

(1910) 06 CAL CK 0027
In the Calcutta High Court

Ramanand Singh and Others and Adhan Singh	APPELLANT
Vs	
In Both Ram Saran Singh and Others	RESPONDENT

Date of Decision : 23-06-1910

Acts Referred:

Citation : 7 Ind. Cas. 27

Hon'ble Judges : Vincent, J; Brett, J

Bench : Division Bench

Judgement

1. The facts of the litigation out of which these appeals arise are as follows:--In August 1883, one Saligram Singh died leaving two widows Surat Koer and Rajpati Koer; these ladies are defendants Nos. 2 and 3 in suit No. 149, Appeal No. 176 and defendants Nos. 6 and 5 in Suit No. 175 corresponding with Appeal No. 175 and they succeeded to the possession of his estate. On the 3rd June 1907, Surat Koer executed a mokatari lease in favour of her brother who is the appellant in Appeal No. 176 demising to him her share of the property left by her husband; and also all properties acquired by her after his death and on the 15th July 1907, Rajpati the other co-widow executed a mokatari lease of her share in her husband's property and any property acquired after his death in favour of her brother and brother's cons who are the appellants in Appeal No. 175 of 1908.

2. The plaintiffs who allege that they are the reversioners to the estate of Saligram Singh seek in this suit for the declaration that they are his reversionary heirs and that these deeds are not binding upon them.

3. The Subordinate Judge has decreed the suits and the defendants to whom the properties have been demised by the lease under discussion have appealed to this Court.

4. It is not alleged before us that the plaintiffs are not the reversionary heirs of Saligram Singh; and the only points argued in this Court are (1) whether the leases in so far as they affect the property inherited from Saligram Singh were executed for legal necessity and for good consideration; (2) whether the leases

of the properties subsequently acquired can be set aside; and (3) whether the plaintiffs can in the circumstances of the case claim the newly acquired properties without being responsible for the price thereof, part of which has been paid by the appellant as they allege.

5. As to the first point, it appears to us that the decree of the Subordinate Judge is amply supported by the facts and the evidence. The properties conveyed to the relatives of these ladies are valued at not less than Rs. 15,000 according to the Subordinate Judge and the annual income derived from them is Rs. 600 or 700. These properties were leased in the case of Surat Koer for an alleged nazrana of Rs. 3,500 and an annual rental of Rs. 125 and in the case of Rajpati for an alleged nazrana of Rs. 5,000 and an annual rent, of Rs. 150. The ladies who executed these deeds were elderly pardanashin ladies and the deeds were executed in favour of near relatives who have according to the Subordinate Judge great influence over them. It is, therefore, necessary to scrutinize the details of these transactions with considerable care.

6. The Rs. 3,500, said to have been paid to Surat Koer, was made up, according to the appellants, of the following sums:-- Rs. 710 paid in cash for the purpose of the Gya sradh of her husband, Rs. 750 to be paid to a certain mortgagee (Ijaradar) of village Khotia under a deed dated 30th March 1904 and Rs. 2,040 to pay off a mortgage debt on a bond executed on the 21st. May 1904. The mortgage deed is on the record and it shows that in 1904 Surat Koer borrowed Rs. 1,500 from one Gur Sahai, who is a plaintiff in this suit. to pay the price of certain properties purchased by her after her husband's death. The actual consideration of the mokarari is thus:-- Rs. 710 in cash, Rs. 2,790 which the mokarari dars contracted to pay to certain creditors of the Musammat for debts incurred by her for the purchase of property after her husband's death. As to the Rs. 2,790, it cannot be said that there was any legal necessity for such purchases or that it was, in any way necessary for the Musammat to borrow money on the security of her husband's estate to pay debts incurred for such a purpose. There was, therefore, in our opinion, no legal necessity to incur this debt.

7. As to the sum of Rs. 710, it is more than doubtful if it was ever paid, and the sudden anxiety on the part of this lady to perform the Gya sradh of her husband, 25 years after his death, arouses considerable suspicion as to the bona fides of the transaction, If, however, the Musammat did desire to perform this sradh, the income of the estate was ample to permit of her doing so without incurring any debt. It is satisfactorily proved that after her husband's death this lady accumulated considerable sums of money, some of which she invested in the purchase of immovable property and some of which she lent out at interest and in fact Rs. 3,000 on account of one of these loans was repaid to her in 1905. In these circumstances, we are of opinion that it cannot be reasonably argued that there was any legal necessity for raising this loan of Rs. 710 in 1907 for payment of the cost of the Gya sradh. Our attention has been drawn to the case of Debi

Dayal Sahoo v. Bhan Pertab Singh 31 C. 433 : 8 C.W.N. 415. and on the authority of that case, it is argued that the ladies were justified in incurring debt for any religious purpose and that they were not bound to meet expenditure for an object of this kind out of the income of the estate; but the decision in that case must be considered in relation to the facts, and it has never been held that a widow is entitled to save the income of her husband's estate for her own benefit and at the same time incur debts chargeable on the estate for charitable and religious purpose.

