(1899) 02 CAL CK 0002

In the Calcutta High Court

Case No : On Appeal from The Original Jurisdiction No. 29 of 1898

Srinath Dass APPELLANT

Vs

Hari Pada Mitter, and others RESPONDENT

Date of Decision : 17-02-1899

Acts Referred:

Citation : (1899) 02 CAL CK 0002

Judgement

Maclean, C.J.—The question for our decision is, whether the Appellant purchased the absolute interest in the property in dispute, being a house and premises No. 97 Machuabazar Street, in the city of Calcutta, or whether be purchased only the limited interest of Srimati Mon Mohini Dassi, as the mother and heiress of her infant son, one Lokenath Bose. It is unnecessary to go into the title under which Lokenath Bose became entitled to the property, for there is no question as to that. He died in 1866, a minor, intestate and unmarried, leaving Mon Mohini Dassi, his mother, and heiress according to Hindu Law. She died on the 26th of February 1896, and thereupon the Plaintiff as the sons of the sisters of the said Lokenath Bose, succeeded to his estate as his heirs according to Hindu Law, and claim to be entitled to the property in question, upon the footing that all that the Appellant purchased was the limited interest in question and not the absolute interest in the property. The plaint was filed on the 10th July 1896.

2. I now pass to the history of that part of the case which is more directly in issue. On the 18th of October 1871, Mon Mohini Dassi executed a document which purported to be a mortgage by her to one Chunna Mull of the premises in question, to secure Its. 3,000, and interest. To that deed the father of the present Plaintiffs, the Mitters, was a party, and also the father of the present Plaintiffs, the Sircars, and the mortgage purported to be given to raise money for the payment of the debts of Rambulluv Bose, the husband of Mon Mohini Dassi. The document was not registered and was consequently ineffective as a mortgage. Chuuna Mull, in 1872, instituted a suit, No. 360 of 1872, against Mon Mohini Dassi, and by the plaint in that suit (putting it shortly) claimed from the Defendant the sum of Rs. 1,200, which he alleged he had advanced to her upon

the faith of the above deed of mortgage, the payment of certain costs, charges and expenses, and Rs. 500 for damages for the alleged breach on behalf of the Defendant in not registering the above mortgage. The relief sought was personal as against the Defendant, Mon Mohini Dassi.

3. In her defence Mon Mohini Dassi repudiated the whole transaction, and denounced the than Plaintiff''s claim as false, unfounded and vexatious. In the plaint no doubt there is an allegation that the money to be advanced was, in effect, to pay off monies which Mon Mohini Dassi had borrowed to pay the debts of her deceased husband. It is reasonably clear that that allegation was not substantiated by the evidence. No case of legal necessity was made out in that suit, nor on the present appeal does the Appellant rely, nor did he rely in the Court below, upon the existence of any such legal necessity. The minutes of the proceedings of the Court in that suit will be found at page 120 of the Paper book : they give rather a meager account of what took place, but, eventually, the decree, dated the 19th March 1873, was pronounced and, upon the wording of that decree, the greatest reliance is placed by the Appellant. Notwithstanding that all that was claimed in that suit was a decree against the Defendant personally, as it appeared that the title deeds had been deposited with Chunna Mull, the transaction was, apparently treated as an equitable mortgage by deposit by the Defendant. It is a little difficult to appreciate why, under the circumstances, the decree, should have taken the form it did. However, so it was, and under the decree the premises were ordered to be sold, and the decree contains a direction that the Defendant should personally pay to the Plaintiff the amount of any deficiency which might arise on the sale. The Appellant contends that upon the face of the decree it was intended that the absolute interest -- not the limited interest--of the then Defendant was to be sold.

4. The Defendant did not pay the decretal amount, and the matter, as is usual, then went before the Registrar, with the view to the preparation of the sale notification and conditions of sale; and it appears, from the minutes of what occurred before the Registrar, that the attorney for the then Plaintiff stated that the title was imperfect, and that the Registrar could sell only the interest of the Defendant in the properties; and that the advertisement of sale was settled accordingly. The statements in these minutes are confirmed by the oral testimony of the attorney himself.

