PRIVY COUNCIL. *

RAMSUMRAN PRASAD

v.

SHYAM KUMARI.

1922.

May, 31.

Hindu Law—Hindu Widow—Husband's Estate—Power to compromise—Immovable Property.

Six immovable properties were brought to sale by a Hindu widow under a mortgage decree for Rs. 1,47,000 obtained by her in a suit commenced by her deceased husband, and she bought them at the auction for Rs. 65,075. The judgment-debtors having filed objections to the sale, the widow entered into a compromise with them whereby they were allowed to sell four of the properties for Rs. 66,000, to be paid over to her, and she was allowed to sell the other two properties, which were likely to realize Rs. 5,000. In a suit by the reversioners both Courts in India negatived fraud and upheld the transaction :—

Held, that the compromise appearing to be reasonable and prudent in the interest of the estate was binding upon the reversioners.

It was not necessary to determine (*a*) whether the judgment of the High Court, in so far as it placed the burden of proof upon the reversioners, was absolutely, and without qualification, sound; or (*b*) whether the power of a Hindu widow to compromise was more restricted in the case of immovable property than in the case of movable property, because the property could not be considered immovable; until sale it was money, though secured on land, and the compromise was upon the very question whether the sale should be confirmed.

A compromise entered into by a Hindu widow *bona fide* for the benefit of the estate, and not for her personal advantage, binds the reversioners quite as much as a decree against her after litigation.

Mohendra Nath Biswas v. *Shansunnessa Khatun* (1).

Judgment of the High Court affirmed.

Present : Lord Phillimore, Lord Carson, and Sir John Edge.

(1) (1914) 21 Cal. L. J. 157.

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Appeal (No. 8 of 1921) from a judgment and decree of the High Court (August 9, 1918) in *Ramsumran Prasad* v. *Shyam Kumari* (1), affirming a decree of the Subordinate Judge of Darbhanga.

The suit was brought by the appellants, who were the reversionary heirs to the estate of the late husband of the first respondent, for a declaration of their rights in certain property which formed part of his estate. The appellants asserted the invalidity of a transaction in the nature of a compromise entered into by the first respondent in 1912. The facts appear from the judgment of the Judicial Committee.

The Subordinate Judge dismissed the suit, and his decree was affirmed by the High Court (Roe and Jwala Prasad, J. J.), in *Ramsumran Prasad* v. *Shyam Kumari* (1). The learned judges were of opinion that there was no fraud, and that the plaintiffs had not shown that the compromise had been entered into by the widow (the first respondent) collusively for the purpose of conferring upon herself a benefit at the expense of the estate.

1922. May 8, 9. *De Gruyther*, *K. C.* and *Kenworthy Brown*, for the appellants. The transaction was not within the powers of a widow in possession of her husband's estate under the *Mitakshara* law. Upon the facts it was not a provident transaction in the interest of the estate, and the estate was in no way benefited: it was made for the benefit of the widow's relations. A Hindu widow has no power to alienate any part of the estate by way of compromise: *Imrit Kunwar* v. *Roop Narain Singh* (2). Without prejudice to that contention, it is submitted that a compromise by a widow involving an alienation of part of the estate does not bind the reversioners unless it is shown that it was for such purposes as would justify a sale by her: *Kanhaiya Lal* v. *Kishori Lal* (3). Further, as the widow had purchased at the auction,

(1) (1918) 47 Ind. Cas. 697. (2) (1880) 6 Cal. L. R. 76.
(3) (1916) I. L. R. 38 All. 679.

the transaction was an alienation of immovable property and therefore could only be justified upon strict proof of necessity. *Khunni Lal* v. *Gobind Krishna Narain*(1) is distinguishable; it was there held that the transaction did not amount to an alienation. In *Mohendra Nath Biswas* v. *Shansunnessa Khatun* (2) which was also relied on in the High Court, the real ground of the decision was *res judicata*. [Reference was also made to *Katama Natchiar* v. *Rajah of Shivagunga* (3), and *Tarinee Churn Gangooly* v. *Watson & Co.*(4).]

