

## APPELLATE CIVIL.

Before Mr. Justice Abdul Raof and Mr. Justice Martineau.

BHAGAT RAM AND OTHERS (DEFENDANTS)—  
*Appellants,*

*versus*

Mst. SAHIB DEVI (PLAINTIFF) }  
Mst. PARMESHRI (DEFENDANT) } — *Respondents.*

Civil Appeal No. 2378 of 1918.

*Hindu Law—Widow's maintenance—whether a valid charge on her deceased husband's property in the hands of a bonâ fide purchaser.*

One L. N. died leaving the plaintiff, his widow, and a minor son. The latter alienated almost all his father's properties. The two shops with which the present suit was concerned were purchased by the defendants, and the only property remaining was a house, already mortgaged, which was in plaintiff's possession. The plaintiff sued the defendants for recovery of maintenance and declaration of a charge on the two shops. The lower Courts found that the vendees were well acquainted with the circumstances of the family; that the property left by L. N. was only limited; that the son incurred debts for immoral purposes; that while purchasing the shops the vendees were warned that the widow had set up a claim for maintenance; and that consequently they were not *bonâ fide* purchasers. It was also found that the properties were acquired by L. N., and the plaintiff's claim was decreed.

*Held*, that on the findings of the lower Courts the sale was not justifiable, that it had unfairly prejudiced the plaintiff's rights, that the defendants were not *bonâ fide* purchasers, and that consequently the decree of the lower Courts in favour of plaintiff must be upheld.

*Lakshman Ramchandra Joshi v. Satya Bhama Bai* (1), per West J., summarised in Gour's Hindu Law, section 87, paragraph 447, followed.

*Ram Kunwar v. Rim Dai* (2), *The Bharipur State v. Gopal Dei* (3), *Mami Lal v. Bai Tara* (4), *Parvati Devanna Jagadal v. Shrinivas Ram Chandra Patil* (5), and *Daulat Ram v. Champa* (6), referred to.

*Second appeal from the decree of Lt.-Col. B. O. Roe, District Judge, Ambala, dated the 3rd May 1918,*

(1) (1877) I. L. R. 3 Bom. 494.

(2) (1900) I. L. R. 22 All. 326.

(3) (1901) I. L. R. 24 All. 160.

(4) (1892) I. L. R. 17 Bom. 398.

(5) (1919) 55 Indian Cases 531.

(6) (1920) 55 Indian Cases 28.

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*affirming that of Sayed Nurullah Shah, Subordinate Judge, 2nd Class, Ambala, dated the 11th February 1918, decreeing the plaintiff's claim.*

SHEO NARAIN, for Appellants.

MEHR CHAND, for Respondents.

The judgment of the Court was delivered by—

ABDUL RACOF, J.—This was a suit for recovery of maintenance and declaration of a charge on two shops. The property in question along with some other properties belong to one Lok Nath. He died leaving *Mussammât* Sahib Devi, the plaintiff, a widow and Jiwan Kishore, a son. The latter is the defendant No. 1 in the case. Jiwan Kishore was a boy of twelve years when his father died. He came into the possession of these two shops and the other property on his father's death. He alienated almost all the properties. The two shops were purchased by the defendants Nos. 2 to 5. A house, which is already mortgaged, is the only property which remains in the possession of *Mussammât* Sahib Devi, the widow. The family admittedly followed the Hindu Law, and the property is found to have been the self-acquired property of Lok Nath.

The deceased was the vendee's *pandha* and the vendees knew the family well. The plaintiff, *Mussammât* Sahib Devi, instituted the suit to claim maintenance as a charge on the two shops in question. The plea set up was that there existed no charge on the property under the Hindu Law and that the vendees were *bond fide* purchasers for value. Both the Courts below have decreed the suit and the defendants have come up in second appeal to this Court.

The question to be determined is whether the maintenance can be made a charge on the property in the hands of the vendees, who claim to be *bond fide* purchasers.

*Pandit* Sheo Narain has contended on behalf of the appellants that the maintenance of a Hindu widow is not a charge upon the estate of the deceased husband until it is fixed and charged upon the estate by a decree or by agreement, and the widow's right is liable to be defeated by a transfer of the husband's property to a

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*bond fide* purchaser for value even with knowledge of the widow's claim for maintenance, unless the transfer has been made with the intention of defeating the widow's claim. In support of this argument he has relied upon a large number of cases out of which the following may be mentioned :—

*Ram Kunwar v. Ram Dal* (1), *The Bhartpur State v. Gopal Dei* (2), *Mani Lal v. Bai Tara* (3), *Parvati Devanna Jagadal v. Shrinivas Ram Chandra Patrii* (4) and *Daulat Ram and others v. Champa and Surjan Mal* (5).

