MUNICIPAL COUNCIL, ANANTAPUR v. VASUDEVA RAO. —— REILLY J.

that the whole scheme under the Act is that house-tax should be assessed and collected for the financial year; but I cannot agree with him that the fact that this notification happened to be published in the District Gazette five days after the commencement of the financial year makes the levy of the tax at the enhanced rate from the beginning of that year illegal.

In my opinion this appeal also should be dismissed with costs.

ANANTAKRISHNA AYYAR J.—I agree.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Curgenven.

1931, July 24.

NANDULA JAGANNADHAM (THIRD DEFENDANT), APPELLANT,

v.

GOTETI VIGHNESWARUDU AND FOURTEEN OTHERS (PLAINTIFFS TWO TO NINE AND DEFENDANTS ONE AND TWO AND NIL), RESPONDENTS.*

Hindu Law—Widow—Property inherited by her—Income out of—Right of disposal over—If bound to pay the principal of binding debts—Sale to discharge a binding debt—Necessity for sale not imminent—Test to be applied—Payment of a small portion of the amount realized by sale for a debt which was not a legal necessity—Effect of on sale.

A Hindu widow succeeded to properties left by her husband which yielded a considerable income. Her husband had executed two mortgages which were binding on the inheritance. The widow sold one of those properties for an adequate consideration, viz., Rs. 3,200, out of which Rs. 2,550 and 650 were

* Appeal No. 181 of 1926.

applied in payment of the principal and interest respectively due under the mortgages. The reversioners objected to the sale.

Held that, (1) a Hindu widow has absolute power of disposal over the income of the property inherited by her, even though there were binding debts to be paid, and she is not bound to apply the surplus income to the payment of the principal amount of those debts but only bound to pay the interest on the same out of such surplus.

(2) the purpose of the sale being the payment of a binding debt, the fact that the necessity for the sale was not imminent should not be allowed to prevail, and the test to be applied in such a case is, "was the sale effected in good faith and in the exercise of proper discretion; in other words, could it be justified as the act of a prudent manager of a joint Hindu family?"

(3) though the payment of Rs. 650 out of the sale price towards the interest on the mortgage debts was not a "legal necessity," the entire sale should be upheld as that sum bears a small ratio to the entire consideration.

APPEAL against the decree of the Court of the Subordinate Judge of Narasapur in Original Suit No. 113 of 1922.

A. Satyanarayana for appellant.

B. T. M. Raghavachari for fourth and eleventh to fourteenth respondents.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by

VENKATASUBBA RAO J.—In this appeal we have to decide whether a certain alienation made by a Hindu widow is binding on the reversioner. One Manikya Rao died on the 4th of January 1919 leaving the first defendant, then a minor, his widow. On the 26th of September 1920, her father, the second defendant, agreed on her behalf to sell the suit house to the third defendant for Rs. 3,200. This agreement was made subject to the widow's confirmation on her attaining majority. After she became a major, in pursuance of that contract, she

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executed on the 16th of February 1922 a conveyance of the property in favour of the third defendant. The price mentioned in the sale deed is Rs. 3,770–5–0, which, ignoring a certain small item, represents the sum mentioned in the contract, (namely, Rs. 3,200), together with the interest thereon to the date of the sale. The fact was that the vendee was put in possession of the property on the date of the agreement and he was, on that account, required, in lieu of the profits received by him, to pay interest on the amount originally fixed as the price. For deciding the question raised, the price must therefore be taken to have been Rs. 3,200.

