
(1923) 05 AHC CK 0074
In the Allahabad High Court

Sitla Prasad and Others

APPELLANT

Vs

Musammat Chameli Bahu and Others

RESPONDENT

Date of Decision : 29-05-1923

Acts Referred:

Citation : (1923) 05 AHC CK 0074

Final Decision : Dismissed

Judgement

1. The question in this appeal is whether Hindu sons can recover joint family property which has been sold in execution of a mortgage-decree against their father without showing that the mortgage-debt was for illegal or immoral purposes. The mortgage was executed by the common ancestor Parmeshar Dayal in 1908. A suit was brought for sale on the basis of the mortgage and a final decree obtained on the 29th of August 1917. The sale took place on the 20th of January 1917 and was confirmed shortly after the institution of the present suit. The auction-purchaser was a stranger to the suit. The suit was filed on 2nd April 1919 by the sons and grandsons of Parmeshar Dayal for a declaration that the sale was not binding on them on the ground that the mortgage-debt was incurred without any legal necessity.

2. Court below has dismissed the suit on the rule laid down by Sir James Colville in Suraj Bansi Koer v. Sheo Persad Singh 5 C. 148 : 6 I.A. 88 : 4 C.L.R. 226 : 4 S.P.C.J. 1 : 3 S.P.C.J. 589 : 2 shome L.R. 242 : 2 Ind. Dec. 705 (P.C.). "that where joint ancestral property has passed out of the joint family under a sale in execution of a decree for the father's debt, his sons cannot recover that property without showing that the debts were contracted for immoral purposes and that the purchasers had notice that they were so contracted," and, further, that the purchasers at an execution sale, being strangers to the suit, if they have not notice that the debts were so contracted, are not bound to make enquiry beyond what appears on the face of the proceedings.

3. The appellants' contention is that this rule has been modified by the decision in Sahu Ram Chandra Vs. Bhup Singh, and that it now only holds good when the

father is dead at the time of the proceedings. In this case Parmeshar Dayal is still alive. The case is, however, exactly covered by the decision in the case of Sripat Singh Dugar Vs. Maharaja Sir P.K. Tagore, This was also a case in which property was sold under a decree on a mortgage passed against the father to which the sons were not made parties, it also resembles the present case in that the father was alive at the time of suit. The case was governed by Mitakshara Law and the question for decision was whether the entire joint family property passed by the sale or only the interest of the father. The law was thus laid down by the Lord Chancellor: "The property in question was joint property governed by the Mitakshara Law. By that law a judgment against the father of the family cannot be executed against the whole of the Mitakshara property if the debt in respect of which the judgment has been obtained was a debt incurred for illegal or immoral purposes. In every other event it is open to the execution creditor to sell the whole of the estate in satisfaction of the judgment obtained against the father alone." In face of this clear and recent pronouncement of their Lordships, which exactly covers the facts of the present case, it is useless to enter into speculations as to the inferences which may be drawn from the decision in Sahu Ram Chandra Vs. Bhup Singh, The decision just quoted is on all fours with the facts before us; the decision in Sahu Ram Chandra Vs. Bhup Singh, is not. The same view has been taken in a number of cases of simple money-decrees, in several of which Sripat Singh Dugar Vs. Maharaja Sir P.K. Tagore, has been relied on. Such cases are:

(1) Dalip Narain Singh v. Parmaoti Bibi 67 Ind. Cas. 931 : 42 A. 58 : 17 A.L.J. 982.

(2) Pandit Mohan Lal Vs. Bala Prasad and Others,

(3) Madhusudan Das Mohant v. Iswari Deyi Debt 61 Ind. Cas. 25 : 48 C. 341 : 24 C.W.N. 949.

4. It is impossible to distinguish these cases on the ground that they were cases of simple money-decrees, for the simple reason that the Privy Council case on which they relied was, like the present case, a case of a mortgage-decree.

5. For these reasons we are of opinion that the decree of the Court below is Correct and we accordingly dismiss the appeal with costs, including in this Court fees on the higher scale.