
(1910) 09 BOM CK 0011
In the Bombay High Court
Case No : Suit No. 979 of 1908

Yamnabai

APPELLANT

Vs

Nanabhai Sadanand

RESPONDENT

Date of Decision : 27-09-1910

Acts Referred:

Transfer of Property Act, 1882 — Section 39

Citation : (1910) 12 BOMLR 1075

Hon'ble Judges : Beaman, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Beaman, J.—This is a suit by the plaintiff, a Hindu widow, to recover maintenance from her brothers-in-law the defendants 1 to 6, defendants 4 and 5 being minors and defendant 6 their guardian, and the purchaser of the ancestral house, defendant 7. It appears that after the death of her father-in-law, who maintained her to the year 1893 or thereabouts, the first defendant continued to maintain the plaintiff as he swears for about three years but as she says for a much shorter period. Since that time whether 1896 or before, she has been maintained by her sisters one of whom was the widow of the late Mr. Justice Telang; but she now complains that her surviving sister Gungabai is too poor to continue supporting her, and she, therefore, makes this claim for maintenance against her brothers-in-law and their alienee.

2. Most of the argument has turned upon Section 39 of the Transfer of Property Act. That section, I think, is very unhappily worded as becomes evident upon a consideration of some of the judgments which have been delivered upon it by way of exegesis. The truth is that the two parts of the section do not correspond, and as it stands it is quite impossible to say whether the Legislature really meant a purchaser-for-value's right to be postponed to a maintenance-holder's right if at the time of the purchase he had notice of her claim to maintenance, or if in addition to that the dominant intention of the vendor had been to defeat the

maintenance-holder's right and the vendee had been aware of that intention also. Now, the latter case could hardly occur in practice, unless indeed the vendors had announced their intention and it could be proved that the vendees had heard them doing so; else the Court would be left to infer from the surrounding circumstances only and inferences of that kind would always fall far short of being irresistible although possibly in exceptional cases Courts might deem them cogent enough to warrant discovering the intention as the true underlying fact. If, however, the intention of the Legislature in enacting that section was to postpone a purchaser-for-value's right to that of a maintenance-holder if the purchaser-for-value had notice of the claim to maintenance, then the section would go beyond and would conflict with the rule of Hindu Law. So that by Section 2 of the Transfer of Property Act its operation would be excluded where the rights of parties were governed by that Law. That is the case here, and I am now, therefore not concerned to pursue with rigor an analysis of the case law which has grown up upon this section.

3. The general Hindu Law applicable to a case of this kind is I think fairly clear and well settled. Widow's right to maintenance can only become a charge upon any definite portion of an undivided family estate when it has been made so by a decree of a Court or by an express agreement. Failing that, it is subject like many other rights founded in what the old Hindu lawyers deemed pious obligations to be defeated by sheer necessity. The further distinction to which the case law lends a great deal of colour, although upon this head it might be thought to need clarifying, is the distinction between the complete right of maintenance and a part included in it, namely the right to a residence in the family house. Cases might conceivably arise in which the distinction, to which some Courts seem to have inclined, between the conditions governing the legal apportionment of the part and of the whole might possibly be of some practical value, and give rise to practical difficulties. But broadly and generally I take it that that necessity which will be sufficient to defeat the larger will also be sufficient to defeat what is included in and less than the larger right. No doubt when the attention of the Courts is being concentrated upon the effect of the doctrine of notice upon the rights in controversy, distinctions of this kind may seem to acquire some importance; for of course it is a common place of the Hindu Law that the widow's right to residence is referable to the ancestral house and, therefore, the purchasers of the ancestral house aware of the existence of the widows, even when the widows are not residing in the house at the time, may without much straining be deemed to be affected with notice of the right: a fortiori when the widows are actually residing at the time of the sale and purchase. Nevertheless it seems to me a strange doctrine that a right of that kind separated from the entire right of maintenance can be earned over and made a burden upon the purchaser-for-value of the ancestral property, even with notice, when it is certainly the better doctrine that the larger right of maintenance cannot be so carried over and made a burden upon what he buys merely because he has notice of the claim to maintenance; and practical effect

