

PRIVY COUNCIL.

BAIJUN DOOBEY AND OTHERS (DEFENDANTS) v. BRIJ BHOOKUN
LALL AWUSTI (PLAINTIFF).

P. C.*
1875
July 2 & 3.

[On appeal from the High Court of Judicature at Fort William in Bengal.]

Hindu Widow—Sale of Right, Title, and Interest of Widow—Execution of Decree—Arrears of Maintenance—Rights acquired by Auction-Purchaser.

C, a Hindu, inherited from his father property charged, under the Mitakshara law, with the maintenance of *N*, his mother. *C* dying without issue, his property passed to *D*, his widow, who allowed the maintenance of *N* to fall into arrears. *N* brought a suit against *D* personally for the amount of the arrears, and obtained a money decree, in execution of which *D*'s right, title, and interest in the property left by her husband were sold. Neither the decree nor the sale proceedings declared the property itself to be liable for the debt. In a suit by the reversionary heir of *C*, after the death of *D*, to establish his right of inheritance to, and to recover possession of, *C*'s estate, *Held*, that the purchaser at the execution-sale took only the widow's interest, and not the absolute estate, and therefore the plaintiff was entitled to recover.

APPEAL from a decree of a Division Bench (Loch and Ainslie, JJ.) of the Calcutta High Court, dated the 22nd March 1872, reversing a decree of the Subordinate Judge of Gya, dated the 13th June 1871, which dismissed a suit brought by the respondent to establish his right of inheritance to, and recover possession of, certain immoveable property as heir of his cousin Chintamun Awusti.

The facts are sufficiently stated in the report of the case before the High Court (1).

From that decision the defendants brought the present appeal. Baijun Doobey, the principal appellant, having died while the appeal was pending, the name of his brother and representative, Hazari Doobey, was substituted on the record.

Mr. Leith, Q.C. (Mr. C. Arathoon with him) for the appellants:—Net Konwar's claim for maintenance was a general charge on her husband Muddun Mohun's estate and on every

* Present:—SIR J. W. COLVILLE, SIR B. PEACOCK, SIR M. E. SMITH, AND SIR R. P. COLLIER.

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part of it. The non-payment to her of maintenance by Doorga Konwar, who was in possession of the estate as Chintamun's widow, rendered the estate itself, and not merely the interest of Doorga, liable for sale. The suit and decree were against Doorga, not in her personal, but in her representative capacity, and the sale in execution of the decree was consequently not merely of her personal interest but of the absolute estate. It is true that the proclamation of sale only sets forth that the right, title, and interest of the judgment-debtor would be sold, but the proclamation refers to the decree, and intending purchasers were entitled to look at the decree to see what in reality was the subject of the sale. On looking at the decree, it would be seen that the judgment-debtor had been sued, not on a personal debt, but as being in possession of an estate which was chargeable, into the hands of whomsoever it might pass, with the maintenance decreed. The case falls within the provisions of s. 203, Act VIII of 1859. Doorga was the representative of the deceased Chintamun, and the decree against her might properly be executed by the sale of the property derived from him. She was liable so far as there were assets. In support of the contention that the auction-purchaser should, under the circumstances, be held to have taken an absolute estate, the cases of *Ishan Chunder Mitter v. Buksh Ali Sowdagur* (1), *Tarakant Bhuttacharjee v. Luckhee Dabea* (2), *Tiluck Chunder Chuckerbutty v. Muddun Mohun Joogee* (3), *Anund Moyee Dossee v. Mohendro Narain Doss* (4), and *The Manager of the Durbhunga Raj v. Maharajah Coomar Ramaput Singh* (5) were cited.

Mr. T. H. Cowie, Q.C., and Mr. B. Wood for the respondent.— We admit that the maintenance of Net Konwar was a general charge on the whole estate of Muddun Mohun. The general right to such maintenance under the Mitakshara law is unquestionable. The case does not fall within the provisions of s. 203, Act VIII of 1859. The argument for the appellants rests on a fallacy in the equivocal use of the terms 'representa-

(1) Mars., 614.

(2) 2 Hay, 8.

(3) 15 B. L. R., 143 note.

(4) 15 W. R., 264.

