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IN THE MATTER OF THE PETITION OF GOBIND CHUNDER MOITRA.

there is some semblance of right on either side, exists, and that such dispute is likely to induce a breach of the peace. I am satisfied that it was not the intention of the Legislature that the provisions of this section should be applied to any case in which a competent Court, whether in a regular suit or in that sort of proceeding which is in this country known as a summary proceeding, has decided that one person is entitled to, or is in possession of, land.

I may refer to s. 535 of the Code of Criminal Procedure by way of further argument in support of this view. This section enacts, that "nothing in this chapter shall affect the powers of a Collector or a person exercising the power of a Collector or of a Revenue Court." The officer acting under the Land Registration Act is probably a Revenue Court; and if a Magistrate may, under s. 530 of the Code of Criminal Procedure, decide that a person is in possession, whom a revenue officer has under the provisions of the Land Registration Act held not to be in possession, the powers of such revenue officer or Court would be materially affected.

It therefore appears to me that the order of the Deputy Magistrate should be set aside, (1*st*) because the initiative proceeding of the District Magistrate was defective; (2*nd*) because the whole of the proceedings were without jurisdiction.

Rule absolute.

PRIVY COUNCIL.

KAMESWAR PERSHAD (PLAINTIFF) *v.* RUN BAHADUR SINGH (DEFENDANT).

P. C.*
1880
Nov. 23.

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

Grounds supporting charge on the Inheritance by a Widow for her Debt.

In transactions such as the alienation by a widow of her estate of inheritance derived from her husband, any creditor, seeking to enforce a charge on such estate, is bound, at least, to show the nature of the transaction,

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

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and to show that, in advancing his money, he gave credit, on reasonable grounds, to an assertion that the money was wanted for one of the recognized necessities. The principle is, that the lender, although he is not bound to see to the application of the money, and does not lose his rights, *if*, upon *bonâ fide* inquiry, he has been deceived as to the existence of the necessity which he had reasonable grounds for supposing to exist, still is under an obligation to do certain things. These are to inquire into the necessity for the loan and to satisfy himself, as well as he can, with reference to the parties with whom he is dealing, that the borrower is acting in the particular instance for the benefit of the estate. This principle, laid down in *Hunooman Persaud Panday* v. *Mussamat Babooee Munraj Koonweree* (1), in regard to the manager for an infant, has been applied also to alienations by a widow of her estate of inheritance, and to transactions in which a father, in derogation of the rights of his son, under the Mitakshara law, has made an alienation of ancestral family estate.

APPEAL from a decree of a Divisional Bench of the High Court, Bengal (2nd July 1878), varying the decree of the Subordinate Judge of the District of Gaya (6th December 1876).

The question in the suit giving rise to this appeal was whether the late Rani Asmedh Konwar (who was living when the suit was commenced), widow of the Raja of Tekari, in the Gaya District, had in her lifetime charged her widow's estate with a debt to the plaintiff of Rs. 72,612, rendering the estate, which she had obtained as widow of the Raja, liable to sale in satisfaction thereof.

The Rani had executed in 1872 a bond to the plaintiff for the above amount, and secured it by mortgage of her estate.

The Subordinate Judge found that the bond had been executed for legal necessities, and decreed that the amount should be realized by the sale of the mortgaged property.

The High Court was of opinion that the Rani's signature to the bond had been obtained without giving her the least intimation of the nature of the contents of the instrument, beyond that money was required, and that no legal necessity had been proved. It therefore held this appellant to be entitled only to a decree for the principal and interest of the debt, which was a personal one, for which the estate in the hands of the Raja's heir was not liable.

(1) 6 Moore's I. A., 393.

The facts are stated in their Lordships' judgment.

Mr. *R. V. Doyne* and Mr. *C. W. Arathoon* appeared for the appellant.

The respondent did not appear.

The judgment of their Lordships was delivered by

SIR J. W. COLVILE.—The only material point to be decided upon this appeal arises in a somewhat peculiar manner. The suit was originally brought by the plaintiff, appellant, who is a mahajun carrying on business in the city of Benares, and also at Gaya, to enforce a bond and mortgage against the late Rani Asmedh Konwar, the instrument being dated the 1st of March 1872. It appearing, however, that the next reversionary heir was in possession of the property alleged to have been mortgaged under an ikrarnamah executed by the Rani putting him in possession, apparently, of the whole of her husband's estate, he was joined as a party defendant in the suit; and it was prayed that a decree might be made for the amount sued for, with costs and interest, and that it might be awarded "by "sale of the mortgaged and hypothecated properties, and in "case the same do not cover the amount, by the sale of other "properties, and from the person of the debtor." The suit, therefore, was framed for the purpose of obtaining, in case of need, an absolute decree for the sale of the property alleged to have been mortgaged, including the reversionary interest of the second defendant therein; and, accordingly, the second issue was settled so as to raise the question how far the reversionary estate was bound by the widow's disposition. It is in these words: "Whether or not was the amount claimed taken for "a legal necessity; and whether or not is the amount of debt "repayable by the property left by the husband of the widow "Mussamut Asmedh Konwar, who contracted the debt."