Dunne, *K. C.* and *H. N. Sen*, for fourth respondent, one of the purchasers from the judgment-debtors, after referring to Mayne's Hindu Law, 8th ed., paragraphs 624, 625, were stopped.

Abdul Majid, for the first respondent, the widow.

May, 31. The judgment of their Lordships was delivered by—

LORD PHILLIMORE.—The question raised on this appeal is whether the reversionary heirs of one Brij Mohan Lal can recover possession of certain property which is said to have been alienated by his widow as one of the terms of a compromise of litigation originally brought by Brij Mohan Lal and continued by his widow after his death. He had begun the suit on July, 1895, and died on December 22. The suit was brought to enforce two mortgage bonds. There was a claim by a prior mortgagee which eventually came up before this Board(5), and resulted in a decree which was generally favourable to the widow, but required her to pay into Court a considerable sum to the credit of this first mortgagee. She paid this, and then proceeded to execute a decree for recovery of what was due to her on the mortgage bonds, which was ascertained by the decree to be the sum of Rs. 1,41,959. Six of the properties were then put up for auction on June 20,

(1) (1911) I. L. R. 33 All. 256; L. R. 38 I. A. 87.
(2) (1914) 21 Cal. L. J. 157. (3) 1864) 9 Moo. I. A. 539, 604.
(4) (1869) 12 W. R. (Civ.) 413.
(5) (1904) I. L. R. 32 Cal. 327; L. R. 31 I. A. 176.

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1912, the widow having leave to bid, and she bought them for the sum of Rs. 65,075. Thereupon the judgment-debtors filed a petition in objection to the sale, and the widow came to the compromise which is now impeached.

By this compromise she agreed that the sale of the six properties should be set aside, and that the judgment-debtors should be allowed to sell them again to certain proposed purchasers for a sum total of Rs. 66,000 to be paid over to her. It was further provided that the two other properties should be hers to sell and make what she could of them, it being estimated that she would probably obtain Rs. 5,000. The rest of the debt, Rs. 70,259, was remitted.

The reversioners, hearing of this transaction, applied for leave to intervene in the suit and oppose, but were refused, all their rights being reserved. Thereupon the present suit was instituted by them, praying that the order entering satisfaction of the judgment debts should be vacated, for a declaration of their rights and for an injunction and further or other relief. They said that the sale was fraudulent, collusive and illegal.

The widow, the judgment-debtors and the purchasers from the judgment-debtors all appeared and defended. One of the points set up on behalf of the defendants was that the widow's husband's family was governed by the *Mithila* School of Hindu law, which gives larger powers to a Hindu woman when an estate is vested in her than she gets under the *Mitakshara*. This was negatived by both Courts, and need not now be considered.

On the other hand, both Courts have found that there was no fraud or collusion, and have taken the view that the compromise should stand, and have dismissed the suit. The principal ground on which the supposed fraud rested was that the properties released being worth considerably more than Rs. 66,000, the purchasers from the judgment-debtors had obtained very advantageous bargains, and that one of

these purchasers was the widow's brother. Both Courts, however, having negatived fraud, it would require an exceptionally strong case to induce this Board to take a contrary view, and indeed the appellants have not ventured to question this part of the decision.

The points further to be decided are, first of all, whether the widow, or anyone holding what is known as a Hindu woman's estate, especially perhaps if that estate consists of immovable property, can compromise in any circumstances, and secondly, whether this compromise is sufficiently reasonable for the Courts to allow it to stand.

Their Lordships have been invited in an elaborate argument which has reviewed all the authorities to hold either that there is no such power of compromise at all, or that a compromise which results in the surrender of land must be treated on the footing that such an alienation is on the same footing with other alienations of land which the holder of a Hindu woman's estate can make—namely, that they are justifiable by necessity and necessity only.

It should be observed *in limine* that the word "necessity," when used in this connection, has a somewhat special, almost technical, meaning. A widow can alienate if there are no other means available for the obligatory ceremonies to secure the repose of the soul of her husband. A holder of a Hindu woman's estate can in some circumstances alienate immovable property to pay the last owner's debts, or (if there is no other available source of supply) for her own or infant-children's maintenance. Necessity does not mean actual compulsion, but the kind of pressure which the law recognizes as serious and sufficient.