On these authorities the crucial question to be determined is whether the vendees in this case were *bond fide* purchasers. This was decided by the trial Court in the negative. It found that the vendees were well acquainted with the circumstances of the family; that the property inherited by Jiwan Kishore was only limited; that Jiwan Kishore incurred debts for immoral purposes; and that while purchasing the shops the vendees were warned that the widow had set up a claim for maintenance. The vendees admitted that they were so warned by *Lala Munna Lal*, Secretary, District Board, of the plaintiff's rights, but said that they purchased the shops as they were situated adjacent to their house. From the above circumstances the Court of first instance concluded that the vendees were well acquainted with the character of Jiwan Kishore also. Having taken the above circumstances into consideration the Court held that the vendees were not *bond fide* purchasers. This finding of the trial Court was challenged in appeal and the argument put forward was, firstly, that the vendees were *bond fide* purchasers, and secondly, that Jiwan Kishore, defendant No. 1, had other property out of which he should support his mother. The lower appellate Court agreed with the finding of the first Court and repelled the plea that the vendees were *bond fide* purchasers.

It was strongly contended by *Pandit Sheo Narain* that there was only a general charge for maintenance on the property, and that there being no specific charge on

(1) (1900) I. L. R. 22 All. 326.

(3) (1892) I. L. R. 17 Bom. 398.

(2) (1901) I. L. R. 24 All. 160.

(4) (1919) 55 Indian Cases 387.

(5) (1920) 55 Indian Cases 280.

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the shops in question the vendees being *bond fide* purchasers were not affected by notice of the fact that the widow had a claim for maintenance. The leading case on the point is admittedly the case of *Lakshman Ramchandra Joshi versus Satya Bhama Bai* (1). The summary of the question decided in that case is given in Gour's Hindu Law at page 447, section 87. Two of the rules, namely, (4) and (5), are thus stated there :—

“ (4) That the right may, however, be lost by a transfer made for legal necessity or for a purpose binding upon the family in which case the question of notice is immaterial. Even a transferee who takes with a notice of the claim would hold it free from it.”

“ (5) That where the property is limited, the transferee is bound to enquire whether there is any claim for maintenance or residence, and his failure to do so would be tantamount to notice within the meaning of section 3 of the Transfer of Property Act, and of the Trusts Act.

In the Bombay case referred to above Mr. Justice West, after discussing the case law and the text, arrived at the following conclusion :—

“ If he (vendor) sought to defraud her, he could not, indeed, by any device in the way of parting with the estate, or changing its form, get rid of the liability which had come to him along with the advantage derived from his survivorship ; and Lakshman (vendee)—taking from him with reason to suppose that the transaction was one originating not in an honest desire to pay off debts, or satisfy claims for which the estate was justly liable, and which it could not otherwise well meet, but in a design to shuffle off a moral and legal liability—would as sharing in the proposed fraud, be prevented from gaining by it ; but if, though he knew of the widow's existence and her claim, he bought upon a rational and honest opinion that the sale was one that could be effected without any furtherance of wrong, he has, as against the plaintiff, acquired a title free from the claim which still subsists in full force as against the recipient of the purchase money.”

The Judges in that case remanded the case for a re-trial, as they thought that having regard to the observations made in their judgment the following questions required determination before the final decision of the case, namely, (1) was the sale justifiable under the circumstances, (2) was it unfairly prejudicial to the widow's rights or remedies, and (3) was the vendee's purchase made under such

circumstances that the property passed to him exonerated from the liability to support the widow.

In the present case the findings recorded by the Lower Appellate Court make it clear that the sale was not justifiable, and that it had unfairly prejudiced the plaintiff's rights, and that the vendees were not *bond fide* purchasers. It is not necessary for us to consider in any detail the authorities relied upon by the respective parties, as the law is fully crystallized in the judgment of Mr. Justice West.

We accordingly uphold the decrees of the courts below and dismiss the appeal with costs.

A. R.

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Mr. Justice Broadway and Mr. Justice Martineau.*

RAM CHAND (DEFENDANT)—*Appellant,*

*versus*

BANK OF UPPER INDIA, LIMITED, DELHI (PLAINTIFF), AND THE DIAMOND JUBILEE FLOUR MILLS COMPANY, LIMITED, DELHI (DEFENDANT),	}	— <i>Respon-</i> <i>dents.</i>
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Civil Appeal No. 459 of 1917.

*Companies in Liquidation—Secured creditor—whether entitled to recover from security principal as well as interest up to date of realisation or only up to date of winding-up order.*

The plaintiff Bank sued the Diamond Jubilee Flour Mills Company in liquidation and one Ram Chand for recovery of Rs. 1,60,914-2-7, due to it under a cash credit loan bond mortgaging certain properties. One of the pleas was that plaintiff was not entitled to any interest after the 24th June 1913, on which date the defendant Flour Mills Company went into liquidation, and the lower Court, accepting this plea, declared that the plaintiff could only recover Rs. 1,52,000 and proportionate costs by sale of the properties hypothecated and must prove for the remainder in the liquidation proceedings.

*Held*, by the High Court that as far as possible the rules of bankruptcy are applicable to liquidation matters. When a

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Dec. 13.