5. It is apparent, from the draft of the advertisement which was put in, that there must have been some discussion as to how the interest to be sold was to be described, for there is, in the margin in blue pencil the words " life interest of the Defendant," though there is no evidence to show how, or by whom, those words came to be written upon the draft. There is again on the draft the substitution of the words, "all the interest of Srimati Mon Mohini Dassi as the mother and heiress of Lokenath Bose," for the original words, undermentioned properties. From this it would appear that the then Plaintiff was under the impression that all he was entitled to sue under the decree was the limited

interest of the mother, and not the absolute interest in the estate.

6. It has been urged that the Appellant cannot be affected by anything that took place before the Registrar, or by any alterations that were made in the draft advertisement, as he was not present. That may be so, but these alterations at any rate indicate what the then Plaintiff thought he was entitled to sell, and what he intended to sell. The sale notification, however, shows that all that was put up for sale pursuant to the decree was, "all the interest of Mon Mohini Dassi, as the mother and heiress of Lokenath Bose," with the condition that the purchaser would take the properties with the title as disclosed in the abstract of title." The abstract discloser, what that interest was, namely, that of a Hindu mother taking as heiress of her deceased infant son, which, it is conceded, is for present purposes an interest identical with that of a Hindu widow.

7. The sale took place on the 12th September 1874. At the sale, a Mr. Weskin for Nitto Gopal Sircar, as the father of the two infant sons, notified that those infants were entitled to the properties; which is in accord, with his letter written to the Registrar on the 9th of September 1874. There is nothing, however, to show that this letter was ever brought to the notice of the Appellant. The property was knocked down to the Defendant for Rs. 4,150; the certificate was filed on the 22nd September 1874, and what the purchaser is there notified to have purchased is "all the interest of the then Defendant, as the mother and heiress of Lokenath Bose."

8. For the purpose of ascertaining what estate was intended to be affected by the decree we may look at the pleadings to enable us to see the nature of the suit, and what was the relief actually claimed. The frame of the suit is, to my mind, more consistent with the view that the case was one against the widow personally, and not one intended to charge the inheritance.

9. If there be ambiguity upon the face of the decree, as to what was intended to be sold, the absence of the reversioners from the proceedings may constitute a material consideration [see Massamut Nanomi Babuasin v. Modan Mohan ILR 13 Ind. Ap. 1 (1885)].

10. We have been referred to a variety of cases for the purpose of showing what the estate of the mother, in such a case as the present, is under Hindu Law, and that the mother has power to bind the inheritance, and that the inheritance may be effectually bound whether the reversioners are, or are not, parties to the suit. To my mind it will not be very profitable to further discuss these cases, for it must now be taken to be established, with reasonable certainty, what that estate is, what power of binding the inheritance she possesses and that the inheritance may be bound by a decree in a suit to which the reversioners are not parties.

11. The real question, to my mind, is what was liable to be sold under the decree and what in fact was sold, or in other words what was intended to be sold, and what was intended to be bought. The purchaser may have made a mistake: he may have thought he was buying the absolute, instead of the limited, interest,

but this would not avail him, if all that was put up for sale was the latter interest. It cannot be successfully contended that it would not have been open to the present Plaintiff, in the present suit, to show that no legal necessity existed such as to justify the mother in charging the inheritance, and the Plaintiffs were undoubtedly prepared, in the lower Court to adduce evidence upon this point, but that course was not adopted, as counsel for the Defendant stated that he did not rely upon any case of legal necessity, but that he relied upon the language of the decree, and the enquiries which the Appellant made before purchasing. Taking it that he did make those enquiries, as ho says, and that those enquiries absolve him from the obligation of showing the existence of a legal necessity, the question still remains what was intended to be sold and what was intended to be bought. Looking at the pleadings in the previous suit, to the circumstance that the relief sought by the plaint was personal against the mother, that the suit was not so framed as to indicate any intention of seeking to bind the inheritance, to the fact that the Plaintiff in that suit, through his solicitor, as is apparent from the proceedings before the Registrar and the oral evidence in this suit, only sought to sell the interest of the mother in the property, to the terms of the sale notification, which was the invitation to the Appellant to come in and bid, and to the terms of the sale certificate which the purchaser accepted, apparently, without demur, and giving all due weight to the allegation in paragraph 5 of the plaint, which was not supported by evidence, and to the wording of the decree, which is, at best ambiguous, my conclusion is that all that was intended to be sold, and all that the Appellant could reasonably have thought he was purchasing, was the interest of the mother, and not the absolute interest in the property. The language of the decree is not inconsistent with the view that it was only the interest of the depositor of the deeds which was to be Sold, and this is in accord with the direction for the payment by the mother personally, not out of her husband''s estate, of any deficiency. Further this view gains support from the price which the Defendant paid, which was very much less than had been paid for the absolute interest nearly seventeen years before, when the property was sold to Rambulluv Bose in October 1856, and when, as there is some evidence to show, the value of the premises, in 1874, was very much greater than Rs. 4,150.

