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SOUTH BRITISH INSURANCE COMPANY, LTD. v. STENSON

Baker, J.

If the insured had claimed under the policy without having paid the premium, I have no doubt that they would have denied their liability.

I agree with the view expressed by the Acting Chief Judge that there can be no contract until there is actual payment of the premium as provided by the policy.

In these circumstances I am of opinion that both the questions referred by the Small Cause Court should be answered in the negative.

Answer accordingly.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Fawcett and Mr. Justice Mirza.

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March 14

BHAGWANTRAO ABAJI MARATHE (ORIGINAL DEFENDANT NO. 1), APPELLANT *v.* RAMANATH KANIRAM SHET AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT NO. 2), RESPONDENTS.*

Hindu law—Widow—Reversioner—Personal debt by widow—Debt properly incurred in management of property—Whether property in the hands of reversioner liable.

Under Hindu law, property in the hands of a reversioner is not liable to satisfy a personal debt not secured on such property which a widow while enjoying a widow's estate has properly incurred in the course of the management of the property.

Gadgeppa Desai v. *Apaji Jivanrao*,[1] relied on.

Sakrabhai v. *Maganlal*,[2] distinguished.

Regella Jogayya v. *Nimushakavi Venkataratnamma*[3] and *Pahalwan Singh* v. *Jiwan Das*,[4] followed.

SUIT to recover a sum of money.

The plaintiff sued to recover Rs. 846 due on a bond dated June 13, 1921, passed by one Manubai, a Hindu widow, and her brother Annaji for an advance of Rs. 600 made to Manubai. The suit was brought against

*Second Appeal No. 192 of 1926 against the decision of N. S. Lokur, District Judge, East Khandesh, confirming the decree passed by C. D. Pandya, Subordinate Judge at Jalgaon.

(1) (1879) 3 Bom. 237.
(2) (1901) 26 Bom. 206.
(3) (1910) 33 Mad. 492.
(4) (1919) 42 All. 109.

the reversionary heir, Bhagwantrao Abaji (defendant No. 1) and Manubai's brother Annaji (defendant No. 2).

Defendant No. 1 contended that he was not liable for the debt because Manubai had no need to borrow money and the debt was not incurred for the benefit of the property.

Defendant No. 2 admitted the debt but contended that it was raised for the purposes of cultivation of the lands belonging to Manubai's husband.

The Subordinate Judge held that the widow had fifty Bighas of land and for the purposes of cultivation the widow had spent Rs. 100 for buying a pair of bullocks and had paid Rs. 275 to two servants as yearly salary. He, therefore, held that Rs. 425 had been actually spent by Manubai for the benefit of her husband's estate and the rest was presumed to have been spent in benefiting the estate. A decree was, therefore, passed in favour of the plaintiff for Rs. 846 against defendant No. 2, and against the estate of Manubai's husband in the hands of defendant No. 1.

On appeal, the District Judge relying on the rulings in *Sakribhai* v. *Maganlal* 26 Bom. 206, and *Regella Jogayya* v. *Nimushakavi Venkataratnamma* 33 Mad. 492, dismissed the appeal under Order XLI, rule 11, of the Civil Procedure Code, 1908.

Defendant No. 1 appealed to the High Court.

P. V. Kane, for the appellant.

H. B. Gumaste, for respondent No. 1.

MIRZA, J.:—This appeal raises a question of law whether property in the hands of a Hindu reversioner is liable to satisfy a personal debt not secured on such property which a widow while enjoying a widow's estate has properly incurred in the course of management of the property. Both the lower Courts have held that it is so liable.

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Mirza, J.

Respondent No. 1 sued the appellant as reversionary heir and the 2nd respondent on a money bond for Rs. 600 dated June 13, 1921, executed jointly in her life-time by one Manubai and the 2nd respondent who was her brother. The bond carried interest at twelve per cent. which rate was to be increased to eighteen per cent. if the debt was not paid within a specified period. The bond did not recite that the widow was borrowing the money for a legal necessity or in course of conducting a trade or business of her deceased husband. It was proved by evidence that out of the moneys she borrowed Manubai had spent Rs. 425 for the benefit of the estate. From that the trial Judge in the absence of evidence to the contrary inferred that the whole amount was so spent. The Appellate Court has confirmed that finding. At the date of the bond the widow was in possession and management of fifty bighas of land yielding an income of Rs. 700 to 800 per annum. The major part of the moneys borrowed was expended in payment of assessment and of servants' wages and in the purchase of certain bullocks all connected with the land.