8. In the case of Rajpati Koer, the consideration for the lease is stated in the document to. be money for the re-payment of a moiety of the premium due under an ijara thika, dated the 20th March 1904, for re-payment of Rs. 3,241, due under the chitti to Ramanand (the ladies' brother and also one of the lessees under the deed) and for payment of the cost of the Gya sradh of her deceased husband and for almsgiving.

9. The first item refers to a thika lease of village Khotia, which is one of the properties acquired by these ladies after Saligram's death, and the premium of this lease was taken in order to enable this lady and Musammat Surat Koer to acquire certain mokarari rights in village Gain. We do not think that it can be said in this case either that there was any legal necessity for this loan or that the widow was entitled to incur debt in this way on the security of her husband's estate in order to add to his property or to acquire property for her own benefit.

10. As to the loan due on the chitti, the Subordinate Judge disbelieved the whole of the story relating to it, and no argument has been adduced to us which leads us to think that it should be accepted as genuine. Indeed it was not seriously pressed before us that the chitti was a genuine deed executed for good consideration.

11. As to the balance of the money to be expended in the Gya sradh and almsgiving, the same remarks apply as in the case of Surat Koer.

12. In this view of the facts, the leases created by these mokarari deeds in dispute, in so far as they affect the ancestral property, were, in our opinion, not executed for legal necessity and are invalid against the reversioners.

13. The question as to the self-acquired property is one of greater difficulty. The appellants urge that a Hindu widow has complete control over any savings she makes out of the income of her husband's estate, and that it is unreasonable to say that her power of dealing with such savings is affected by the fact that she chooses to invest the money in immovable property; that such property is, therefore, at the absolute disposal of the lady who acquires it and that the reversioners have no right to attack the title of the lessees to this property. A number of cases has been quoted in support of this view, the most important perhaps being the case of Akkanna v. Venkayya 25 M. 351, and it must be admitted that many of the arguments put forward by their Lordships of the Madras High Court in that case appear to be very cogent. The question in

dispute, however, appears to us to be concluded by the authority of the Judicial Committee, and it is now, we think, settled Law that where a widow acquires immovable property out of the savings of her husband's estate, the property must, *prima facie*, be presumed to be acquired as part of and as an increment to that estate, and where such acquisition forms part of her husband's estate, her power of alienating it is limited by legal necessity. As the question is of some importance, we may refer to the following cases in support of this view.

14. One of the early cases on the point is *Gonda Koer v. Koer Oodey Singh* 14 B.L.R. 159. In this case the Judicial Committee decided in clear language that when immovable property is acquired by a widow out of the income obtained from her husband's estate, and there is no proof of any intention to sever the purchases from the estate, the presumption is that the lands acquired are accretions to that estate.

15. In the leading case of *Isri Dutt v. Hansbutti* 10 C. 324 : 13 C.L.R. 418 : 10 I.A. 150, certain property was acquired in 1857 by a widow and was in 1878 alienated together with other properties obtained from her husband's estate, and then not for the need or personal benefit of the widow, but owing, to a desire to change the line of succession and benefit the widow's own relatives. Their Lordships say that in the circumstances the acquisition must be clearly held to be an accretion to the parent estate.

16. Again in the case of *Bhagbutti Devi v. Bhola Nath Thakoor* 2 I.A. 256 : 1 C. 104 : 24 W.R. 168, their Lordships of the Judicial Committee say in regard to a lady, who was a party in the litigation before them that if she held as a Hindu widow, one consequence, no doubt, would be that she would be unable to alienate the property of her husband and that what she purchased out of the profits would be an increment to her husband's estate.

17. In a more recent case *Sheo Lochun v. Saheb Singh* 14 C. 387 : 14 I.A. 63, it is laid down that where a widow comes into the possession of the property of her husband and utilises the income in the purchase of other property, their Lordships think that *prima facie* it is the intention of the widow to keep the estate as an entire estate and that such property should be deemed to be an accretion to the original estate. In this case it may be noted that self-acquired and inherited properties were alienated together, and under the circumstances the alienation was held to be invalid.