being given to this special doctrine would make all sales of ancestral property in which widows claim a right of residence impossible, for it is absurd to suppose that any purchaser would care to acquire household property subject to the rights of an indefinite number of ladies to reside in that property for indefinite periods. I think, however, it will not be seriously disputed that if the sale of the ancestral property was necessitated in the interest of the family as a whole, then a bona fide purchaser-for-value would acquire a right paramount to that of the widows either to maintenance or residence. Otherwise, doubtless, where the maintenance holder's right had been made a definite charge, as I began by saying, upon the property sold, that would constitute a distinct legal limitation of the otherwise unlimited interest of all coparceners acting together. So too if we look at what is required of a purchaser with notice of Hindu widow's claim to maintenance, that would be governed, I apprehend, by altogether different considerations from those which apply in deciding whether the purchaser from one who has merely a limited estate, such as a Hindu widow has, acted with proper caution and circumspection. It may indeed be doubted whether any duty is thrown upon a purchaser from all the coparceners to investigate the character of their needs merely by the fact that some Hindu widow in the family has given him notice that she claims maintenance. If I am right in this brief and necessarily rather sketchy outline of the Hindu Law on this subject, which will be found expounded at very great length and perhaps not always very consistently in the numerous judgments to which my attention has been drawn, then it follows that the substantial question I have to answer here is a question of fact whether or not the alienation of the ancestral property was a proper alienation, or as expressed in one of the issues, for a legal necessity.

4. The case is of course not quite the same against all the defendants, for even assuming that the purchaser-for-value's right was indisputably paramount to the plaintiff's, still if the sale of the ancestral property had left any surplus in the hands of the remaining coparceners in the family the widow would certainly have a claim against them personally for her maintenance calculated with reference to the ancestral assets remaining in their hands. Again, the case of the first defendant stands upon its own footing alone; for he alleges and has proved that he separated from his brothers long before the final alienation of the ancestral family property. He has proved that he gave them a release in respect of the whole of it and that the plaintiff was well aware of this. Inasmuch as the right to maintenance attaches upon ancestral family property in the hands of relatives it must be restricted to the existence of such ancestral family property, it follows naturally that the plaintiff could have no claim or a shadow of a claim against the first defendant. Similarly, unless the alienation to defendant No. 7 could be shown to have been of such utterly illegal character, as for instance, to have been moved solely by the desire to defeat the plaintiff's right to maintenance, no doubt upon the general principles of the Hindu Law her right would not survive the sale. It could only still attach upon the property, the purchaser of which was found to be privy to the dishonest nature of the transaction. It may, however, be

seriously doubted whether the widow's right to maintenance would survive against the purchaser-for-value merely upon the ground that the alienation was rendered necessary by the extravagance or even the profligacy of the consenting coparceners provided that the purchaser is not specially affected by special knowledge of the character-of the debts, for I do not see precisely if that is so what limits are to be imposed on what is really an unlimited interest in the hands of all the coparceners consenting to the alienation of the coparcenary property. The single case upon which all the authorities are clear and definite is the case to which expression has been given in the first part of section 39 of the Transfer of Property Act, and that is the case which, as I have said, is never likely to occur. All the best authorities seem to me to be equally in accord against the view expressed, if we take language in its ordinary sense, in the second part of that section, that some notice of the widow's claim is sufficient to give her right priority over that of a bona fide purchaser-for-value having that notice.

5. Reverting now to the question of fact, the evidence seems to me clear enough to warrant the conclusion that the final alienation of all the ancestral property was the result of debts incurred originally by the father and after his death in conducting the family business of the printing press and maintaining the members of the family. The history of all the money Dealings commencing, so far as this case is concerned, with the first mortgage of Rs. 4,500 to the final decree of this Court directing the sale of the ancestral family house, has been clearly and succinctly given by the members of the family. It certainly appears a little shocking that the mortgage debt of Rs. 4,500 should have swelled apparently through the accretion of interest alone, although no doubt there may have been slight additional borrowings, to over Rs. 18,000. That was the sum for which the family house had to be sold under the decree of this Court, and the defendant No. 7, who is a relative of the family, appears to have come in and with the sanction of the Court to have offered a sufficient sum to pay off the entire mortgage debt and so free the coparceners from all personal liability. I am unable to discover in these transactions anything of so gross an immoral and fraudulent character as would defeat the alienation for value and make the widow's claim to maintenance survive against him.

6. As to the coparceners, they appear to have no family assests in their hands. Their Counsel has expressed his entire willingness to give the plaintiff every penny of ancestral money which he can discover; and, as there is no evidence to the contrary, it seems to me that the plaintiff's claim entirely fails.

7. I must, therefore, dismiss the plaintiff's suit with all costs.