
(1903) 04 CAL CK 0007

In the Calcutta High Court

Case No : Appeals from Original Decrees Nos. 47 and 55 of 1900

Ram Lal Shookool and others

APPELLANT

Vs

Akhoy Charan Mitter
 Ram Lal Shookool Vs Chandra
Kant Sen

RESPONDENT

Date of Decision : 02-04-1903

Acts Referred:

Citation : (1903) 04 CAL CK 0007

Final Decision : Dismissed

Judgement

1. Chandra Kant Sen claims as daughter's son and, therefore, as heir to Madan Mohan Singh to have succeeded to taluk Durga Churn Dewan on the death of his grandmother on the 20th Agrahan 1302 B. S., 5th December 1895. He has sold a portion of his property to certain persons and they as well as he have separately sued to recover this property from the Defendants who claim to hold it under a title derived from a sale in execution of a decree against Rjeshwari, the widow of Madan Mohan Singh, the maternal grandmother of of Chandra Kant Sen, who at the death of her husband Madan Mohan Singh succeeded to possession of his estate. Both these suits have been decreed by the Subordinate Judge in favour of the Plaintiffs and in both separate appeals have been preferred by the Defendants.

2. It is unnecessary to consider all the points raised in the Court of first instance and found in favour of the Plaintiffs, as only three points have been raised before us in these appeals.

3. Madan Mohan Singh died some time between the latter part of May and the first part of September 1846. There can be no doubt that he and the other members of the family were very much involved in debt. He died leaving a widow Rajeshwari and a daughter, the mother of Chandra Kant Sen. At that time or within a short time afterwards, several snits were brought against the widow as representing the estate to recover monies due on loans which must, under the circumstances, have been contracted by Madan Mohan Singh and this is not

disputed in the appeals before us. Some of these creditors, Giridhari Lal Dischit and others, sued on the 3rd September 1846 to recover money due on a loan contracted by Madan Mohan Singh which was payable in the previous Joisto when he was undoubtedly alive and a decree was passed in their favour on the 4th December 1846 after his death. Proceedings in execution of that decree were taken shortly afterwards and, although the papers themselves are not forthcoming having, with many other necessary papers connected with the transactions mentioned in these suits, been destroyed under the orders issued by the High Court for the destruction of useless records, it is clear that an attachment in execution of this decree was made some time before April 1847, for, we find from a copy of a Rubakari of the District Judge that the 19th April of that year, 7th Bysack 1254 B. S., was fixed for the sale of certain properties belonging to the judgment-debtors.

4. On the 2nd and 7th Bysack petitions were presented by the decree-holders and this judgment-debtor respectively asking for an order of the Court for a postponement of the sale until the 7th Joisto following, in which it was stated that the judgment-debtors had agreed to pay the money due, and it was further prayed by the decree-holders that on default the properties of the judgment-debtors be sold by public auction on the 7th Joisto. The execution case was accordingly, by what must be regarded as a departmental order, struck off by an order of the Court dated the 19th April 1847. On the 31st May, the decree-holders petitioned the Court for a renewal of the proceedings in execution representing that the judgment-debtors had neglected to satisfy the decree. There was apparently some delay, as the record had been sent to the office of the District Judge. It seems that, on the 7th Bysack 1254, the date on which the sale in execution of Giridhari Lal's decree was postponed, the judgment-debtors borrowed Rs. 500 from one Chetti Lal Wasti on an agreement for a very early repayment and that, on the 17th May 1847, 4th Joisto 1254, a suit was brought to recover this money from Rajeshwari as well as from Jamuna, the widow of Gopal Krishna, one of the brothers of Madan Mohan Singh, as well as their am-muktears through whom the money had been taken and a decree was passed on the 25th June following. On the 5th March 1849, a sale was made in execution of this decree under which, it is stated, the property now in suit was sold. At that time, we would remark, the attachment in execution of Giridhari Lal's decree was apparently subsisting, the sale having been suspended on the 7th Bysack 1254, 19th April 1847, only until 7th Joisto following but it does not appear from the record before us that any further steps were taken in execution of that decree.

5. We next find from a petition made by Giridhari Lal on the 15th Cheyt 1255, 27th March 1849, that he applied for an order in satisfaction of his own decree; that he might participate in the rateable distribution of the money realised by the sale of the property now in suit in execution of Chitti Lal's decree and an order was passed on the 1st June following to that effect. How far Giridhari Lal's decree was satisfied we have no information, the parties to the appeals now

under hearing having been placed in great difficulty by the destruction of the records of the Civil Court in respect to these matters. The Plaintiffs contend that the sale in execution of the decree under which the Defendants acquired their right was to satisfy a personal debt of the widow Rajeshwari and that, therefore, only her life-interest passed. They consequently claim to obtain possession with mesne profits from the date of the death of Rajeshwari on which Chandra Kant Sen succeeded as the heir of Madan Mohan Singh.

