
(1956) 08 PAT CK 0010

In the Patna High Court

Case No : Letters Patent Appeal No. 19 of 1953

Sudhansu Kumar Singh

APPELLANT

Vs

Mt. Ramjhari Kuer and Others

RESPONDENT

Date of Decision : 21-08-1956

Acts Referred:

Citation : AIR 1957 Patna 115

Hon'ble Judges : Ramaswami, C.J.;Raj Kishore Prasad, J

Bench : Division Bench

Advocate : Dasu Sinha, for the Appellant; G.P. Das and Shambhu Nath, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal under the Letters Patent is brought against a judgment of Choudhary J. dated 5-10-1953, in Second Appeal No. 138 of 1950.

2. The history of the case is Important. In the year 1927 Raja Prasad Singh along with his father Jagat Narain Singh and others brought Title Suit No. 69 of 1927 against the respondents and their mother who was the widow of Fouzdar Singh, an agnate of the plaintiffs. In this suit the plaintiffs asked for a declaration that Fouzdar Singh died in a state of jointness and as such his widow was entitled to maintenance only and the inheritance of Fouzdar Singh passed by survivorship to the plaintiffs.

On 8-12-1930, the suit was compromised and an admission was made by the plaintiffs in the compromise petition that Fouzdar Singh died as a separate member of the joint family. In the year 1938 the minor son of Misri Singh and two minor sons of Kedarnath Singh brought Title Suit No. 58 of 1938 against the respondents, and in that suit the other plaintiffs of Title Suit No. 69 of 1927, including Raja Prasad Singh, were made defendants second party. In the Title Suit of 1938 the plaintiffs asked that the compromise decree should be set aside on the ground that the leave of the Court under Order 32, Rule 7, Code of Civil

Procedure, was not obtained and as such the compromise was not binding on the minors

This suit was decreed on 22-9-1939, and it was ordered that the compromise decree in the previous Title No. 69 of 1927 should be set aside and that Title Suit should be heard again on merits. The trial Court thereafter heard the title suit and on 4-2-1942 dismissed that suit. The minor plaintiffs preferred an appeal and the lower appellate Court allowed the appeal and decreed the title suit on 3-9-1943. The Title Suit was decreed not only in favour of the minor appellants but also in favour of the respondents second party, Raja Prasad Singh and others.

The other set of respondents preferred a second appeal to the High Court and on 25-10-1945, the High Court allowed the second appeal, set aside the decree of the lower appellate Court and res-tored that of the trial Court. During the pendency of the second appeal In the High Court respondents 1 to 3 of that second appeal applied for delivery of possession of the properties on the strength of the decree passed by the lower appellate Court and obtained actual possession.

Thereafter Raja Prasad Singh and others, who were plaintiffs of Title Suit No. 69 of 1927, got their names mutated in register D. When the decree of the lower appellate Court was set aside by the High Court, the present respondents applied for restitution. Raja Prasad Singh objected, but in spite of this objection possession was delivered back to the respondents. Thereafter the respondents applied for mesne profits for the period during which the judgment debtors were in possession by virtue of the decree passed in their favour by the lower appellate court.

Raja Prasad Singh objected to his liability for mesne profits, but the objection was dismissed by the Subordinate Judge and his decision was affirmed on appeal by the Additional District Judge. Raja Prasad Singh preferred a second appeal to the High Court. During the pendency of the second appeal Raja Prasad Singh died and his only son, namely. Sudhansu Kumar Singh was substituted in his place.

3. It was argued before the learned Judge who heard the second appeal that the liability for . mesne profits On Raja Prasad Singh should not be fastened upon his son Sudhansu Kumar Singh, because the debt was "avyavarika" and, therefore, the share of the appellant cannot be sold in execution of the decree taken out against the father Raja Prasad Singh for the satisfaction of the mesne profits.

It was pointed out on behalf of the appellant that in the compromise decree Raja Prasad Singh had admitted that Fouzdar was separate and, therefore, the act of Raja Prasad Singh taking possession of the inheritance was a dishonest act and so the liability for mesne profits was tantamount to an "avyavaharika" debt. This argument was rejected by Choudhary J. on the ground that the nature of the father's debt has to be ascertained with reference to the facts existing at the time the debt was incurred and that an examination of the circumstances before or after the liability was incurred is irrelevant to ascertain the nature and

character of debt.

