Pahalwan Singh and Others Vs Jiwan Das and Others

Court: Allahabad High Court

Date of Decision: July 30, 1919

Citation: (1920) ILR (All) 109

Hon'ble Judges: Stuart, J; Ryves, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Ryves, J.
The facts as found by the lower court and not contested are as follows:

One Braj Kishore, who was related to the plaintiffs respondents, as will be explained later on, inherited a very valuable banking business and

zamindari estate from his mother''s family which he carried on under the style of Jugal Kishore Chunna Mal, and afterwards of Jugal Kishore, Braj

Kishore. He him- self became Government Treasurer of Shahjahanpur. He died in 1878, leaving surviving him a widow, Musammat Durga Dei.

This lady carried on her late husband''s business for something like 25 years till her death on the 8th June, 1905.

2. It is admitted that she was careful in her management, and was not a spendthrift. The evidence on the point as to how far she was successful is,

perhaps vague, but one of the plaintiffs, Kishan Chand, admitted that the value of the property left by Braj Kishore was believed to be about 2t or

22 lakhs, and that at Durga Dei''s death, the property left by her was of about the same value. At any rate there is nothing to show that she wasted

the property.

3. She adopted, or is said to have adopted, Murari Lal, one of the plaintiffs.

4. After her death a number of suits were instituted, by some , or other of the plaintiffs, against Murari Lal, and as against other plaintiffs, all of

which were settled by compromise. The details of those litigations are fully given in the judgment of the court below, and need not be repeated. By

these suits it was mutually established that Lala Jiwan Das, Ramji Das, Narain Das, Kishan Chand, and Murari Lal, the adopted son, were entitled

to succeed as reversioners to the estate of Braj Kishore and the share in which each was entitled (the lion''s share going to Murari Lal), was also

settled inter se. Rai Din Dayal, and Govind Prasad, who had acquired some of Kishan Chand''s interest, and who were parties to some of the

previous litigations, were also recognized as entitled to a particular share, Having settled their disputes among themselves, to their satisfaction, they

combined in bringing this suit against a large number of persons, forty-three, to be accurate, who were transferees from Musammat Durga Dei, to

recover the properties which were in their possession and which they had acquired from her, on the ground that all the transfers were made by her

without "" legal necessity "" and became void on her death. The details of the properties claimed in the suit are given in the schedules attached to the

plaint.

5. The broad defence to the suit was a denial that the plaintiffs wore the reversioners of Braj Kishore, and, secondly, that the transfers were made

either for legal necessity, or in the ordinary course of business of Braj Kishore''s firm of Jugal Kishore Chunna Mal, which Durga Dei carried on

after his death, and were, therefore, valid.

6. The lower court gave a decree against the bulk of the defendants, holding that the transfers were without legal necessity, and were, therefore,

void on Durga Dei''s death at the instance of the plaintiffs, who were, it held, entitled to sue as reversioners. In some cases, the plaintiffs were

ordered to repay the sale consideration, as a condition precedent to their obtaining their decree, in other eases, no such condition was imposed,

Some of the claims were compromised.

7. In this appeal we are only concerned with three sets of property, (1) No. 2, Lalpur, (2) No. 6, Manorathpur, and (3) items 10 to 19 of schedule

1. The appellants are the transferees of these properties, or their representatives in interest.

8. Two main grounds are pressed in appeal:

(1) That the plaintiffs have not proved themselves to be reversioners of Braj Kishore.

(2) That the transfers made by Durga Dei, were justified under the Hindu Law.

9. [The first point was found by his Lordship in favour of the plaintiffs.]

10. The second argument raises a very important point of Hindu Law, which, as far as we can ascertain, is not directly covered by any reported

authority.

11. Were the transfers made by Durga Dei justified by Hindu Law? One aspect of this question is well raised in paragraph 16 of some of the

defendants'' written statement: ""Lala Braj Kishore was a banker. He used to advance money as loans, He also used to purchase property and soil

it at a profit. was the buniness which was carried on by him. This was carried on in the names of Jugal Kishore After the death of Braj Kishore the

same business and practice were carried on by Musammat Durga Dei. All the transfer''s which have been made were made for the benefit of the

business or for procuring loans. She did not make the transfers as a Hindu widow. Consequently all the transfers made are valid.