12. The Appellant is an experienced vakil of this Court, and I can scarcely think that, in face of the terms of the sale notification, he could have believed he was purchasing the absolute interest at the price he paid. Apparently he did not place much reliance on the language of the decree : he says it did not satisfy him.

13. Finally, we are asked to make some compensation to the Defendant under sec. 51 of the Transfer of Property Act. I concur with Mr. Justice Jenkins that no such case has been, set up : but apart, from this, having regard to the long-period during which the Defendant has enjoyed the property, for the mother did not die until 1896, to the price which he paid, and, as his own evidence shows, to the pecuniary returns from it, I am not disposed to think that the transaction has been for him a wholly unremunerative one. But be that as it may, I see no valid ground for acceding to his request. The judgment appealed against must be

affirmed and the appeal dismissed with costs.

Prinsep, J.

14. It is unnecessary that I should repeat all the facts in this case. While Srimati Mon Mohini Dassi, the widow of Rambulluv Bose, was, as heiress to her deceased minor son, Lokenath Bose, in possession of the family estate in which she had only a life interest, she entered into a transaction with Chunna Mull to borrow money on a mortgage on certain property now in suit and received Es. 1,200. The transaction was not completed as she refused to register. There was consequently no mortgage. The creditor then sued her personally to recover the money. He could sue for it only as a bond-debt, for the deed not being registered was inadmissible as a mortgage, and he got a decree against her only, for she was the sole defendant. The form of the suit unmistakably shows that it was a personal action in which it was sought to make her personally liable for breach of contract for refusal to register the deed, and damages as well as repayment of the money advanced were claimed from her. But inasmuch as the title-deeds were in deposit with the Plaintiff, it was declared that Plaintiff was entitled to an equitable mortgage. The question now is whether this was a personal decree in its effect and consequences or whether it was a decree which gave the auction-purchaser at the execution sale a title as against the reversioners who at the death of Mon Mohini Dassi have succeeded to the family estate.

15. There was no attempt in this suit against the widow Mon Mohini Dasi to prove any legal necessity for the loan so as to bind the estate, though something-was recited in the deed to this effect and no attempt was made to prove any debt of her deceased husband which it was sought to pay off by this money. And as pointed out in the judgment just delivered the Defendants presented the trial of such an, issue when the Plaintiff offered to adduce evidence to Negative it.

16. But we have been asked to consider the proceedings which took place after the decree, to determine whether the life interest of the widow or the entire estate was sold. Now we have first of all the draft sale proclamation. This shows that the usual form was at first adopted, the notification being that the undermentioned properties (describing them) were to be sold. On this an office note was entered in blue pencil: "Life interest of Defendant;" apparently one of enquiry before the, notification was settled in the Registrar''s office. Eventually the words "all the interest of Srimati Mon Mohini Dassi, the mother and heiress of Lokenath Bose, in the following" were inserted. The proceeding book of the Registrar''s office next shows that on 10th August 1874, Babu W.C. Banerjee, attorney for the decree-holder, Chunna Mull, stated that "the title was imperfect, and that the Registrar will sell only the interest of the Defendant in the properties," that the advertisement was settled accordingly and that publication in certain newspapers was ordered.

