

APPELLATE CIVIL.

Before Mr. Justice Stephen and Mr. Justice Vincent.

SRIMOCHAN JHA

v.

BRIJBEHARY MISSER.*

1909
May 14.

Hindu Law—Alienation—Legal Necessity—Hindu Daughter's right to alienate property—Onus of Proof—Sradh Ceremony—Government Revenue—Succession Certificate, Costs of—Property sold for Arrears of Road-cess, recovery of.

A Hindu widow died leaving her surviving a daughter as life-tenant to the estate of her deceased husband which was in involved circumstances. The daughter executed a *kobala* and a mortgage of the properties, and out of the moneys thereby obtained she paid for the *sradh* ceremony of her mother, the Government revenue, the costs of a succession certificate and a rent decree. She also executed another mortgage and used the money obtained to recover the property sold for arrears of road-cess. In a suit brought by the reversionary heir after the death of the life-tenant to set aside the *kobala* and the mortgages as having been made by the life-tenant in excess of her power of alienation :—

Held, that it was for the defendant to show that these alienations had been made for legal necessity.

Held, further, that the expenses of the *sradh* ceremony, the payment of the Government revenue, the costs of the succession certificate and the payment of the rent decree were made for legal necessity; but that the payment of money to recover the property sold for arrears of road-cess was not so made.

Raj Chandra Deb Biswas v. Sheeshoo Ram Deb (1), *Shekaat Hosain v. Sasi Kar* (2), *Mahamund Chuckerbutty v. Banimadhub Chatterjee* (3), *Bupram Namasudra v. Iswar Namasudra* (4) approved.

Braja Lal Sen v. Jiban Krishna Roy (5) distinguished.

SECOND APPEAL by Sri Mohan Jha, the plaintiff.

This appeal arises out of a suit brought by the plaintiff as reversionary heir seeking to have the alienations, made by the previous life-tenant, set aside and to recover possession of

* Appeal from Appellate Decree, No. 1433 of 1907, against the decree of H. E. Ransom, District Judge of Darbhanga, dated April 15, 1907, confirming the decree of Ambica Charan Dutt, Additional Subordinate Judge of Darbhanga, dated Jan. 31, 1907.

(1) (1867) 7 W. R. 146.

(3) (1896) I. L. R. 24 Calc. 27.

(2) (1892) I. L. R. 19 Calc. 783.

(4) (1902) 6 C. W. N. 302.

(5) (1898) I. L. R. 26 Calc. 285.

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properties and surplus sale-proceeds on establishment of title on a declaration that the transferee has acquired no right by the alienations. The facts are briefly as follows:—

A Hindu widow died leaving her surviving a daughter as life-tenant to the estate of her deceased husband, one Harnandan Jha. In consequence of the involved circumstances of the estate of her father, the daughter executed a *kobala* and sold a portion of it in order to raise money to enable her to pay the expenses of her mother's *sradh*, the Government revenue and the costs of taking out a succession certificate of her father's property, and mortgaged the rest of the properties by two usufructuary bonds in order to enable her to meet the expenses of opposing an execution case and of recovering certain property which had been sold for arrears of road-cess. After the execution of the above-mentioned *kobala* and mortgages, the daughter died and the plaintiff as the next reversionary heir became entitled to the estate of Harnandan Jha. The plaintiff, thereupon, instituted the suit to set aside the alienations and to recover possession of the properties. Both the original Court and the lower Appellate Court dismissed the suit, and the plaintiff now appealed to the High Court.

Babu Golap Chandra Sircar (Babu Buldeo Narain Singh with him), for the appellant. The amounts of Government dues, the costs of succession certificate of the father's property and the payment of the rent decrees and of the amount for recovery of certain property sold in execution of road-cess are all personal debts and the estate cannot be charged with them. As regards the *sradh* expenses which amounted to Rs. 1,700, the judgment in *Raj Chunder Deb Biswas v. Sheeshoo Ram Deb* (1), which is at variance with the head note, makes these expenses a legal necessity. My contention is not whether these expenses are a valid charge, but whether the daughter was justified in incurring them when the estate was so heavily involved.

In order to make this estate liable for arrears of rent due after the death of the father, it must be shown that the debts were contracted as of necessity or under such circumstances

as to make the whole estate liable and not merely the interest in it of the person who contracted them. The moneys could have been borrowed and afterwards paid up out of the income: *Mohima Ghunder Roy Chowdhry v. Ram Kishore Acharjee Chowdhry* (1) and *Braju Lal Sen v. Jiban Krishna Roy* (2).

The amount due on account of cesses is only a personal debt: *Shekaat Hosain v. Sasi Kar* (3), *Mahamund Chuckerbutty v. Banimadhub Chatterjee* (4), *Mahomed Abdul Hai v. Gujraj Sahai* (5), *Rupram Namasudra v. Iswar Namasudra* (6) and *Lachmi Narain Singh v. Nand Kishore Lal* (7).