The lower Court has set aside the sale, but has declared in favour of the third defendant a charge over the property in question for Rs. 3,200, the price paid. From this decree he appeals. His case was that the sale was made for purposes of necessity. Rs. 3,000 out of the consideration went in full discharge of a mortgage of 1916 and the balance of Rs. 200 in part-payment of another mortgage of 1918. Both these mortgages were those executed by the first defendant's husband, and that the debts were accordingly binding on the inheritance is not disputed. The plaintiff attacks the sale by saying that the debts could have been paid off with the income from the estate. He contends that the rents for 1918, which accrued due during Manikya Rao's life-time, must have been received subsequent to his death. It is unnecessary to decide whether his contention is correct that a Hindu widow has no absolute power of disposal over the income which accrues due during her husband's life-time. For, it has not been shown that in point of fact such income was available to the first defendant. The learned Judge does not find that she was in possession of the income for 1918. He merely observes that she

must have been in possession of such income. Nor is it sufficient to suggest that she received the rents; what must be shown is, that, after allowing for the expenses of the previous year, there was a balance left in her hands, available for the payment of the debts. On the contrary, it appears clearly that Manikya Rao was borrowing money for household expenses even some time prior to his death. It is likely that for the expenses incurred during his lifetime the widow had to make payments. We are not, therefore, prepared to assume that she had at her disposal any unexpended rents of the year 1918 and was thus in a position to pay off any part of the debts with such rents.

It is next contended that by the date of the sale the widow came into possession of some considerable income; and that, it being incumbent upon her to pay off her husband's debts with such income, she was not competent to sell any part of the estate. The question raised is, whether a Hindu widow is bound to pay the debts of her husband out of the income. It is settled law that a widow or other limited heir has absolute power of disposal over the income of the property inherited by her. She is not bound to make any savings and may spend the whole income just as she likes. But it is argued for the respondents, that this rule is subject to the qualification, namely, that legal necessity, which alone justifies an alienation, disappears when the limited owner is shown to be in possession of a sufficient surplus, after meeting the necessary expenses. This proposition involves that, where there are binding debts to pay, the so-called absolute power over the income becomes illusory. The contention is not only illogical, but is opposed to authority. The following passage from the judgment of MUTTUSWAMI AYYAR J.

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in *Ramasami Chetti* v. *Mangaikarasu Nachiar*(1) states the law very tersely:—

"It is next contended that she was bound to apply the income of her husband's estate first in discharge of his debts instead of executing the mortgage. The net income is, under Hindu law as administered in this Presidency, her own exclusive property as widow, and she is not bound either to save or apply it for the benefit of the reversioners. She is no doubt bound to pay her husband's debts from it, because she had taken charge of the whole property left by him whilst her right of inheritance extends only to the property as diminished or affected by his debts. As between her and the reversioners she is entitled to say, 'I will pay my husband's debt by the sale of his property and take the residue, and I desire to keep the net income derived from it and to spend or invest it as I please.'"

The point is more fully dealt with in *Boddu Jaggayya* v. *Goli Appala Raju*(2). That case points out that it is not over the gross but net income that a widow has absolute power of disposal. She takes the estate subject to payment of debts. The interest on those debts is an expense properly debitable to the income. A limited owner is thus bound to pay off the interest on the debt where there is a sufficient surplus, but it is equally clear that it is not incumbent on her to apply any part of the income to the payment of the corpus. So stated, the rule is consistent and logical and we must, therefore, reject the view of the lower Court, which is opposed both to reason and authority. The last-mentioned case was followed in Appeal No. 214 of 1929 to which one of us was a party.

The cases relied on by the respondents' Counsel, such as, *Cavaly Vencata Narrainapah* v. *The Collector of Masulipatam*(3) and *Mahomed Shumsool* v. *Shewukram*(4), are not really helpful. The point to decide is, whether a limited owner is bound to apply the surplus revenues

(1) (1894) I.L.R. 18 Mad. 113.
(2) (1913) M.W.N. 275.
(3) (1867) 11 M.I.A. 619.
(4) (1874) L.R. 2 I.A. 7.

to the payment of binding debts. Apart from the point not having been considered or decided in these cases, there are not even dicta in them on which the respondents can rely. From a bare reference to the surplus revenue in the statement of facts, no inference can be drawn either for or against the position taken up by the respondents. As regards the cases referred to in the lower Court's judgment, they scarcely merit any consideration, as they are irrelevant and have no bearing on the question. To the authorities that actually decide the point the learned Judge has failed to refer.