12. The other aspect is were the transfers made for "" legal neces-sity "" as that term is understood in Hindu Law?

13. The issue on this point, keeping in view both aspects of the question, was clearly raised in issue No.4:

14. Whether Musammat Durga Dei executed the various sale deeds in suit for legal necessity, for urgent necessity or for sufficient cause, and

whether the legal heirs of Musammat Durga Dei are bound by them.

15. The first aspect of the question is disposed of by the learned Subordinate Judge somewhat summarily, and not entirely by itself. He says: ""It is

contended that Durga Dei, to realize debts, purchased the property at auction sales, and then sold the property; that if she had realized the debts in

cash she could have spent that cash in any way she liked, why should she not be able to sell away property and turn it into cash and use that cash?

that purchasing property for her and not husband''s debts, and then selling it were incidents of money lending, which she carried on, and if under

those circumstances she sold the property she transferred it for valid necessity, But this argument cannot avail. At page 458 of Trevelyan''s Hindu

Law we find that '' where additions are made to an estate by a restricted female owner with the intention that they should form part of the estate,

such additions pass with the estate and not to the heirs of such owner." As to accumulations it is ordained that if she invest the income with the

intention that it should be an accretion to her husband''s estate, she cannot thereafter deal with it, except under circumstances which would justify

her dealing with the original estate. But if she invest the income in such a way as to indicate her intention that it is not to form part of her husband''s

estate, but to remain at her disposal, she can deal with it during her lifetime, at any rate. Now, in this instance there is no indication that she

intended that the purchased property should not form part of her husband''s estate. She remained in possession for a few months, and then sold the

property she had purchased for her husband''s debts. I find that she had not power to do so, that no legal necessity is proved, and the sale is not

binding on the reversioners.

16. Before discussing the question of law I will state the facts of each of the transfers with which this appeal is concerned.

1. Lalpur. This property belonged to Braj Kishore, that is to say, he bought it in 1874. Durga Dei sold it in 1904, for Rs. 9,000 to Gauri Bibi. The

sale consideration was made up as follows: Rs. 7,200 which had been deposited by the vendee''s deceased husband in the banking business, while

Durga Dei was managing the business after Braj Kishore''s death, was set off, Rs. 300 was paid in cash, and Durga Dei accepted a rukka for the

balance, Rs. 1,500.

2. Manorathpur. This property and other property had been mortgaged to Braj Kishore, and he obtained a decree for sale of the mortgaged

property shortly before his death in 1878. In execution of the decree, Durga Dei purchased it for Rs. 25 (It is fractional share) in 1882, and got

possession in 1884, in the next year she sold it for twice what she gave for it.

3. Items 10 to 19. These were mortgaged to Braj Kishore in 1876. Durga Dei sued on the mortgage in 1879, and got a decree, in execution of

which she purchased property for Rs. 5,920 in 1882 and 1884, and sold it in 1890 for Rs. 5,000 to Ishri Singh, whose heirs and representatives

are now in possession. The defence, in this instance, was that Musammat Durga Dei''s purchase was benami for Ishri Singh, and that Ishri Singh

had all along been in possession, and that Musammat Durga Dei had never had possession. On this point we agree with the finding of the lower

court that this allegation of a benami purchase was false. Musammat Durga Dei bought it herself, and enjoyed its profits until 1890, when she sold

it to Ishri Singh.

17. The lower court found that all these transfers had been made without legal necessity, and decreed the plaintiffs'' claim, though in the case of the

first, Lalpur it made its decree conditional on the plaintiffs'' repaying Rs. 7,200. The cross-appeal is against this portion of the decree.

18. It seems to me that three propositions of Hindu Law are now settled beyond controversy.

1. The general rule--that a widow in possession of a widow''s estate cannot alienate immovable property which she inherited from her husband,

beyond her own life except for ""legal necessity.