The Subordinate Judge who tried the case in the first instance, found wholly in favour of the plaintiff, and gave a decree for the amount sued for; and a further direction that, in case it was not paid, the mortgaged properties should be sold out-and-out. The High Court, upon appeal, so far confirmed

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the decree of the Subordinate Judge that it left the widow bound to the extent of being a debtor on the bond for the amount stated on the face of the bond to be due, but determined that the deed had not been properly explained to her; that she did not understand, or was not properly informed, that it was a deed mortgaging the property; and, consequently, that all that could be given against her was a decree in the nature of an ordinary money-decree.

The appeal to their Lordships is against the decree of the High Court so far only as it was adverse to the plaintiff. After the decree was pronounced, and before the appeal was presented here, the widow died, and the second defendant, the only respondent upon the record, became the absolute owner of the property in question.

Their Lordships concur with the High Court in thinking that, upon the evidence, there was a total failure of proof as to the proper explanation of this deed to the lady. It is not necessary for them to say whether, that being so, they should have gone so far as to make the money-decree which was made against her. That is not the subject of appeal, and they must assume that so far the decree was properly made. Nor do they think it necessary to express any opinion, whether in point of fact the bond sued upon, upon the face of it, purports to pledge more than the widow's interest. They will assume that it was intended by those who prepared it, to be a pledge of the mouzas and property which she had inherited from her husband. The only question to be decided on this appeal is, whether the transaction created a charge on the inheritance; whether it made the property in question, when in the hands of the respondent, liable to satisfy the bond-debt for which a decree has been made against the widow.

In order to establish the affirmative of this proposition, it is necessary, in the first place, to show that the widow intended to do that which the law allows her to do in certain specified cases; *viz.*, to make a pledge of her husband's estate. But if the High Court was right in supposing that the document was not properly explained to her, there is a failure of proof that she did really intend to do that. The question whether the pro-

perty was mortgaged at all depends upon the fact whether she intentionally executed a deed containing such a stipulation; and their Lordships have already intimated that, in their judgment, the High Court, dealing as it did with the evidence of Bishen Sahi and the other evidence in the cause, was right in coming to the conclusion, that there was no such proper explanation of the bond as would bind her in respect of that stipulation.

Again, if this were otherwise, there would remain the question whether the plaintiff had satisfied the burden of proof which every plaintiff who seeks to charge the inheritance after the death of a widow, by virtue of a security executed by her, has to sustain. Their Lordships in no degree depart from the principles laid down in the case of *Hunooman Persaud Panday* v. *Mussamat Babooee Munraj Koonweree* (1), which has been so often cited. They have applied those principles in recent cases, not only to the case of a manager for an infant, which was the case there, but to transactions on all-fours with the present, namely, alienations by a widow, and to transactions in which a father, in derogation of the rights of his son under the Mitakshara law, has made an alienation of ancestral family estate. The principle broadly laid down is, that although the lender is not bound to see to the application of the money, and does not lose his rights if, upon a *bonâ fide* inquiry, he has been deceived as to the existence of the necessity which he had reasonable grounds for supposing to exist, he still is under an obligation to do certain things. The words of the judgment in that case are:—"Their Lordships think that the lender is bound to inquire into the necessities for the loan, and to satisfy himself as well as he can, with reference to the parties with whom he is dealing, that the manager is acting in the particular instance for the benefit of the estate; but they think that if he does so inquire and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge, and they do not think that, under such circumstances, he is bound to see to the application of the money." And the judgment ends thus:—"Their

(1) 6 Moore's I. A., 393.

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Lordships do not think that a *bonâ fide* creditor should suffer when he has acted honestly and with due caution, but is himself deceived."

It appears to their Lordships that, such being the law, any creditor who comes into Court to enforce a right similar to that which is claimed in the present suit is bound at least to show the nature of the transaction, and that in advancing his money he gave credit on reasonable grounds to an assertion that the money was wanted for one of the recognised necessities.

In this case there is hardly any evidence on the part of the plaintiff to show what negociations took place with him, and what representations induced him to advance the money; still less is there any proof that, having those representations before him, he made the necessary and proper inquiries. The chief witness that has been called, Fakir Chand, says of himself, that, although he is a village wasil-baki-nuvis, and writes certain zemindari books, he has nothing to do with the books relating to the mahajani business. It is true that he speaks to having been present when persons purporting to come from the Rani asked for a loan of money for payment of Government revenue and the like; but one would expect in such a case as this that the gomashta, who had the management of the books, and who was responsible for lending money from the kooti, would be the person to come forward and show upon the faith of what representations and after what inquiry he advanced the money. There is no evidence at all of that kind.

Then, again, the servants who are called from the defendant's establishment, give evidence which cuts both ways, because, although Dost Mahomed, calling himself one of the dewans of the Rani, professed to have gone to the plaintiff and to have taken money from him, he shows *primâ facie* that there was no real necessity for the plaintiff to borrow money under the power which she could exercise only in the case of certain necessities. His evidence goes to show that the lady was in fact in very easy circumstances, and that she had a net revenue of about 1,30,000 rupees. He says:—"The amount of collections used to remain in the custody of the dewan. A certain amount, when required, used to be paid to the Rani. I cannot