The sale is next attacked on the ground that it was made for an inadequate price. The learned Judge has rightly attached no weight to the evidence on the plaintiffs' side, but he makes a conjecture that the house might have been worth Rs. 5,000 on the date of the sale. He records a halting finding to this effect. It is contended by the respondents that the late owner spent nearly Rs. 7,000 on the construction of the house. This has not been satisfactorily proved. Apart from that, a house cannot be expected to fetch at a sale the amount which its owner spends in building it to suit his own fancy or needs. According to the learned Judge, there is no reason to suspect collusion on the part of the widow or her father with the purchaser. In the circumstances, we fail to see why, in the absence of evidence to that effect, it should be held that the price got was inadequate.

The sale is next impeached on the ground that it has not been shown that there were circumstances of actual pressure. According to this contention, where money is raised for paying off a binding debt, an alienation can be justified only if actual pressure is shown in the sense of some pressure from without. For instance

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it must be shown that legal proceedings were threatened or a forced sale of the mortgaged property was imminent. In our opinion, this is not the correct test of justifying necessity, for, a restraint of this kind, far from benefiting or preserving the estate, would lead to the very opposite result. Why should a widow, for instance, be compelled to allow a mortgage-debt to grow and swallow up the property mortgaged, when the early paying off of that debt would be beneficial to the estate and tend to its preservation? If the alienation was made in the exercise of a reasonable discretion and could be justified as the act of a prudent manager, the objection that there was no compulsion from without and that the necessity was not imminent should not be allowed to prevail. The question then reduces itself to this: the purpose of the sale being the payment of a binding debt, was it effected in good faith and in the exercise of proper discretion; in other words, could it be justified as the act of a prudent manager? Judged by this test, we are satisfied that this sale must be upheld. The husband died in debt. There were two mortgages outstanding. Some part of the debt had been incurred for building this very house. He died while still it was being built. To complete its construction, it would be necessary for the widow to raise further money. We fail to see why, in such circumstances, any limited owner should be compelled to retain against her consent such a property, while she deems it prudent in the exercise of a sound discretion to dispose of it and pay off a binding debt.

There is one further matter to be dealt with. The sale price was Rs. 3,200 out of which only Rs. 2,550 was applied in payment of the corpus of the principal of the debts. The balance of Rs. 650 went in discharge of the interest due on those debts. According to our

judgment, the widow was bound to pay the interest from the surplus revenue in her hands. In these circumstances, is the sale to be upheld in its entirety or not? Following *Sri Krishan Das* v. *Nathu Ram*(1) and *Suraj Bhan Singh* v. *Sah Chain Sukh*(2), we hold that the portion of the price not taken for legal necessity bears such a small ratio to the entire consideration that it might be left out of account. Accordingly the sale is upheld and the appeal is allowed and the suit is dismissed with costs of the third defendant throughout. In this view, it is unnecessary to decide the question whether the plaintiffs are the next reversioners of Manikya Rao or not.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Reilly and Mr. Justice Anantakrishna Ayyar.

GYANAMMAL (PETITIONER—PLAINTIFF), APPELLANT,

v.

ABDUL HUSSAIN SAHIB (COUNTER-PETITIONER—SECOND DEFENDANT), RESPONDENT.*

1931, April 28.

Code of Civil Procedure (Act V of 1908), O. V, r. 20—Substituted service effected with due formality—Due service necessarily if, within meaning of arts. 164 and 169 of the Indian Limitation Act (IX of 1908) and Orders IX and XLI of the Code of Civil Procedure.

Substituted service, when it has been effected with due formality, is not necessarily due service within the meaning of articles 164 and 169 of the Limitation Act or rule 13 of Order IX or rule 21 of Order XLI of the Code of Civil Procedure.

(1) (1926) I.L.R. 49 All. 149 (P.C.); L.R. 54 I.A. 79.
(2) (1927) 53 M.L.J. 300 (P.C.).
* Appeal against Order No. 382 of 1927.