18. Our attention has been drawn by the appellants to the case of *Sadamini v. Broughton* 20 C. 433 : 20 I.A. 12., which lays down, it is argued, a somewhat different principle, but the facts in that case were entirely different and there was there no husband's estate in the hands of the lady to which the newly acquired property, which consisted of Government promissory-note, could be considered an accretion.

19. In this state of the authorities we think that if the defendants seek to justify alienation of the self-acquired property, they must show-either legal necessity or

that it was the intention of these ladies to treat such self-acquired property separately and distinctly from the property inherited. Indeed we may go so far as to say that it has never been distinctly decided that a Hindu widow has absolute power of alienation over immovable property acquired out of the income of her husband's estate, even if she does wish to deal with it as a separate estate. Mr. Maine in this connection says that it has only been suggested by the Judicial Committee that perhaps purchases made by the widow out of the income of her husband's estate are not necessarily accretions to it.

20. Examining the facts of the present case in the light of the decision, referred to, we are constrained to find that the ladies did not treat the acquisition as separate from their other property, and that the indications are that these properties were intended to form part of the parent estate. We find many points in the present case very similar to those in the case of *Sheo Lochun v. Saheb Singh* 14 C. 387 : 14 I.A 63, already referred to. The alienation is clearly made for insufficient consideration to change the line of succession, and to benefit the next heirs and near relatives of these ladies, at the expense of their husband's heirs, and the alienation is not confined to the newly-acquired properties alone, but purports to convey at the same time all properties both inherited and self-acquired.

21. Nor do the deeds make any distinction between self acquired and inherited property. Thus the mukarari lease executed by Raj-pati Koer recites that six annas out of the 16 annas of Mouzah Gaini, 8 annas of Khotia 6 dams and odd out of Jhinguri and 1 bigha 10 cottas of Jaigir, are transferred, and there is no specification at all of any different title to any particular portion of the property. This is more noteworthy because with regard to one village at least the circumstances were peculiar. In the village Gaini, Rajpati Koer with her co-widow inherited from her husband 12 annas share. After Saligram's death, a suit was brought against his widows in regard to a certain mokarari lease to have been executed by Saligram of his share in this village. This suit was compromised, the arrangement being that the ladies should retain 10 annas of the village free of any mukarari and should grant a mokarari lease of 2 annas to the alleged lessees who were their relatives. This 2 annas mokarari right was subsequently purchased back by these widows from the successors-in-interest of the original lessees and thus the ladies again became the owners of 12 annas milkiat free of any mokarari lease. Surely in the circumstances we may infer that they intended by their purchase to restore their husband's estate to the condition in which they received it. Indeed way mokarari right purchased by them became on the purchase merged in the milkiat right and it is, therefore, that the whole 6 annas of this village is treated by Surat Koer as one property, and no distinction is made between the inherited and self-acquired property. Much stress is laid on the fact that in the mokarari-putta of the 3rd June 1907, Musammam Surat Koer speaks of the property demised as consisting partly of the estate left by her husband and partly of self-acquired properties. It is said that this indicates a desire to distinguish between the two. But there is little force in this argument.

Part of the property was undoubtedly self-acquired. But this does not indicate that the lady intended to treat this property in any way differently from the remaining property inherited from her husband. Indeed the indications are that the ladies intended the properties to be part of their husband's estate, as a portion of the price of the acquisition was paid by the mortgage of their inherited estate; vide Exhibit 0 dated 25th May 1904. The reasonable inference in such circumstances is that the acquisition was for the benefit of that estate. Again, in addition to the inherited property we also find that village Khotia was mortgaged to pay a portion of the price of some of the late acquisitions and it cannot be said, therefore, that it was treated differently from the inherited properties.

22. It is, moreover, doubtful how far it can be stated that the acquired properties, which were paid for partly by money advanced on the security of the inherited property, can be said to be the separate property of the ladies at all.

23. We may note here that it is not denied in this Court that the properties purchased by the ladies were paid for out of the income of their husbands' estate, although a somewhat different case was put forward for the defence, in the lower Court. The only other point of any importance, which has been discussed before us, is whether it was open to the Subordinate Judge to grant plaintiffs decrees declaring that these leases were inoperative against the reversioners of Saligram without some condition as to the re-payment of the whole or some portion of the consideration for the leases. In our opinion it is not necessary at this stage to consider this question. The deeds may be declared to be inoperative as against the reversioners, but the equitable considerations and conditions upon which possession of the property should be restored can be decided only when the succession opens out and a suit for possession of the property is brought by such of the reversioners as may then be alive.

24. It follows from the findings., stated above that these appeals must be dismissed with costs and the decrees of the lower Court affirmed.