

(1915) 05 BOM CK 0004
In the Bombay High Court

Thakur Vassenji Morarji

APPELLANT

Vs

Musammat Chanda Bibi

RESPONDENT

Date of Decision : 07-05-1915

Acts Referred:

Citation : (1915) 17 BOMLR 556

Hon'ble Judges : John Edge, J;George Farwell, J;Dunedin, J;Atkinson, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Atkinson, J.—This is an appeal from a decree of the High Court of the North-Western Provinces, Allahabad, dated the 6th February 1912, whereby a decree of the Subordinate Judge of Benares, dated the 28th of July 1910, was set aside. The respondent did not appear on the hearing before this Board to support the judgment appealed from.

2. The suit out of which the appeal has arisen was brought by the respondent against Thakur Vasonji Morarji, a well-to-do merchant of Bombay to recover possession of a certain house in the city of Benares, and also mesne rates.

3. The land upon which this house is built was part of the Immovable property inherited by the respondent's father, one Kunj Behari Lal, the last surviving male member of a joint Hindu family, who died on the 6th of November 1890. He left his widow, Musammat Rama Bibi, and the respondent, his daughter, by that lady him surviving. He had no other issue. One Musammat Phundo Bibi, the widow of Goshain Radhe Gobind, the paternal uncle of Kunj Behari Lal, was, in and subsequent to the year 1892, entitled to maintenance out of the property so inherited by the latter. By deed, dated the 24th of November 1892, these two widowed ladies jointly conveyed to Thakur Vasonji Morarji some interest in the site of the aforesaid house with the two houses then standing upon it in consideration of the sum of Rs. 10,500.

4. The main question in dispute upon which the two Indian Tribunals have

differed is the nature of the interest so conveyed. The Subordinate Judge held in effect as a fact, first, that the sale of these houses was made by Musammat Rama Bibi as a matter of necessity, in order to discharge out of the purchase money certain debts due respectively by her husband's father Krishen Chaitan Deo, deceased, and his aforesaid paternal uncle amounting to Rs. 9,500 with interest, for the payment of which the creditors were pressing, and also certain debts incurred by herself, in order to obtain the necessities of life for the family; and, secondly, that Musammat Rama Bibi, having, under these circumstances, the power to sell the absolute interest in this Immovable property, she intended so to do; that this deed on the true construction of its terms, effected her intention and carried to and vested in the purchaser the absolute interest in the then existing two houses and their sites.

5. The High Court, while not differing from, or disturbing in any way the conclusions of fact at which the Subordinate Judge had arrived, or questioning the intention of Musammat Rama Bibi, to sell and convey the absolute interest in this piece of Immovable property, held that the terms of the deed were inadequate to convey to the purchaser anything beyond her own interest in the same, which they described as a life-interest.

6. The purchaser, the defendant in the suit, died on the 22nd of March 1913. Repurchased these houses for the purpose of founding a Dharamshalla on their site, and with that object caused the two dilapidated houses standing upon it at the date of the deed to be demolished, and one house to be erected upon the site at a cost to him of Rs. 13,000. Rama Bibi died on the 19th of August 1909, Phundo Bibi having pre-deceased her. On the 12th of January 1910 this suit was instituted by the respondent, as heir of her father, claiming the relief asked for on the ground that the sale by her deceased mother was made without necessity and without her, the respondent's, consent. The Subordinate Judge found as a question of fact that the respondent was not a minor at the date of the deed, and that she had full knowledge of the intended sale, and consented to it. Owing to the fact that the respondent did not appear on the hearing of this appeal, their Lordships thought it right not to content themselves with accepting and acting on the findings of fact of the Subordinate Judge, without examining for themselves the evidence upon which those findings purport to be based. Counsel for the appellant has accordingly fully opened this evidence. Their Lordships have fully considered it, and are clearly of opinion that the existence of the debts incurred by the predecessors of Kunj Behari Lal to the amount mentioned, the necessity for the sale of the absolute interest in these two houses in order to discharge them, and the payment of them out of the purchase money when obtained, are clearly established. Their Lordships see no reason whatever to dissent from any of the Subordinate Judge's findings of fact.