Bearing this in mind their Lordships will proceed to consider whether an alienation, which is the result of a compromise, or the mode by which a compromise is carried into effect, should ,if the compromise be reasonable and prudent, and for the interest of the estate, fall within the power of the holder of a Hindu

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woman's estate, either as being an alienation which is to be deemed to be induced by necessity, or as being in a parallel position to an alienation induced by necessity. It may be observed at once that the argument which would refuse authority to compromise in any case would have very extreme consequences. A Hindu woman might be party to a litigation concerning considerable immovable property, might be successful in the first Court and be threatened with an appeal, and have then a suggestion from the adversary that if she would part with a single item of property or a few *bighas* he would let the judgment stand. She would have if the argument were sound to refuse the suggested compromise, and be prepared to fight the case up to the Privy Council. Or it might be put in another way. Her opponent could never suggest a compromise, because he would know that any compromise would be upset. It would be very undesirable in the interests of property owners that this extreme doctrine should be upheld, and their Lordships, after consideration of the authorities that have been cited to them, are glad to find that they are not driven to any such extreme position.

The case of *Katama Natchiar* v. *Rajah of Shivagunga* (1), which has been brought to their Lordships' notice, has no direct bearing upon the point now to be discussed, but it is perhaps useful as an introductory statement. Their Lordships there held that a decree fairly and properly obtained against a widow binds the succeeding heirs because the whole estate is for the time vested in her, absolutely for some purposes, though in some respects for a qualified interest, and because until her death it could not be ascertained who would be entitled to succeed.

In *Tarinee Churn Gangooly* v. *Watson & Co.* (2), the High Court at Calcutta had to deal with the case of a widow who was under age and had a minor son, and the judges held that if she was properly represented in the suit they must treat the matter as

(1) (1864) 9 Moo. I. A. 539. (2) (1869) 12 W. R. (Civ.) 413.

standing precisely as if she had been of age, and had acted on her behalf, that it was erroneous to look upon the transaction simply as an alienation by her, and that she had full power to compromise a suit or even to have entered into a compromise before the suit was brought

In *Khunni Lal* v. *Gobind Krishna Narain* (1) decided in 1911, an agreement of compromise was made between the daughters of the predeceased son of a convert from Hinduism to Muhammadanism, and his heir at law, by which the property was divided into certain shares between the daughters and the alleged heir at law. After the death of the daughters, the heirs in reversion claimed the estate against the derivative purchasers from the heir at law, putting their case in this way, that the heir at law's title came under an alienation made by the daughters without justifying necessity, and that therefore neither he nor his derivative purchasers could hold the property. This Board held that the compromise on its true construction did not mean an alienation, and that it was not right to say that the heir at law or the derivative purchasers derived a title from the daughters. It is obvious that to put it as the respondents in that case did, that the purchasers derived title from the daughters, was begging the question. The property belonged to one or other, or possibly both, of the parties to the dispute, and the compromise proceeded upon the footing that it was uncertain in which of them the title was. As their Lordships put it, it was based on the assumption that there was an antecedent title of some kind in the parties, and the agreement acknowledged and defined what that title was.

It was contended in the present appeal that this Board had laid down in the case of *Imrit Kunwar* v. *Roop Narain Singh*(2), decided in 1880, "that it is clear that daughters could not be bound by a compromise made by the widow under any circumstances";

(1) (1911) I. L. R. 33 All. 256; L. R. 38 I. A. 87.
(2) (1880) 6 Cal. L. R. 76.

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but it must be remembered what that case really was. In a dispute between a person claiming to be an adopted son of the previous owner and the widow and her daughters who would have titles after her, the widow gave up her daughters' rights in consideration of her own remaining practically unimpaired. Such a compromise obviously could not stand; indeed it is not a compromise at all. If the language in the sentence quoted is rather wide, no one referring to the case in full could be misled by it.