17. The sale took place on the 12th September following, and the same book again shows that before the sale three claims on the property were made, of

which it is sufficient to mention only one, viz., that "Mr. Weskin for Nobo Gopal Sircar, the father of two infant sons, notifies that these infant sons are entitled." These infants are some of the reversionary heirs who are the Plaintiffs in the appeal now before us. The Defendant Appellant purchased at this sale for Rs. 4,150.

18. Now how does the matter stand up to this point. The form of the suit shows that a personal decree was asked for and obtained against the widow, Mon Mohini Dassi. The cause of action was her refusal to register the mortgage bond and a decree was asked for and against her only for recovery of the money advanced as well as for damages. The decree, no doubt, was as for an equitable mortgage in consequence of the previous deposit of title-deeds with the Plaintiff, but that did not necessarily affect the decree so as to indicate that it declared a mortgage on the family estate rather than on the life interest of the sole Defendant. The sale proclamation is not express in this respect but we learn from the minutes that on behalf of one set of the reversioners, notice of their rights was given and that with this notice the sale took place. The Appellant admits that he brought with notice of their claim. But it is stated on his behalf that he is protected as a bond fide purchaser because after full enquiry he had good reason to believe that he brought the entire interest in this property. He has been examined as a witness in this case, and he says that although he saw the decree and the unregistered mortgage deed he was not satisfied and that he purchased what he believed to be the entire interest because the fathers of the reversioners who wore then infants came and asked him to purchase. He admits at the same time that he was aware of the objection put in before the sale by one of the same persons as father of one set of these reversioners. The enquiry made was apparently directed towards the discovery of Wooma Charan Haldar to whom the recital in the mortgage deed stated that money was due from Kambulluv Bose which it sought to pay off. But the enquiry made was an insufficient enquiry, for it is admitted that nothing was discovered. Wooma Charan Haldar was not found nor was any trace of the alleged debt obtained. Now even if the father of the minor reversioners did come and ask the Appellant to purchase the property, I do not think that this would bind the heirs." But however that may be, I am satisfied from his evidence that the Appellant was not satisfied with this. He is one of the leading pleaders of this Court, and he is therefore well acquainted with the difficulties in obtaining a clear title in such a purchase, and I cannot believe that without some information regarding an antecedent debt of Kambulluv constituting a legal necessity which would make the widow holding only a life interest competent to burden the estate with a debt, he could have been led to believe that he was obtaining a title to the property so as to bind those who might succeed at the widow''s death. The small price at which ho purchased affords some indication of the nature of the title bought.

19. In regard to the claim for compensation for improvement, I don''t find that this was seriously pressed in the Court of first instance, and there is entirely no evidence on which we could award anything. Indeed as far as the evidence goes

and on the Appellant''s own admission he has made a very considerable profit on the transaction.

20. On these grounds I am of opinion that judgment of the lower Court giving the Plaintiffs a decree is correct and that the appeal must be dismissed.

Ameer Ali, J.

21. I also think that this appeal should be dismissed. It is now well settled that a Hindu widow or mother may, for certain purposes or under certain circumstances, convey or charge the entire inheritance. It is equally well settled that the reversioners may, upon her decease, question the validity of her act in so far as it affects the inheritance, and may require the alienee, whether the transfer was in invitum or voluntary, to establish the circumstances which would justify the passing of the entire inheritance.