(5) 10 B. L. R., 294; S. C., 14

Moore's I. A., 605.

tive' and 'assets.' A widow may be sued as representative of her deceased husband on a debt contracted by him. It was not, however, as the representative of Chintamun that Doorga was liable for the maintenance of Net Kouwar, but as being in possession of the estate charged with that maintenance. It was in respect of her own enjoyment of the estate that her liability arose, and not as representing some one else who was bound and had failed to pay. The maintenance was payable out of the revenue which Doorga drew from the estate, and which was amply sufficient to meet the charge. The cases of *Ishan Chunder Mitter v. Buksh Ali Sowdogar* (1) and *The Manager of the Dhurbunga Raj v. Maharajah Coomar Ramaput Singh* (2) only establish that the Courts will not hold themselves fettered by the terms of a notification or certificate of sale, but will construe these in conformity with the real character of the decree. In the former of the cases cited, a widow was sued as guardian of her minor son on a debt contracted by her deceased husband, the father of the minor. The decree referred to the debt as on a bond of the deceased. The notification of sale erroneously described the property to be sold, as the property of the widow, although in another place it stated that what was to be sold was the right and interest of the debtor. The Court held that, as the widow had been sued as representing her son, the decree was really a decree against the son, and that it was the rights and interests of the son which had, in fact, been sold. In the other case, the claim was made against a widow as heiress and representative of her deceased husband in respect of a debt contracted by him in his lifetime, and it was held that the estate of the deceased was liable in execution of the decree obtained against the widow. But, in the present case, the Court has to deal with a debt incurred by the widow herself. The maintenance was not in arrears at the time when Chintamun died. Doorga was sued on her own debt, not on her husband's. As to the interest which passes in execution of a merely personal decree against a widow, see *Greeschunder Lahooree v. Ramlal Sirhar* (3), *Kistomoyee Dossee v. Prosouno*

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(1) Mar., 614. (2) 10 B. L. R., 294; S. C., 14 Moore's I. A., 605.

(3) 1 W. R., 145; see at p. 151.

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Narain Chowdhry (1), and *Nugender Chunder Ghose v. Sreemutty Kaminee Dossee* (2). The last of these cases was decided by the Privy Council, and is closely parallel to the present case. The cases of *Tiluck Chunder Chuckerbutty v. Muddun Mohun Joogee* (3) and *Anund Moyee Dossee v. Mohendro Narain Doss* (4) depend on the special law applicable to the sale of tenures for arrears of rent under the provisions of Act X of 1859 and Act VIII of 1835.

The suit for maintenance was not brought against Doorga in a representative capacity, nor was it brought as against assets. Except the mention of her being in possession of her husband's assets, there was nothing in the plaint to show that she was sued in any other capacity than as holding a widow's interest in the estate. The plaintiff's claim was not to be paid out of assets but to be paid by the holder of the estate. The High Court have observed in their judgment that "if Net Kouwar desired to push her remedy beyond the life-interest of her debtor, she ought to have made the heir expectant a party." We do not rely on that remark, but we say that if the plaintiff sought to charge the estate itself, she should have done so in a suit properly framed for that purpose. But assuming that to be a suit in which there might have been a decree against the corpus of the estate, it was open to the plaintiff to waive her right to a decree against the estate, and to rest satisfied with personal relief against Doorga. [Sir B. PEACOCK.—If there were assets, the plaintiff might limit herself to assets.] We go further. The plaintiff might limit her decree or the execution of it to the mere personal remedy. The decree-holder might be content to sell only the widow's life-interest. When the position of the execution-creditor is considered, as being himself the reversionary heir, it is impossible to suppose that he intended to sell his own reversionary right. That it was the reversionary heir who was executing the decree was in itself an indication that the execution involved the widow's life-interest only. There was besides express notice in the proclamation and conditions of sale, that the rights and interest of the judgment-debtor only, and

(1) 6 W. R., 304.

(2) 11 Moore's I. A., 241.

(3) 15 B. L. R., 143 note.

(4) 15 W. R., 264.

not those of any other person, were to be sold. The terms of the auction-purchaser's application for a certificate of sale show that he knew he had bought only a life-interest. He must have known from the price at which the property was sold that he was not buying the absolute estate. As to notice of equities, and the title taken by a purchaser at a Sheriff's sale, see *Gourmonee Dabee v. Reed* (1).

