
(1954) 11 AHC CK 0002
In the Allahabad High Court
Case No : First Appeal No. 123 of 1949

Salik Ram Upadhia

APPELLANT

Vs

B. Jai Gopal Singh

RESPONDENT

Date of Decision : 24-11-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 52, 53
Contract Act, 1872 — Section 38

Citation : AIR 1955 All 350

Hon'ble Judges : Malik, C.J.; James, J

Bench : Division Bench

Advocate : N.D. Pant and S.K. Verma, for the Appellant; Vishwanath Singh, for the Respondent

Final Decision : Allowed

Judgement

Malik, C.J.—This is an appeal on behalf of the defendant-appellant against a decree passed by the learned Civil Judge of Sultanpur. The points raised in the case were not very difficult but the learned Judge got lost in the number of authorities that were cited before him and appears to have come to an entirely erroneous conclusion.

2. on Thakur Rudra Pratap Singh, Taluqdar of Rampur, had borrowed a sum of money from one Salik Ram on 10-5-1932. Thakur Rudra Pratap Singh died issueless on 3-5-1933. He, however, left a widow surviving him, named Thakurain Sri Nath Kuar. On 14-10-1930, he executed a will which contained the following provision about his wife if he died issueless:

"That Thakurain Sri Nath Kuar will be the owner of the entire taluqa and all the move-able and Immovable properties etc., mentioned above as the widow of the Hindu family provided she leads a moral life. Thakurain Saheba aforesaid shall have no right to transfer the Immovable property. Till the life-time of Thakurain aforesaid no other person shall have any right of any sort in the said property."

The next paragraph in the will is to the effect that after the death of Thakurain Saheba the entire property was to go to Thakur Jai Gopal Singh, son of Thakur Vijay Bahadur Singh, who was to be the owner thereof, but in case neither he nor any male issue were alive on the date of the death of the widow the property was to go to the male issue of Thakur Rajeshwari Prasad Singh.

3. After the death of Thakur Rudra Pratap Singh the widow applied for mutation of her name in the village records, mutation was effected and she got possession of the property. On the 2nd of June 1939, Salik Ram filed a suit against Sri Nath Kuar and claimed the money out of the estate of the deceased, A decree was passed in his favour and the decree provided that the money was to be realised from the estate of the deceased Thakur Rudra Pratap Singh. This decree is dated 30-9-1939. On 2-7-1941 Sri Nath Kuar relinquished the property in favour of Thakur Jai Gopal Singh on condition that he will pay off the debts and will arrange for the maintenance of the widow.

On 24-8-1946 the decree-holder applied for execution of the decree against Thakur Jai Gopal Singh for recovery of the amount due from the estate of the deceased Thakur Rudra Pratap Singh. Thakur Jai Gopal Singh filed an objection on the 23-9-1946 that the decree was not executable against him and that his name could not be substituted in place of the name of the widow. On 2-11-1946 however counsel appearing for him agreed to the substitution of his name but as the decree-holder did not proceed with the execution the papers were consigned to the record room on 13-11-1946.

4. On 13-12-1947 Thakur Jai Gopal Singh filed the suit out of which this appeal has arisen that on 15-8-1932 Thakur Rudra Pratap Singh had made a valid tender of the entire amount due and as Salik Ram had refused to accept the money on 18-8-1932, interest ceased from that date and the widow should have taken this plea in her written statement and she not having done so by reason of fraud or gross negligence the decree was not binding on him.

The other plea was that on the death of Thakur Rudra Pratap Singh the life estate vested in Thakurain Sri Nath Kuar while the vested remainder was in Thakur Jai Gopal Singh, That he should have been impleaded as a defendant in the suit filed by Salik Ram for the recovery of the money. That the widow could not represent the estate and the decree passed against her was not binding on him. That the widow having surrendered the estate in his favour the decree was not executable against the property left by the deceased in his hands. Both these pleas found favour with the learned Judge and he discussed the law at great length on these and other points that were raised before him.

5. The plea of valid tender of the money was raised on these facts: On 15-8-1932, an insured cover for Rs. 5200/- was sent by Thakur Rudra Pratap Singh to Salik Ram and a sum of Rs. 457/- was sent by money-order. In the coupon, it was mentioned that the insured cover contained currency notes of Rs. 5200/- and the balance of Rs. 45/- was being sent by money-order. If the

amount due is validly tendered to the creditor by the debtor or by his agent, on the debt becoming payable, the creditor is bound to accept the money and if he does not accept it he is not entitled to claim interest after the date of the tender. By sending an insured cover, however, though it might have been insured for Rs. 5200/- and might even have contained currency notes of the value of Rs. 5200/- the debtor cannot be said to have validly tendered the money.

The creditor was not bound to accept the insured cover and take the risk of its not containing currency notes of the value mentioned in the coupon. Valid tender of a debt can only be in the currency of the country which is recognised as legal tender. An insured cover cannot be treated as legal tender. There are authorities to the effect that by offering a cheque or by offering any article of value even if that article is of a larger value than the debt due the debtor cannot claim to have offered to pay the debt. The creditor was not bound to accept the insured cover merely because it was insured for a sum of Rs. 5200/- and in the coupon it was mentioned that notes of that value had been enclosed. There was, therefore, no valid tender of the debt on 15-8-1932, and the view taken by the learned Judge that the widow was guilty of gross negligence in not taking the plea that interest had ceased on the day when Salik Ram had refused to accept the insured cover was all wrong.

6. Then remains the second question whether in the lifetime of Sri Nath Kuar Thakur Jai Gopal Singh should have been impleaded. We have already referred to the will which provided that Sri Nath Kuar was to be the owner of the property during her lifetime as a Hindu widow and that during her lifetime no one else had any interest in the property. The will further provided that Thakur Jai Gopal Singh or his male descendants were to get the property only if they were living on the date of the death of the widow. It cannot, therefore, be said that there was a vested remainder in Thakur Jai Gopal Singh on the date of the death of Thakur Rudra Pratap Singh. The widow represented the entire estate of the deceased and the decree passed against her was binding on the estate.

7. The learned Judge has also failed to consider that when Thakur Jai Gopal Singh got the deed of surrender from the widow he undertook to pay all the debts. He was, therefore, in a sense her legal representative for payment of the debt. The widow was still alive on the date when the suit was decided by the lower Court and Thakur Jai Gopal Singh could not have got the property if the widow had not surrendered the estate in his favour. He was, therefore, clearly bound by the undertaking given in the deed and was estopped from challenging the same.

8. In our view the plaintiff was bound by the decree in suit No. 14 of 1939 passed against Thakurain Sri Nath Kuar and was not entitled to the reliefs claimed by him in the plaint. The appeal is allowed, the decree of the lower Court is set aside and the plaintiff's suit is dismissed with costs in both the Courts.