22. It is not contended in this case that the decree obtained by Chunna Mull against Mon Mohini Dassi was res judicata; a judgment inter partes is conclusive in another action when it fulfils the conditions specified in sec. 13 of the Code of Civil Procedure. A judgment or decree not inter ''partes, unless it falls within the provisions of secs. 41 and 42 of the Evidence Act, is declared by sec. 43 to be irrelevant unless the existence of such judgment or decree is a fact in issue or is relevant under some other provision of the Act. From this point of view the contention that the said decree was " binding" on the Plaintiffs does not seem to me to be well-founded. No doubt it has been held that the widow fully represents the estate for certain purposes, and if in a properly-contested suit brought by the transferee against the widow to which the reversioners are not parties, he succeeds in establishing that the transfer or incumbrance was created for a purpose which is regarded as valid under the Hindu law, in order to convey or charge the entire estate, it may be said that such judgment is binding on the reversioners in so far as it throws the onus on them of showing that the adjudication was invalid or improperly obtained and was consequently not binding upon them. But whore there is no Adjudication, a decree made against the widow should, in my opinion, be treated under sec. 43 of the Evidence Act as irrelevant for any purpose other than showing the existence of such a decree. Even if the decree against Mon Mohini Dassi were to be regarded as binding against the present Plaintiffs, we must, first, see what its nature was, and secondly, what was intended to be sold, and was in fact sold under it. It appears that on the 18th of October 1871, Mon Mohini along with certain other persons purported to execute a mortgage in respect of the premises in suit for a loan of Its. 3,000 to be advanced to her by Chunna Mull. Rs. 1,200 is alleged to have been paid, and the, remainder was payable upon the registration of the document. Admittedly the balance was never paid to her as she refused to register the document. Upon that Chunna Mull brought a suit with the object of recovering from her the sum of Rs. 1,200 with interest and damages. The 12th paragraph of his plaint sets out the nature of his claim and the relief he was actually seeking. It runs as follows:--(Here his Lordship sot out the plaint as

given above).

23. Mon Mohini Dassi was the only Defendant in the suit. She denied that she borrowed any money from or executed any document in favour of Chunna Mull. At the trial Chunna Mull''s witnesses were cross-examined apparently with the object of showing that the loan was not taken by her. Towards the end of the Plaintiffs case, however, learned counsel for Mon Mohini said he would not contest the case further; and upon that the learned Judge appears to have made the following order :--

Decree for Rs. 1,200, and declaration that by deposit of deeds Plaintiff is entitled to an equitable mortgage with 18 per cent, interest to payment, usual decree for account and sale in three months. Costs No. 2.

24. The formal decree which was drawn up appears at page 25 of this paper-book and it is upon this decree that the Defendant contends that what was directed to be sold was not merely the mother''s limited estate but the entire inheritance. It is quite clear, however, that the suit of Chunna Mull was a personal action, against her for a non-feasance committed by her, namely, the non-registration of the mortgage deed. The claim for damages indicates clearly the nature of the action. No relief is asked for on the basis of what is now alleged to have amounted to an equitable mortgage by the deposit of title-deeds. The learned Judge who tried the case instead, however, of making a money decree as upon the plaint he would have been justified in doing, made a decree on the basis of an equitable mortgage, giving three months for the payment of the money (Rs. 1,200) and in default directing the sale of the premises. If he had made a money decree, Chunna Mull would have been entitled to take out execution at once and to sell up the interest of the widow. The Judge, however, gave the Defendant three months'' time for the payment of the money. The form of the decree is consistent with either its being against the widow''s interest or against the entire inheritance. But when we consider the allegation in the plaint and the nature of the relief sought for in the action, it is quite clear that it could not have been intended that the entire estate should be liable for the debt; and this again is abundantly clear from what took place subsequently. The decree was made on the 19th of March 1873. On the 5th of September, Chunna Mull obtained a change of attorney and from that time Babu W.C. Banerjee, a well-known attorney of this Court, had the charge of the sale before the Registrar. Mon Mohini Dassi having failed to pay the decretal amount, the sale notification and conditions were in accordance with the Rule of this Court (now represented by Rule 397 of the Rules and Orders) settled by the Registrar on the 10th August 1874. On that date Babu W.C. Banerjee acting for the Plaintiff, decree-holder, stated that the title was imperfect, and that the Registrar would sell only the interest of the Defendant in the property. The advertisement was settled accordingly. The sale was held by the Registrar on the 12th September 1874. The conditions of the sale were read out. Mr. Weskin, an attorney of this Court, gave notice of the present Plaintiffs, the reversioners, right in the property and

thereafter three persons commenced to bid. The decree-holder by leave bid up to Rs. 4,100 and the property was knocked clown to the Defendant in this suit for Rs. 4,150. It is clear upon the notes of the proceedings before the Registrar that the attorney for the decree-holder who had the carriage of the sale required the Registrar to sell only the interest of Mon Mohini Dassi, and Babu W.C. Banerjee''s evidence in this ease shows conclusively what he did and what he intended to do on that occasion. Referring to the letter of Mr. Weskin he says in his evidence :--" The letter is addressed to me and to the Registrar. The letter was received by me before the sale. I don''t remember what was done about this letter, but I think notice was taken of it and the lady''s interest was sold. I say I think nothing was clone about this notice. This referred to the reversionary interest and what was being sold was the lady''s interest."

