mortgaged more than her life interest in the property: there was no pretence that the mortgage was for any legal necessity so as to bind her successors. Stress, however, is laid on the fact that Jwala Prasad and Chandrika Prasad were impleaded in the mortgage suit and did not set up their title to the property on the death of Mt. Jaiwanti Kuar. But it was plainly not in respect of this title that they had been impleaded in the suit. Para. 4 of the plaint in the mortgage suit sets out that Badrinath (father of Jwala Prasad and Chandrika Prasad) had, subsequently to the execution of the mortgage, purchased the interest of Mt. Jaiwanti Kuar in execution of a money decree, and that therefore the sons of Badrinath who had died before the institution of the mortgage suit were impleaded. It is clear that in these circumstances the reversionary title (as it is often called) to the property on the death of Jaiwanti was not drawn into" controversy at all in the mortgage suit. It is true that the sale certificate does not speak of the life interest of Jaiwanti Kuar in the property; but it is obvious that the mortgage suit, even if Jwala Prasad and Chandrika Prasad were impleaded as defendants in it, could not operate to enlarge the interest of the mortgagor, regarding the extent of which there is no-doubt whatsoever. The paramount title is sometimes submitted to the decision of the Court in a mortgage suit; but that question does not ordinarily arise, and it does not appear that it either arose or was pronounced upon in the mortgage suit of the predecessor-in-title of the defendants. It seems to me, therefore, that the sale certificate on which the appellants rely, does not give them any larger interest than the mortgagor Mt. Jaiwanti Kuar possessed, and as that interest has come to an end by reason of her death, the, appellants are not entitled to keep the property against the principal plaintiff who is clearly entitled to it under the terms of the taksimnama.

3. The learned advocate for the plaintiffs-respondents has also endeavoured to support the decree of the lower Court in respect of this property by raising a point which also arises in connexion with his cross-objection which relates to another property. This property was sold in 1903 by Mt. Jaiwanti Kuar, Jwala Prasad and Chandrika Prasad. The trial Court held that notwithstanding the fact that Jwala Prasad and Chandrika Prasad were parties to the sale deed, the title of the plaintiff to this property on the death of Mt. Jaiwanti Kuar was not affected. The lower appellate Court, however, took the view that the taksimnama had conferred a vested interest upon Badrinath and that, therefore, the absolute right to the property had passed under the sale deed by reason of Jwala Prasad and Chandrika Prasad joining in it. The learned District Judge came to this conclusion in view of the provision of Section 19, T.P. Act, which provides that:

Where on a transfer of property an interest therein is created in favour of a person ... on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

4. In order to see whether this provision of the law has any application at all, we have to turn to the terms of the taksimnama. As regards the properties that were placed at the disposal of Mt. Jaiwanti Kuar under that deed for her lifetime,

the deed provides that on the death of Mt. Jaiwanti Kuar those properties "shall devolve upon my nephew Babu Badrinath aforesaid, or his legal heir." Later on, it provides:

Be it noted that Babu Badrinath aforesaid, or his legal heir, shall as absolute owner, generation after generation, remain in possession ... of all the properties ... in the possession of my wife Mt. Jaiwanti Kuar, which he will get on her death.

5. If this were an absolute gift to Badrinath, subject to the life interest of Mt. Jaiwanti Kuar, Section 19 would undoubtedly apply and Badrinath would undoubtedly have a vested interest in the property which, as the section in effect provides, would not be defeated by his death before succeeding to the property. But the interest created is not in favour of Badrinath, or of Badrinath and his heirs, but of Badrinath or his legal heir, and we find the author of the taksimnama employing the same phraseology as regards his cremation and sradh, which he says is to be performed "by the hand and under the management of the said Babu Badrinath, or of his legal heir." This makes the intention of the author of the taksimnama perfectly clear. The property is to be taken on the death of Mt. Jaiwanti Kuar by Badrinath, if he should then be alive, or by such legal heir of his as may then be alive, just as the sradh also is to be performed by Badrinath if he should be alive at the death of the author of the taksimnama, or by such legal heir of his as may then be living.

6. The case really comes within the principle of Section 24, T.P. Act; an interest is created in respect of such person or persons as shall be surviving at the death of Mt. Jaiwanti Kuar. Now, Jwala Prasad and Chandrika Prasad, who joined Mt. Jaiwanti Kuar in executing the sale deed of 1903, had at that time no vested interest in the property. They did have a contingent interest which, however, was defeated by their deaths before the death of Mt. Jaiwanti Kuar. The principal plaintiff takes the property on the death of Mt. Jaiwanti Kuar in his own right under the taksimnama, and it is clear that this title of his cannot be affected by anything that Jwala Prasad and Chandrika Prasad may (except for legal necessity, which is not the appellants' case) have done in the lifetime of Mt. Jaiwanti Kuar. The cross-objection of the plaintiff, therefore, in respect of this property which was the subject matter of the sale deed of 1903 must be allowed, and the order of the lower appellate Court set aside and that of the trial Court restored. The nature of the interest created, by the taksimnama in the events that have happened in favour of the plaintiff is thus also another answer to the appellants' claim that the sale in execution of the mortgage decree operated to convey the entire property, because Jwala Prasad and Chandrika Prasad were impleaded in the suit. Quite apart from the fact, to which I have already referred, that their paramount title, if any, viz., the reversionary title, was not put in controversy at that time, they had no power to convey the interest that only accrued to the principal plaintiff on the death of Mt. Jaiwanti Kuar, while their own interest, which was contingent, came to an end with their deaths before the

death of Mt. Jaiwanti Kuar. I would, accordingly, dismiss this appeal and allow the cross-objection with cost3 throughout.

Varma, J.

7. I agree.