6. The first objection raised in appeal is in regard to the right acquired by the Defendant whether it was on the sale of only the life-interest of Rajeshwari or of the right and title to the property. This depends upon the terms of the decree in execution of which the sale was held.

7. The next objection which was also taken in the Court of first instance is that Chandra Kant Sen was not entitled to inherit as heir of Madan Mohan Singh inasmuch as he was an illegitimate son of his mother Anand-mayi the daughter of Madan Mohan and Rajeshwari, because she, a Kayesth, had married his father who was a Baidya. The third objection which was not really pressed before us is that, even if the Plaintiffs succeed they are not entitled to mesne profits inasmuch as it is not proved that they gave notice to the Defendants of their title.

8. The fact that the decree-holders Giridhari and others held decrees under which they might have sold the complete right and title in the property now in suit in satisfaction of debts due by Madan Mohan Singh and that they had in execution of their decree attached this property and obtained a portion of the monies realised at the sale held, does not necessarily give the purchasers a right to claim a complete title to this property. That would depend upon the nature of the right, title and interest sold and upon the terms of the decree in execution of which the sale was held. The sale was in execution of Chitti Lal's decree. That appears from Giridhari Lal's petition of 25th Cheyt 1255 B. S., in which he asked for payment of portion of the monies realised by the sale held in execution of Chitti Lal's decree. There is nothing to show that a sale was held in execution of his decree or of any other decree. No doubt in execution of his decree a sale was about to be held but it was postponed at the decree-holder's request. The attachment remained. Still no sale was held. Giridhari Lal's participation in monies realised by the sale held in execution of Chitti Lal's decree would not have affected the title acquired by the purchaser at that sale. From the nature of the debt for the payment of which Chitti Lal obtained a decree and sold we have no doubt that it was a Bale to obtain payment of a debt personally contracted by the widows for which they alone were liable and that it was not a debt for which the estate in which these ladies had only a life-interest could be made liable.

9. Mr. O'Kinealy for the Appellant contends that the money was borrowed for payment to the decree-holders Giridhari Lal and others and for the purpose of obtaining a postponement of the sale which was imminent and that therefore the transaction must be regarded as for the benefit of the estate and not a debt for which the ladies alone were personally liable. There is some oral evidence that

the money was borrowed for payment to the decree-holders and that it was so paid. But we agree with the Subordinate Judge that that evidence is not reliable. The witnesses do not show to our satisfaction that they were persons likely to be present on the occasions to which they speak; there is no mention of such payment in any of the papers on the record ; and lastly we cannot find any reduction in the amount claimed by the decree-holders Giridhari Lal and others as it stood before this money was borrowed and in the various stages of the proceedings up to the application to participate in the proceeds of the sale in execution of Chitti Lal's decree. There is in fact nothing to connect this sale with the decree of Giridhari Lal and others except in regard to the payment to the latter out of the sale-proceeds. It is not without some significance that as printed out by Mr. O'Kinealy the amount realised by the sale practically represents the full value of the property now claimed as set out in the plaint, the difference being small at the time when the sale was held more than 50 years ago the law was not so clearly defined and understood in respect of the effect of decrees to satisfy personal debts of a widow having only a life-interest and a decree to obtain payment of a debt contracted by a full owner of property. Still on the evidence we cannot but find that the sale was held to obtain payment of a debt for which Rajeshwari was personally liable and that consequently only her life-interest could be sold. Rajeshwari having died, the right of the purchasers no longer exists and the reversionary heir must succeed to the property.

10. In regard to the title of Chandra Kant Sen, it cannot be disputed that his mother a Kayesth and therefore a Sudra married his father a Vasya. The ancient Hindu law did not regard such marriages with the condemnation expressed by later authorities which have been accepted by our Courts so as to make children born from such unequal marriages illegitimate.

11. But however the law may be, there is ample evidence set out in the judgment of the Sub-Judge on which it must be held that such marriages as in the present case are recognised by local custom in the District of Tipperah and that there is no instance on which their validity has been questioned. We agree with the Sub-Judge in holding that such marriages are in accordance with local custom in Tipperah and are valid. Consequently Chandra Kant Sen is entitled to sue as lawful heir to the estate of Madan Mohan Singh. The last point in regard to liability for mesne profits has not been seriously pressed. We find that there is evidence of notice to the Defendants. The appeals are therefore dismissed with costs in both appeals.