25. In cross-examination he says, "whatever the interest of the lady was, was sold." And in re-examination he adds : " Yes, I had authority from my clients to sell less than the decree directed, and I did sell according to that authority."

26. Now, in the face of these facts it seems to me impossible to contend that any thing more was intended to be sold, or was, as a matter of fact, sold, than the interest of Mon Mohini Dassi herself. It seems to me wholly immaterial what the Defendant, the purchaser, believed ho had purchased. His notions on the subject in the presence of these facts cannot be regarded as of any value in judging what was actually sold. If it were necessary to express any opinion about his belief on the subject, I should be inclined to think that Babu Sri Nath Dass knew that what was really being put up to sale was the interest of the widow and that he undertook the chance of meeting the claim of the reversioners which was made and put forward in his presence at the time of the sale. In this view it is unnecessary to consider whether he made any enquiry or not as to the existence of any necessity for the loan. But as this point has been laboured I must say that in my opinion the enquiry which is said to have been made was of a most insufficient character. There is no suggestion as to what became of the Rs. 1,200 alleged to have been advanced to Mon Mohini Dassi and for which Chunnu Mull brought the suit. It was stated in the mortgage deed that Rs. 3,000 was being borrowed to discharge the debt to Wooma Charan Haldar, but it is by no means clear that there was any such debt due. Babu Sri Nath Dass purports to have been satisfied with the mere statements said to have been made by the father of one of the Respondents who, however, has not been called. In the Court below learned counsel for the Defendant relied only upon the decree and the alleged enquiry, and it was in consequence of that position that the Plaintiff did not, as appears from the minutes of the Court, go into evidence to disprove the allegation of necessity. I am therefore of opinion that the sale under which the Defendant purchased conveyed only the life interest of the widow Mon Mohini Dassi. Some stress has been laid on the use of the words " mother and heiress" in the advertisement and in the sale notification. I am of opinion that these words are merely descriptive, as any title Mon Mohini had to the property was as mother and heiress of Lokenath Bose. I am inclined to think that the mode of

expression used in the advertisement instead of supporting the case for the Defendant indicates that it was only the qualified estate of the mother that was being sold.

27. In reply it was contended by Mr. Woodroffe that if the Plaintiffs are hold entitled to recover in this action, they should be required to pay to the Defendant the money expended by him in protecting and improving the property, and reliance was placed on the words of sec. 51 of the Transfer of Property Act; that section is as follows :--

When the transferee of immoveable property makes any improvement on the property believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of improvement estimated and paid or secured to the transferee or to sell his interest in the property to the transferee at the then market value thereof, irrespective of the value of such improvement. The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

28. The section clearly contemplates that the present value of the improvements should be established by the Defendant. In this case when a question was put to one of the Plaintiff''s witnesses as to the present value of the property it was objected to on behalf of the Defendant and was consequently disallowed; and when a witness of the Defendant was asked whether he had books from the time of the purchase, the question was objected to, and that again was dropped So that the Defendant himself, though he asserts generally in his evidence that he has spent a considerable sum of money in various ways over the property, gave no definite evidence as to what the present value of the improvements made by him amounted to. And in my opinion therefore, his present claim to have the benefit of sec. 51 was properly overruled by the learned Judge in the Court below.

29. As regards any claim for the money spent by him, it is to be further observed that while his gomasta says that from the books it appears that only five or six thousand rupees were spent, the Defendant puts it at Rs 15,000. However that may be, it is clear from the Defendant''s evidence that he must have made a considerable profit from the property and fully recouped himself for what he had spent in the purchase and improvements of the property. For these reasons I think that the view, taken by the learned Judge in the Court below, is correct, and I accordingly agree in dismissing the appeal with costs.

