

(1906) 06 CAL CK 0009
In the Calcutta High Court

Ram Chandra Marwari

APPELLANT

Vs

Mudeshwar Singh

RESPONDENT

Date of Decision : 28-06-1906

Acts Referred:

Citation : (1906) ILR (Cal) 1158

Hon'ble Judges : Pratt, J;Ormond, J

Bench : Division Bench

Judgement

Pratt and Ormond, JJ.—The plaintiff having in execution of a money decree against Sureswar Singh attached the rights and interests of his judgment-debtor in 4 mouzahs of Pergannah Padri, a claim to the same was successfully made by Sureswar Singh's father, Maharaj Kumar Guneshwar Singh. Hence the present suit to establish the right of Sureswar Singh, since deceased, to the said property, and for a declaration that his share is liable to sale in execution of the plaintiff's decree. The claim was contested by the sons and grandsons of Maharaj Kumar Guneshwar Singh, as well as by Gruneshwar Singh, who however has subsequently died. The Subordinate Judge found that Sureswar Singh lived in a joint family with his father and as a member of a joint Hindu family governed by the Mitakshara Law, he enjoyed the usufruct of the property in suit, that he was in debt to the plaintiff under a decree, and in execution thereof there was an attachment of the mouzahs in question before his death. These findings of fact are not now disputed.

2. The suit was dismissed because the Subordinate Judge was of opinion that the property being a Babuana grant by the then Rajah of Darbhanga to his son Ganeshwar Singh was not saleable.

3. The nature and incidents of a Babuana grant are stated in the case of Rameswar Singh v. Jibender Singh (1905) ILR 32 Calc. 683: "Babuana property granted in accordance with the Kullacbar or family custom of the Darbhanga Raj is property granted to the junior male members of the family to be enjoyed by them in lieu of money maintenance subject to the proprietary rights of the

grantor, and his ultimate claim as reversioner on the extinction of the grantee's descendants in the male line. The grantor remains responsible for the payment of the Government revenue, and retains his position as the recorded proprietor of the property assigned. The grantee has the right to alienate the property subject only to the contingent interest of the grantor."

4. In the present case some evidence of an unsatisfactory nature has been given, but it is of no value to establish a custom of inalienability, and against it there is a recital in Exhibit 12, which is a mortgage deed executed by Guneshwar Singh.

5. The Subordinate Judge's reference to Section 6, Clause (d) of the Transfer of Property Act is clearly inappropriate. The alienability of the Babuana grant being established, the next question is whether the sons of the grantee acquired any interest in the grant on the ground that the property is ancestral.

6. Here the grant was made by the owner of the impartible Raj estate to enure for the benefit not only of Guneshwar Singh, but of his direct male line. It was ancestral property in the hands of the Rajah, and did not lose its character by the transfer. In *Muddun Gopal Tuakoor v. Ram Buksh Pundey* (1863) 6. W.R. 71 it was laid down that landed property acquired by a grandfather and distributed by him amongst his sons does not by such gift become the self-acquired property of the sons, and we do not think it makes any difference because in the present case Guneshwar would not have inherited apart from the grant.

7. The property being ancestral Sureshwar acquired an interest in it at his birth.

8. Finally there can be no doubt upon the authorities that the attachment during Sureshwar's life time would have the effect of validating a sale of his share, and the plaintiff can work out his rights acquired by virtue of the attachment. See (1879) L.R. 6 I.A. 88 (Privy Council) . It was contended that the attachment was put an end to by the order of the Court in the claim case, and so at the time of the judgment-debtor's death there was no attachment subsisting. We think this is not a correct view. The order u/s 280 of the Code is not conclusive. It may be reversed in a suit like the present one, and, as was held in the case of *Banomali Rai v. Prosunno Nnrain Chowdhry* ILR (1896) Cal. 829, the effect of the decree would be to maintain the attachment originally made and to establish the plaintiff's right to the declaration he seeks and to the consequential remedy. The order for release u/s 280 was only provisional and liable to be set aside by regular suit.

9. The result is that the decree of the Lower Court will be set aside. The order in the claim case is declared null and void. It is declared that Sureshwar Singh had a share in the property in suit as a member of the joint family, though the extent of that share is at present undetermined. It is further declared that Sureshwar Singh's share is liable to be sold in execution of the plaintiff's decree, and that the plaintiff is entitled to work out his remedy under the law. The plaintiff-appellant is entitled to his costs in both Courts.