7. The question of the proper construction of the deed of conveyance remains. The principle laid down by Lord Justice Knight Bruce in delivering the judgment of this Board in the case of Hunoomanpersaud Panday v. Mussumat Babooee

Munraj Koonweree (1856) 6 M.I.A. 393 is particularly applicable to this case. At pp. 411-412 of the report he says :-

Deeds and contracts of the people of India ought to be liberally construed. The form of expression, the literal sense, is not to be so much regarded as the real meaning of the parties which the transaction discloses.

8. Well, it appears to their Lordships that an examination in detail of the provisions of the deed of conveyance in this case cannot leave any doubt upon one's mind that all the parties meant that the absolute interest in these two houses should be conveyed to the purchaser, and thought that it had by the deed been effectually conveyed to him. That instrument commences with a full and detailed recital of the title to the property. It contains a declaration that Rama Bibi is the owner of all the property left by her deceased husband, but that Phundo Bibi being an elderly woman in the family, this property was by courtesy enjoyed by the latter jointly with herself.

9. It is then recited that the deceased husbands of these two ladies (both of whom execute the deed) did not leave behind them property, the produce of which was sufficient to meet their necessary expenses; that they had been obliged to borrow money to provide the ordinary necessities of life; that the father and paternal uncle of Kunj Behari Lal were at the time of their respective deaths each indebted to several creditors, still unpaid, who were pressing for their money; and that the only way by which money could be procured to discharge all these debts was by selling a portion of the property inherited by Kunj Behari Lal. Not, be it observed, a particular estate, or interest in the whole or a portion of that property but a portion of the property itself, part of the corpus as it were, if one may use that expression.

10. Now, it is plain that all those recitals touching the existing indebtedness of the executants and their predecessors could only have been introduced for the purpose of showing that the circumstances were such as to give to the executants the power to dispose of the absolute interest. The recitals were entirely otiose, serving no purpose whatever, if the intention and object of the parties were merely to dispose of the interest to which Rama Bibi would normally be entitled as the widow of her deceased husband. She could dispose of that interest whether debts existed or not. So that special pains are taken to set out in detail the facts and circumstances which remove every fetter from her power of disposition over the absolute interest.

11. It is next recited that the two executants have Jointly and severally agreed to sell and convey all their full and existing rights in the two houses to the purchaser for the sum of Rs. 10,500 to be paid in cash; and that Phundo Bibi has joined as an executant by virtue of her position in the family for the additional guarantee of the vendee. Her right to maintenance was a liability affecting the absolute interest in every portion of the property left by Kunj Behari Lal. It might last beyond the life of Rama Bibi if Phundo Bibi outlived her; but the vendee, it

was agreed, was to enjoy the property absolutely discharged from this latter liability for all time. By the operative granting part of the deed Rama Bibi in the first place sells, conveys, and transfers all her rights and interest in these two houses to the purchaser without any reservation. Then Phundo Bibi transfers to him her only right in the property, namely, her right to maintenance. And then the two ladies jointly proceed to sell and convey to him all their own existing right, title and interest in, or belonging or appertaining to these two houses, including easements, and declare that from the execution of the deed thenceforth the purchaser shall be-

the full owner and proprietor of the said houses in our stead, and shall own, possess, and enjoy them in the same way as we have been hitherto doing.

12. Then there follow two very significant provisions, first that-

as proof of the existing debts and the necessity of conveying the property for purposes aforesaid Sham Lal, the husband of Chanda Bibi, (the respondent) has signed as one of the witnesses of the deed,

and secondly, that-

should at any time the said vendee or his heirs and representatives be deprived of the whole or part of the property conveyed by this deed he or they would be entitled to recover the money in full or in part, as the case may be, from us and rest of our property.