The *kobala* and the mortgage bonds are not binding on the reversioner's interest in the immoveable property and the sale and conveyance which they purported to effect are in consequence invalid: *Giribala Dassi v. Srinath Chandra Singh* (8). Finally, the reversioner has not to prove legal necessity. The whole onus is on the other party.

Babu Shorashi Charan Mitra, for the respondent. In considering the question of the money spent for the various dues and expenses, the pressure on the estate and the fact that payments were made *bonâ fide* must be taken into consideration. There were debts to be paid and the estate was very much involved and payments were made in the *bonâ fide* belief that they were rightly made. It was only the right, title and interest of the daughter that were alienated, and it was done to meet the expenses which, as she was satisfied, were for legal necessity. If there be moneys in hand from the income, the sums borrowed shall be paid back.

STEPHEN AND VINCENT JJ. The suit out of which this appeal arises is brought in order that a *kobala* executed on the 29th December 1877 and the usufructuary mortgage-bonds, dated the 23rd June 1891 and 8th August 1891, may be declared null and void on the death of one Musammat Bisneshuri Dai. She was the tenant for life of the estate of her father

(1) (1875) 23 W. R. 174.

(2) (1898) I. L. R. 26 Calc. 285.

(3) (1892) I. L. R. 19 Calc. 753.

(4) (1898) I. L. R. 24 Calc. 27.

(5) (1893) I. L. R. 20 Calc. 826.

(6) (1902) 6 C. W. N. 302.

(7) (1902) I. L. R. 29 Calc. 537.

(8) (1906) 12 C. W. N. 769.

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who was the last full owner. The plaintiff is his reversionary heir, and he now sues to have the sales set aside as having been made by the lady in excess of her powers of alienation. It is for the defendant to show that these sales were made for legal necessity.

As regards the *kobala* of the 29th December 1887, it was executed in the first place for the purpose of securing money for performing the *sradh* ceremony of the mother of the tenant for life. It is admitted by the plaintiff that the lower Appellate Court is right in the view it takes of the decision in the case of *Raj Chandra Deb Biswas v. Sheeshoo Ram Deb* (1), and that the performance of the *sradh* ceremony of the mother is a legal necessity for which the tenant for life was justified in charging the family property. A point has been raised before us that the amount in *sradh*, viz., the sum of Rs. 1,700, is excessive. But this is a question which we cannot go into. Out of the balance of the money secured by the execution of the above-mentioned *kobala*, Rs. 300 was spent in paying the Government revenue. We have no doubt at all that this also must be regarded as a legal necessity. It is admitted on both sides that the estate was exceedingly involved at the time, and there can be no doubt also that the life-tenant was acting judiciously in raising funds for the purpose of paying the Government revenue. We are, therefore, of opinion that it should be regarded as a legal necessity. Similarly the sum of Rs. 85 which was raised in order to pay the costs of a succession certificate was spent for a legal necessity, as the succession certificate was a document, without which it would have been impossible for the life-tenant to manage the estate.

Then come the two mortgage bonds. The deed of the 23rd June 1891 was executed in order to raise the sum of Rs. 80 for paying a rent decree. It is argued before us that this was a personal obligation only, and in support of this contention reference is made to the decision in the case of *Braja Lal Sen v. Jiban Krishna Roy* (2). That, however, is a

(1) (1867) 7 W. R. 146.

(2) (1898) I. L. R. 26 Calc. 285.

very different case from the present one, as in that case certain co-sharers were suing the tenant for life, and it would not be in their power to affect the interest of the reversioner. In this case had the rent decree not been paid, the whole estate could have been placed in peril, and it was the duty of the life-tenant, as a careful manager of the estate, to pay the rent decree. Under these circumstances, we agree with the lower Appellate Court in holding that this was also a matter of legal necessity.

As regards the third document of the 8th August 1891, it was a mortgage executed for Rs. 500. This money was used to recover the property which had been sold for arrears of road-cess apparently under the Public Demands Recovery Act. Authorities have been produced before us to show that the obligation to pay such a debt as this was a personal one, and decisions in the cases of *Shekaat Hosain v. Sasi Kar* (1), *Mahanund Chuckerbutty v. Banimadhub Chatterjee* (2) and *Rupram Namasudra v. Iswar Namasudra* (3) seem to show that the point is one beyond dispute. It is argued before us by the learned pleader for the respondent that under the circumstances of the case, considering the pressure under which the estate was and considering the benefit which accrued to the reversioner, it ought to be considered as a legal necessity. In view of the fact that this money was not used to stop the execution of a decree under the Public Demands Recovery Act, we find it impossible to hold that this money was spent to meet a legal necessity. So far as the money is concerned we think that the appellant must succeed.

The result is that this appeal must be allowed and the decree of the lower Appellate Court set aside so far as this bond of the 8th August 1891 for the sum of Rs. 500 is concerned. In other respects the decree of the lower Appellate Court will stand. The parties will be entitled to proportionate costs throughout.

O. M.

Appeal allowed in part.

(1) (1892) I. L. R. 19 Calc. 783. (2) (1896) I. L. R. 24 Calc. 27.

(3) (1902) 6 C. W. N. 302.

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