On the death of Manubai the land passed on to the appellant as the reversionary heir of her husband. The widow's estate she enjoyed in the land terminated with her death. The land cannot be said to form part of any estate she may have left. There is no encumbrance created by her on the land. *Prima facie* therefore the ruling of this Court in *Gadgeppa Desai* v. *Apaji Jivanrao*[1] would apply and the land in the hands of the reversioner would not be liable for a debt which is not secured on it. To the same effect is the ruling in *Ramasami Mudaliar* v. *Sellattammal*.[2] The lower appellate Court holds that these rulings have since been practically overruled in this Court by the Full Bench

[1] (1879) 3 Bom. 237.

[2] (1881) 4 Mad. 375.

case of *Sakrabhai* v. *Maganlal*[1] and in Madras by *Regella Jogayya* v. *Nimushakavi Venkataratnamma*.[2] The effect of these later rulings according to the learned Judge is that where a widow incurs a debt for the purpose of carrying on her husband's avocation and could have validly created a charge on the estate in respect of it, the debt after the widow's death would equally bind the estate in the hands of the reversioner although there may be no specific charge created on it. The proposition laid down by the learned Judge appears to me to be too wide and is not justified by the rulings to which he has referred.

Sakrabhai v. *Maganlal*[1] has not in my opinion either expressly or by necessary implication over-ruled *Gadgeppa Desai* v. *Apaji Jivanrao*.[3] The judgment discusses that case at pages 215-6. The *ratio decidendi* of that case is there referred to as being that as the advance was made on the widow's personal credit the property in the hands of her adopted son could not be made liable for a necessary debt she had previously incurred in order to pay *judi* leviable to Government on the property in which she then had a widow's estate. *Sakrabhai* v. *Maganlal*[1] only decided that trade debts properly incurred by a Hindu widow on the credit of the assets of the business to which she has succeeded as the heiress of her deceased husband are recoverable after her death out of the assets of the business as against the reversioners who have succeeded thereto, even in the absence of a specific charge. The Full Bench was there considering trade debts which were incurred on the credit of the assets of the business and not debts which are incurred in the course of the management of an estate as was the case in *Gadgeppa Desai* v. *Apaji Jivanrao*.[3] The Full Bench case seems

[1] (1901) 26 Bom. 206. [2] (1910) 33 Mad. 492.

[3] (1879) 3 Bom. 237.

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Mirza, J.

to contemplate ordinary trade dealings and not all loans or transactions entered into by the widow. In *Pahalwan Singh* v. *Jowan Das*[1] the Allahabad High Court has followed *Sakrabhai* v. *Maganlal.*[2] The Court there held that a Hindu widow who had succeeded to the banking business of her husband and had conducted it prudently was competent in the course of that business to alienate both moveable and immoveable property which formed part of the business without showing in the case of the immoveables "legal necessity." The distinction between trade dealings and ordinary dealings is not there departed from.

The lower appellate Court states that Manubai held fifty bighas of land which had to be cultivated and she incurred the debt in suit for the purchase of bullocks for the purpose of cultivation, for payment to farm-servants and for other miscellaneous items of expenditure connected with the carrying on of her husband's trade, viz., that of an agriculturist. The learned Judge seems to assume that being an agriculturist is the same as trading. I am not inclined to accept that description. A trade usually implies transactions both of sale and purchase and they must be sufficiently numerous and of a general character before they can come under the description of trade. An agriculturist who merely cultivates his soil and sells its extra produce can hardly in my opinion be called a "trader." If the description were to be so widened every transaction of a Hindu widow managing her husband's estate would be regarded as a 'business or trade' transaction. As long as the transaction was *bonâ fide* there would be no need then to prove legal necessity. Such a doctrine would be perversive of the elementary principle of

[1] (1919) 42 All. 109.

[2] (1901) 26 Bom. 206.