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Mr. *Leith* in reply referred to the case of *Tarakant Bhuttacharjee v. Luckhee Dabea* (2), and contended that the decision in the case of *Nugender Chunder Ghose v. Sreemutty Kaminee Dossee* (3) was distinguishable as resting on the construction to be given to the special provisions of s. 9, Act I of 1845.

The judgment of their LORDSHIPS was delivered by

SIR B. PEACOCK.— This is a suit brought by Brij Bhookun Lall against Baijun Doobey, to declare his right to the inheritance of Lot Moranwan and to obtain possession of that estate. The plaintiff claims the estate by right of inheritance from Chintamun as reversionary heir after the death of Doorga Konwar, the widow of Chintamun. The defendant claims by purchase under an execution of a decree against Doorga, the widow, and the question is, whether, under that decree, only the widow's interest or the absolute estate was sold. If only the widow's interest, then upon the death of the widow the plaintiff succeeded to the estate as reversionary heir of Chintamun, and is entitled to recover; if, on the other hand, the whole interest passed under the sale, then the plaintiff as reversionary heir upon the death of the widow took no interest, but the estate passed to the defendant Baijun by reason of his purchase under the decree.

Now it appears that Sheo Churn and Muddun Mohun, two brothers, the sons of Deo Kishen, separated in estate. Muddun Mohun took one share of the estate and Sheo Churn the other. Muddun Mohun therefore obtained a separate estate. The

(1) 2 Tay. & Bell, 83; at p. 109.

(2) 2 Hay, 8.

(3) 11 Moore's I. A., 241.

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lands are situate in the District of Gya, and are subject to the rules of the Mitakshara law. Muddun Mohun having got this separate estate died leaving two sons, Balgobind and Chintamun; Balgobind died childless, and the whole estate came to Chintamun. Chintamun consequently acquired the estate by inheritance, and it was ancestral estate derived from the father, Muddun Mohun. Chintamun died childless, leaving two widows, Doorga Konwar and Radha Konwar. Muddun Mohun, the father, left a widow, who was the mother of Chintamun. The mother, Net Konwar, the widow of Muddun Mohun, was entitled to be maintained out of the estate held by Chintamun. The maintenance of Net Konwar, the widow of Muddun Mohun, was a charge upon the inheritance which came from Muddun Mohun. The liability to maintain the mother passed to Chintamun when he got the estate of his father, and when the estate passed from Chintamun to his widow, the liability to maintain Net Konwar still attached to the inheritance, and Doorga was bound to maintain her out of the inheritance. It appears that she allowed the maintenance of the mother, which had been fixed by the two brothers at Rs. 200 a year, to fall into arrear for about five years, making Rs. 1,000 for the five years. In consequence Net Konwar brought a suit against her personally for the amount due for maintenance with interest.

The plaintiff obtained a decree, whereby it was ordered that the plaintiff should recover from the defendant on account of her claim Sicca Rs. 1,033-5-6, which is equivalent to Co.'s Rs. 1,102-3-6. The plaint prayed that the defendant be ordered to pay that amount, and by the decree it was ordered that the plaintiff do get from the defendant that amount.

Now the decree being a personal decree against the widow, according to the case of *Kistomoyee Dossee v. Prosonno Narain Chowdhry* (1), all that would be sold under it was the interest of the widow. It was there held that where only the rights and interests of a Hindu widow in the property left by her husband were sold in execution of a decree against her on account of a debt contracted by her, and neither the decree nor the sale proceedings declared

(1) 6 W. R., 304.

the property itself liable for the debt, the purchaser obtained an interest in the estate only during the widow's lifetime. This was a personal debt of the widow, and there is nothing to show that the estate of Muddun Mohun was charged by the decree. The sale against her in discharge of her personal liability was of the interest which belonged to her, and not of the estate which belonged to her husband. It was the widow's property only that was liable to be sold, or was sold, in discharge of her personal debt.