13. That guarantee might not be of much value, but it contemplated a loss which might occur after the death of Rama Bibi. Well, the purchase money was paid, the debts were discharged, and Sham Lal and the creditors of the male debtors, whose claims were paid, signed the deed as witnesses.

14. Thus every precaution which apparently occurred to the minds of the parties to the instrument or to those of their advisers was taken to show on the face of the document that circumstances existed which would empower Rama Bibi to dispose of the absolute interest in this property.

15. There can be no doubt, therefore, as to the object and intention of the parties to the transaction, and as to their view as to the meaning and effect of the language of the instrument. They all obviously intended that all the interest which the recited circumstances, true in themselves, empowered Rama Bibi to alienate should pass to the vendee, and it is equally plain that they thought that the effect of the instrument was to pass it to him.

16. The High Court seem to have attached little importance to some, if indeed not all, of the pregnant recitals which have been referred to. They took the two following passages from the granting part of the deed, first:-

I, the said Rama Bibi, do hereby convey, sell and transfer all my rights and interest in the said houses which I inherited from my said deceased husband, Goshain Kunj Behari Lal.

And secondly-

We...sell all our existing rights, title, and interests....

As together with the declaration that the vendee-

will be the full owner and proprietor of the said houses in our stead, and shall own, possess and enjoy them in the same way as we have been hitherto doing.

They then proceed to say-

These recitals (as they erroneously style them) show that the widow was selling such rights as she had as widow, that is to say, her life estate.

17. With all respect to the learned Judges of the High Court, their Lordships are quite unable to take that view. They think that the High Court fell into the very error which Lord Justice Knight Bruce, in the passage already quoted, stated should be guarded against in the construction of deeds between the people of India. They took the strict literal sense of the words in the passages referred to, and ignored the meaning which the parties to the transaction obviously attached to them. It is not quite accurate to describe the interest which a widow normally takes in Immovable property, which her husband inherits and leaves at his death, as a "life estate."

18. In Ch. xx of Mr. Mayne's Hindu Law, 8th Edn., p. 846, he lays it down that it is wholly incorrect so to describe her estate, and that it would be just as untrue to speak of the estate of a father under the Mitakshara law as one for life.

"Hindu law," he says, "knows nothing of estates for life, or in tail, or in fee. It measures estates not by duration but by use. The restrictions upon the use of an estate inherited by a woman are similar in kind to those which limit the powers of a male holder, but different in degree. The distinctive feature of the estate is that, at her death, it reverts to the heirs of the last male owner."

And again at page 870 :-

It is not a life-estate, because, under certain circumstances, she can give an absolute and complete title. Nor is it in any sense an estate held in trust for the reversioners. Within the limits imposed upon her, the female holder has the most absolute power of enjoyment.

19. If the circumstances existed which enabled her to dispose of that absolute interest, and she intended to dispose of it, the language of the instrument does not seem inadequate for the purpose.

20. Taking the deed as a whole and endeavouring to reconcile its various provisions the one with the other, giving effect as far as possible to each, their Lordships find nothing in its language constraining them to adopt a construction which would plainly defeat the object and intention of the contracting parties. They think the passages relied upon by the High Court may well be construed as meaning to refer to the right to, and interest in, the property which Rama Bibi,

as the widow of her deceased husband, had, in the particular circumstances of the case, power, for the purpose indicated, to sell and dispose of, that is, the absolute interest, and not as merely meaning to refer to the right and interest which a widow normally takes in the Immovable property which her husband owned at his death and leaves after him.

21. Their Lordships are, therefore, of opinion that the decree appealed from was erroneous and should be reversed, that the decree of the Subordinate Judge should be restored with costs throughout, and they will humbly advise His Majesty accordingly.

22. The respondent will pay the costs of this appeal.