Their Lordships are of opinion that the true doctrine is laid down in *Mohendra Nath Biswas* v. *Shansunnessa Khatun* (1), decided in 1914. A compromise made *bonâ fide* for the benefit of the estate and not for the personal advantage of the limited owner will bind the reversioner quite as much as a decree on contest.

This being so, their Lordships proceed to inquire whether this compromise is one that can be supported on these principles. At the outset it is a startling one. Assuming as upon the whole appears to be the case, that the two reserved properties were worth the Rs. 5,000 for which they were to stand, the widow took for the estate Rs. 66,000, *plus* Rs. 5,000, or Rs. 71,000 in all, and gave up all but as much, Rs. 70,959. Moreover, her petition to the Court presented in pursuance of the compromise in order to effect the necessary entries on the Court register, states, and the widow herself has stated in evidence, that one of her motives was the fact that the judgment-debtors were related to her and belonged to a respectable family, which she did not wish absolutely to impoverish, and that she gave up her rights after an entreaty by one of the judgment-debtors, who said that he had no property left. On the other hand, it does not appear that the judgment-debtor or debtors had any available property; one was said to have nothing but the house he lived in, which was itself encumbered.

(1) (1914) 21 Cal. L. J. 157.

Then comes the question, what was the value of the property released? It would have been easy for either party to have produced evidence nearly conclusive upon this point, but they have failed to do so, and the Courts have been left to a series of inferences. The sub-sales were for Rs. 69,000, and if we are to take it that there was no fraud, it is reasonable to suppose that this would be the full value, not perhaps as between willing purchasers and willing sellers if an undisputed title were conveyed, but very likely as much as the widow would have realized if she had re-sold; and if this be the case, all that she has given up is Rs. 3,000. While, therefore, giving all weight as against the validity of the compromise to the point that the widow was partially actuated by motives which, however laudable in themselves, did not entitle her to give up property in which she had only a partial interest, their Lordships do not see that a concession of Rs. 3,000 out of Rs. 69,000 to buy off the opposition of the judgment-debtors, which had crystallized into a petition of objection, was otherwise than reasonable.

Litigation in respect of this very subject matter had already once taken the widow to the Privy Council, and though the objections of the judgment-debtors were of the stock kind and not likely to prevail, still with judgment-debtors who had little or nothing to lose it was likely that their objections would have been carried as far as the High Court.

Their Lordships do not find it necessary to consider whether the judgment of the High Court, in so far as it places the burden of proof upon the present appellants, is absolutely and without qualification sound; but upon the facts found by both Courts in India they agree in the conclusion to which those Courts came.

One further observation should be made. It was suggested in argument for the appellants that there was a greater sanctity in immovable than in movable property forming the estate of a deceased Hindu. If

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this be the case, as to which their Lordships do not find it necessary to pronounce, it would be carrying technicality to an excess to consider this property as immovable property. In the hands of the deceased and in the hands of the widow till the sale it was money secured by a mortgage on immovable property. For a very brief period it might be said that the widow had converted the property by her purchase at the sale; but even this can hardly be said. The sale had not been confirmed and the compromise was upon the very point whether it should be confirmed, that is whether the property should be converted. In these circumstances there is no substance in the suggestion that the compromise is more difficult to uphold because it resulted in an alienation of immovable rather than of movable property.

Their Lordships will therefore humbly advise His Majesty that this appeal be dismissed with one set of costs.

Solicitors for appellants: *Watkins & Hunter.*

Solicitors for first respondent: *Truefitt & Francis.*

Solicitors for fourth respondent: *Pugh & Co.*

Appeal dismissed.

APPELLATE CIVIL.

Before Coutts and Das, J.J.

KUMAR RAMYAD SINGH

v.

CHHEDIA BARHI.*

1922.

June, 13.

Execution of Decree—Sale, whether part of property may be exempted from—effect of such exemption—Suit by decree-

* Appeals from Appellate Decrees Nos. 702, 746 and 747 of 1920, from a decision of Babu Pramatha Nath Bhattacharji, Additional Subordinate Judge of Hazaribagh, dated the 26th April, 1920, confirming a decision of Maulavi Shaikh Ali Karim, Munsif of Hazaribagh, dated the 30th April, 1919.