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The notification of the sale under the decree was that a sale would be held of whatever right and interest the judgment-debtor had in the estates. It does not say that it is to be levied by sale of the husband's assets, but that it is to be realized by the sale "of whatever right and interest the judgment-debtor had in the estates." Then it is specifically pointed out: "Besides the right and interest of the judgment-debtor the right and interest of no other person will be sold at the said auction." The right and interest of the judgment-debtor which was to be sold, was that to which she was entitled, that which was liable to make good her default in non-payment of the maintenance. The sale took place under that notification, and it is clear, if that is important, that Brij Bhookun, the plaintiff, understood that what was to be sold was the widow's estate, not his own reversionary interest as the heir of his uncle. He wanted to sell the widow's estate, not his own interest. The real question is what was liable to be sold under the decree, and what in fact was sold. The purchaser may have made a mistake. He may have thought that the Court was selling something which they did not sell, but he was informed distinctly by the notification that the Court was selling the interest of the defendant in the estate, and that besides that interest no other interest was being sold. The appellant having purchased the interest of the judgment-debtor, obtained a certificate of the purchase, which stated that whatever right, title, and interest the judgment-debtor had in the said property had ceased from the date of the sale, and had become vested in the auction-purchaser.

It appears therefore to their Lordships that what was intended

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to be sold was the widow's interest only and not the absolute estate in the lot, and that, consequently, upon the death of the widow, the lot descended to the plaintiff as the reversionary heir of her husband, and that the purchaser did not obtain the absolute estate, but only the widow's interest in it, which continued only so long as the widow lived.

Several cases have been cited. The first case which was referred to was the case of *Ishan Chunder Mitter v. Buxsh Ali Sowdagur* (1). That case was fully gone into, and it was explained in the course of the argument that the suit was against the widow not in her own right as widow, but as representative of her son. In that case the widow had no estate at all to be sold, and when the decree and the order for sale are examined, it is clear that what was intended was the sale of the interest of the debtor: that was the interest of the son to whom the widow was the guardian; and when it was said that the interest of the defendant was sold, the widow's interest was not intended, but the interest of the person who was liable, and that was the son. That decision was referred to and approved by this Board in the case of *The Manager of the Durbhunga Raj v. Maharajah Coomar Ramaput Singh* (2). It appears to their Lordships that those cases are no authorities to show that, under the judgment and execution in this case, anything further passed to the purchaser than the widow's interest. Then two cases were cited, one *Tiluck Chunder Chuckerbutty v. Muddun Mohun Joogee* (3). That was a very different case from the present. It was there held, that "where a widow's estate is sold for arrears of rent, it is not merely the widow's life-interest that is transferred, and the reversionary heir cannot follow the estate after her death." There the widow was sued for rent under Act X of 1859. S. 105 of that Act enacts that, "if the decree be for an arrear of rent due in respect of an under-tenure which by the title-deeds or the custom of the country is transferable by sale, the judgment-creditor may make application for the sale of the tenure, and the tenure may there-

(1) Mar., 614.

(2) 14 Moore's L. A., 605; S. C., 10 B. L. R., 294.

(3) 15 B. L. R., 143 note.

upon be brought to sale in execution of the decree." The rent was due to the landlord. He recovered a decree, and under it the tenure, not the widow's interest, was sold.

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The other case which was cited was *Anund Moyee Dossee v. Mahendro Narain Doss* (1). That was the case of a suit brought for arrears of rent. It was there held, that "when neither the Hindu widow who has succeeded by inheritance, nor the reversioner, chooses to pay the arrears of rent which have fallen due upon a tenure, the tenure, if sold for such arrears, passes to the purchaser by the sale;" that is to say, if the rent is not paid, the tenure is answerable, and the landlord has a right to look to the tenure. Those cases therefore are not at all applicable to the present and are no authorities in favor of the defendants.

Then another case was cited which, in their Lordships' opinion, bears out the position already laid down. It is *Nogendro Chunder Ghose v. Sreemutty Kaminee Dossee* (2). It was there held that the decree in that case was not a decree against the land but a personal decree. It bears out the view which their Lordships have taken with regard to this decree, that it was a decree in a suit against the widow personally; that the decree was against her personally; that the attachment was to sell her property, that is, the interest which belonged to her in the estate, and which was liable to make good her default.

Looking, therefore, to the whole case, their Lordships are of opinion that the decision of the High Court was correct, and they will humbly recommend Her Majesty that that decree be affirmed, with the costs of this appeal.

Appeal dismissed.

Agent for the appellants: Mr. T. L. Wilson.

Agent for the respondent: Messrs. Watkins and Lattey.

(1) 15 W. R., 264.

(2) 11 Moore's I. A., 241, see p. 257.