Hindu law on the subject. *Regella Jogayya* v. *Nimushakavi Venkataratnamma*[1] does not in my opinion over-rule *Ramasami Mudaliar* v. *Sellattammal.*[2] There the case was remanded to the lower Court for a finding whether the loan was made to the widow personally or on the credit of her husband's estate. If that test were to be applied to the present case it would appear that credit was given to Manubai personally and not to the estate she represented. The rate of interest is high and her brother who is not interested in the estate is made a surety for the debt by his jointly executing the bond with her.

In *Ramcoomar Mitter* v. *Ichamoyi Dasi*[3] the Calcutta High Court came to a different conclusion. It did so by applying the English principles of equity to the case. In a case governed by the Hindu law as the present case is, we should be chary I think of invoking such an aid where the principle applicable is clear and not unreasonable. The present case in my opinion is governed by *Gadgeppa Desai* v. *Apaji Jivanrao*[4] and the principle of that decision is consistent with Hindu law.

The appeal in this case should be allowed with costs throughout against respondent No. 1 and the decree of the lower Court should be amended by striking out from it the portion "and from the estate of Manubai's husband in the hand of defendant No. 1."

FAWCETT, J.:—I agree. I think that *Sakrabhai* v. *Maganlal*[5] lays down a qualification of the general rule formulated in *Gadgeppa Desai* v. *Apaji Jivanrao,*[4] and cannot be taken as absolutely over-ruling the latter decision. The former case is clearly confined within certain limits, which must be regarded before that ruling

[1] (1910) 33 Mad. 492.
[2] (1882) 4 Mad. 375.
[3] (1880) 6 Cal. 36.
[4] (1879) 3 Bom. 237.
[5] (1901) 26 Bom. 206.

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Fawcett, J.

is applied to a specific case. In my opinion, the present case does not fall within those limits. It might have been different if Manubai's husband had been buying and selling bullocks as a trade and the widow had merely raised money in order to carry on such trade. But those are not the facts found by both the lower Courts.

Appeal allowed.

J. G. R.

APPELLATE CIVIL

Before Mr. Justice Patkar and Mr. Justice Baker.

1928
March 19

HIRACHAND SUCCARAM GANDHY (ORIGINAL PLAINTIFF), APPELLANT *v.* G. I. P. RAILWAY COMPANY, BOMBAY, NOW ADMINISTERED BY GOVERNMENT OF INDIA AND HENCE THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), RESPONDENT.*

Civil Procedure Code (Act V of 1908), sections 79, 80, 26, Orders IV, XXII, rule 16—Suit against a Railway Company instituted in First Class Subordinate Judge's Court—Pending suit railway acquired by Government—Presentation of plaints in District Court—Notice of suit to Secretary of State necessary—Suit against a State Railway—Indian Railways Act (IX of 1890), section 3, clause (6) and sections 77, 140.

The plaintiff filed two suits against the G. I. P. Railway in the Court of a First Class Subordinate Judge. Notices were given by the plaintiff to the railway administration under sections 77 and 140 of the Indian Railways Act, 1890. While the suits were pending the G. I. P. Railway was taken over by Government on July 1, 1925, and consequently, the Secretary of State for India in Council had to be joined as a party to the suits. The plaints were, therefore, returned to the plaintiffs for presentation to the proper Court and were then presented to the District Court. The defendant, the Secretary of State, having raised an objection that the institution of the suits was bad as the notice required by section 80 of the Civil Procedure Code, 1908, had not been given.

Held, upholding the objection, that the notice under section 80 of the Civil Procedure Code, 1908, was necessary in a suit against the Secretary of State whatever be the nature and character of the suit. That the presentation of the plaints in the District Court was an institution of the suits under section 26 and the provisions of Order IV of the Civil Procedure Code.

Secretary of State v. *Kalekhan*[1]; *Secretary of State for India* v. *Gulam Rasul*[2]; *Secretary of State for India in Council* v. *Rajlucki Debi*[3] and *Bhagchand* v. *Secretary of State*,[4] followed.

*First Appeal No. 206 of 1926 (with F. A. No. 222 of 1926).

(1) (1912) 37 Mad. 113.
(2) (1916) 40 Bom. 392 at p. 396.
(3) (1897) 25 Cal. 239.
(4) (1927) 29 Bom. L. R. 1227 : 51 Bom. 725.