
(1919) 01 CAL CK 0031
In the Calcutta High Court

Saradindu Mukherjee

APPELLANT

Vs

Charu Chandra Dutt and Another

RESPONDENT

Date of Decision : 22-01-1919

Acts Referred:

Citation : 53 Ind. Cas. 885

Hon'ble Judges : Panton, J; Greaves, J

Bench : Division Bench

Judgement

1. This is an appeal by the defendant against the decision of the, Additional District Judge of the 21-Pergannas, dated the 5th August 1915, modifying the decision of the Subordinate Judge of Alipur, dated the 9th April 1914.

2. It is necessary to state before dealing with the contentions raised by the appellant a few material facts. On the 29th January 1907 one Suresh Chandra Ganguly made his Will and thereby, inter alia, dedicated the bulk of his properties to an idol which he might thereafter establish or which might be established after his death at Benares. In his Will he made provision for the five sons of his two daughters named Keshab, Gopal, Bankim, Khetra and Mritunjoy. Suresh died on the 7th February 1907, and on the 19th November 1907 Probate of his Will was granted to Satis Chandra Sen, the executor named in the Will. Satis died on the 30th January 1908 and Keshab, one of the five grandsons, commenced a suit in 1908 for the construction of his grandfather's Will, for the administration of the estate so far as necessary and for partition. In that suit it was held in accordance with the law as it then stood, that the gift under the testator's Will to an idol to be established thereafter was not a valid gift in Hindu Law, and accordingly on the 5th September 1908 a preliminary decree for partition was passed. On the 15th July 1908 prior to that decree two of the grandsons, Keshab and Bankim, mortgaged to one Sukbilal for Rs. 3,500 their shares in their grand-father's estate, which in accordance with the construction of the Will which had been declared consisted inter alia of the property which the testator had dedicated for the purpose of the idol to be established at Benares.

On the 29th September 1908 Keshab and Bankim mortgaged their shares to one Nagendra Nath Mitter for Ra. 6,000, the mortgage of Sukhilal being paid off out of the mortgage money. In August 1909, the decision of the Full Bench* was promulgated which declared that bequests to an idol to be established in future were not invalid in Hindu Law. On the 27th September 1909 Nagendra Nath Mitter assigned his mortgage to one Harendra Nath Mukherjee, who was the father of the appellant. On the 25th February 1910 the suit for partition was withdrawn in view of the decision of the Fall Bench of August 1909. On the 15th May 1908 Government published a notification for the acquisition of 151/2 cottas of land which formed part of the testator's estate. The award was published on the 7th August 1908 awarding 1/5th of the compensation money to Gopal, testator's grandson, 2/3ths to the other grandsons, Khetra and Mritunjoy, and the remaining 2/5ths to Keshab and Bankim.

3. Harendra obtained a decree upon his mortgage and on the 18th March 1910, he attached 2/5ths share in the compensation money belonging to Keshab and Bankim in accordance with the award which amounted to Rs. 2,163, and shortly after Harendra withdrew this sum. On the 19th May 1910 administration de bonis non of the testator's estate was granted to the present plaintiff. There was an appeal but the grant was confirmed on appeal.

4. On the 7th August 1912, Harendra commenced a suit to enforce payment of the balance due to him under the mortgage, and it was held in that suit that the mortgage-debt was realizable from the amount bequeathed to the mortgagees, Bankim and Keshab, under their grandfather's Will. On the 17th March 1913 the present suit was instituted by the plaintiff to recover the sum of Rs. 2,163 from the defendants, being the money withdrawn by their father under the attachment of the 18th March 1910.

5. Three points are urged before us on appeal. First, it is said that the original mortgagee and his assignees had no notice of the debutter character of the estate when the original mortgage was entered into. Secondly, it is said that as the law stood at the date of the mortgage the mortgage was a good mortgage and was of secular and not of debutter property, and thirdly, it is urged that the plaintiff had no cause of action against the present defendants as Harendra's heirs, as Harendra obtained the sum of Rs. 2,163 not from the testator's estate but from Bankim and Keshab, and it is said that the plaintiff's cause of action, if any, is against the cestui que trust under the Will of Suresh. Lastly, it was urged that this is not a case of trust money which is earmarked and which can be recovered.

6. So far as the first contention is concerned, it seems to us that there is nothing in this. No question of bona fide purchaser for value or any similar question arises. By the Will of Suresh such portion of his estate as was dedicated to the idol to be established at Benares was impressed with a trust for that purpose.

7. Then so far as the second point is concerned, the learned Vakil for the

appellant does not really contest that the effect of the Full Bench decision was not to make a new law but was to declare the law as it stood and has always stood, and so far as the third contention is concerned and also the last contention to Which I have referred, it appears to us that on the 18th March 1910 when the sum of money was withdrawn by Harendra, this was money to the knowledge of all the world, by virtue of the decision of the Full Bench, impressed with a trust for religious purposes.

8. Under these circumstances we think that the decision of the Additional District Judge was correct and this appeal fails and must be dismissed with costs.