In support of this view Choudhary J. relied upon Kirit Singh v. Mt. Chandra Kali ILR 30 Pat 826 : (AIR 1951 Pat 587) (A) ; AIR 1943 142 (Privy Council) . In this Court Mr. Dasu Sinha argued that this view of law was not correct, and in support of his argument learned counsel relied upon Darbesh. wart Darbeshwari Singh Vs. Raghunath Pd. Singh and Others, ; Brij Behari Lal Vs. Phunni Lal and Another, ; Sunder Lal Vs. Raghunandan Prasad and Others, and Govind Prasad Vasudeva Prasad Tewari v. Raghunath Prasad Indraprasad, AIR 1939 Bom 286 (FB) (F).

We have examined the authorities upon which Mr. Dasu Sinha has relied. We have also examined the cases upon which Choudhary J. has based his decision. We do not think that the decision of the Judicial Committee in (AIR 1943 142 (Privy Council) lends support to the proposition that the previous history of the transaction cannot be looked at in order to ascertain the nature and character of the father's debt or to find out if it is "avyavaharika". (AIR 1943 142 (Privy Council) , Sir Madhavan Nair no doubt states as follows :

"It also appears to be clear on principle, and on authority, that examination of the nature or character of the debt should be made with reference to the time when it originated, in other words, when the liability was first incurred by the father. If on such examination it is found that at the inception the debt was not tarnished or tainted with immorality or illegality, then it must be held that it would be binding on the son. This Principle, stated as Rule 1 by Venkatasubha Rao and Madhavan Nair JJ. in Palanivel Ramasubramania Pillay and Another, by mother Muthammal Vs. Sivakami Ammal, , In language almost identical, is amply borne out by the numerous authorities which they have examined."

But on the same page Sir Madhavan Nair proceeds to say "the rule is not. rigid, but has to be applied with reference to the circumstances of each case". At page 178 he further says that the principles mentioned by him "are not exhaustive but only basic aid if a particular debt is called in question it should be the duty of the Courts to examine its nature in the light of those principles and to see whether in the circumstances it is of the kind which would give exemption to the son from the liability of paying it on the ground that it is repugnant to morals.

We, therefore, doubt the correctness of the decision of the Division Bench reported in ILR 30 Pat 826 :(AIR 1951 Pat 587) (A) and also the decision of the First Appeal Bench in Durga Sun-dari Debya v. Rakhahari Ojha, First Appeal No. 44 of 1947, D/- 5-8-1953 (Pat) (H). We feel that the question needs further consideration by a larger Bench, but we do not propose to refer this appeal to a larger Bench in the present case because the question of law does not properly arise. The point taken by learned counsel on behalf of the appellant is that the act of Raja Prasad Singh taking possession of the property was a dishonest and fraudulent act and so the appellant was not liable for the mesne profits incurred by Raja Prasad Singh.

It was argued on behalf of the appellant that; the suit brought by Raja Prasad Singh, namely, Title Suit No. 69 of 1927, was fraudulent because Raja Prasad Singh knew at that time that Fouzdar Singh was separate and the widow of Fouzdar Singh was entitled to succeed to his inheritance. There is no material, however, to support the allegation of the appellant that the claim of Raja Prasad Singh was fraudulent in the Title Suit. On the other hand, it appears that the claim was held to be a valid claim by the lower appellate Court and the suit was decreed by the lower appellate Court on 5-9-1943.

It is true that this decree was set aside by the High Court in Second Appeal No. 1287 of 1943. The judgment of the High Court in the second appeal is reported in Mt. Ramjhari Kuer and Others Vs. Deyanand Singh and Others, . It is true that the High Court set aside the decree of the lower appellate Court after consideration of the various items of evidence given by the parties, but there is nowhere a finding or even a suggestion that the plaintiff Raja Prasad Singh had made a fraudulent or false claim in the title suit. It has been pointed out by learned counsel that in the compromise petition Raja Prasad Singh had admitted the claim of Fouzdar's widow, but that is not sufficient to indicate that the claim of Raja Prasad Singh in the title suit was a fraudulent claim.

It might be that Raja Prasad Singh made a concession in the compromise petition because the parties were adjusting their claims in compromising the suit. But that circumstance will not establish that the claim of Raja Prasad Singh in the Title Suit was a false and fraudulent claim. On the other hand, Raja Prasad Singh was in possession of the property after he had got a decree passed by a competent Court. Therefore, we find it difficult to accept the argument of learned counsel for the appellant that the act of Raja Prasad Singh in taking delivery of possession by the authority of a valid decree was a fraudulent or dishonest act.

If that is the correct inference in this case, it follows that the decree for mesne profits against Raja Prasad Singh is not in respect of debt tainted with immorality and that the debt incurred is not an "avyavaharika" debt within the meaning of Hindu law. In the special facts of this case we are of the opinion that the appellant was liable to pay the decree for mesne profits passed against his father. Therefore, this appeal under the Letters Patent must fail and must be dismissed with costs.