2. The same rule applies to both immovable and movable property in the hands of the widow, inherited from her husband.

3. That a trade or business belonging to the husband is heritable by the widow and she is entitled to carry it on.

19. I do not think that there is any real inconsistency in these rules. In every case the how is entitled to alienate only for ""necessity,"" but it seem to

me that there may be a great difference between what amounts, in law, necessity "" between the sale of the family dwelling house or home farm, and

the sale of a bale of cloth or other article of merchandise.

20. If the business of the husband was, let us say, that of a cloth merchant, the widow would be entitled to carry it on, and she could only do so,

by selling, buying again and again selling. The very existence of the business creates the necessity; it is inherent in its proper conduct.

21. Now if the husband''s business was that of a banker in the rural parts of India, as in this case, his chief business is lending money on mortgage,

and, if not repaid, recovering it by a suit for sale of the property mortgaged. In execution he buys it, not in most cases, with the intention of

permanently retaining it, but in order to sell it if a favourable opportunity offers. The property will often consist of an undivided share in some village

situated far away from the banker''s premises, and it would often be practically impossible, or, at any rate, very inconvenient to look after it for his

own profit.

22. The banker dies and leaves a widow. It is admitted that, if she so choses, instead of going on with the business, she is entitled to realize

outstandings, and invest them, and then enjoy the income in any way she pleases, for her own profit. So long as the corpus of the estate remains

whole, the reversinners have no ground for complaint. But that is not carrying on the business, as she is entitled to do. If she elects to carry on the

business, as she is entitled to do, she must surely be entitled to do so in the same way as her deceased husband. The learned Counsel, for the

respondents, admits this, but with a reservation. He says if she invests any of the income in the purchase of land, that piece of land becomes at

once inalienable and can only be legally sold by her if forced to by the same dire necessity as would justify her in soiling the family dwelling house.

But the same argument should apply to the purchase of a bale of cloth out of the stock of the widow of a cloth merchant.

23. I agree. that in both cases the re-sale can only be justified by "" necessity"" and that the widow is not entitled to give it away or sell it at a nominal

and wholly inadequate price to, say, her brother or her own friends and relations. But I think she can sell in the course of business, the "" necessity

being the prudent conduct of the business.

24. Nor do I think the test can be, "" was there a profit or a loss?"" It is often prudent to cut one''s loss, It is, I think, enough if it can be shown that

the business was carried on with reasonable care. To press the argument a little further, suppose Durga Dei invested some of the income of the

estate in the purchase of sharps m one of the large limited liability coal companies, which own extensive purely zamindari property beside their

collieries. It is not suggested that she could not re-sell the shares. But by her purchase she has become the owner or partner in the ownership of an

undivided fraction of land. Nevertheless she can sell freely, and if the market has appreciated the gain goes to the estate, and if it has depreciated,

the estate bears the loss. Bub, what, in essentials, is the difference, if instead of purchasing shares in a company owning land, she buys a biswas of

an undivided village? All she acquires by her sale is an undivided fraction. Of course the analogy is not perfect and cannot be pressed too far,

because in the latter case by her purchase she also acquires the right to have her undivided share partitioned oft from the rest, and so get

possession of a definite area delimited by metes and bounds. But, unless and until she exercises this right, her position is the same. Yet in the latter

case, she cannot re-sell in the ordinary course of business but only for ""legal necessity "" in its strictest sense, if the argument) is sound, If so, the

widow of a rural banker can only carry on the business in a limited and greatly curtailed manner. This seems to me to offend against the third rule

set out above. Both sides admit that there is no direct authority which covers this case. By the respondents great reliance is placed on the case of

Sham Sundar Lal v. Achhan Kuar I.L.R.(1898) All. 71 and especially on the observations reported at the bottom of page 83. The facts of that

case, however, are totally different, and the actual decision turns on quite another point. The passage referred to has been considered by the Full

Bench of the Bombay High Court, in Sakrabhai Nathubhai v. Maganlal Mulchand I.L.R(1901). 26 Bom. 206 and that decision has been approved

of by this Court in Radha Kishan v. Janki and Kanhaiya Lal Weekly Notes, 1907, page 155, by Sir John Stanley, C. J. and Burkitt, J.

25. In any case I do not consider that I am in any way deciding contrary to what was laid down by the Privy Council, for, as was quoted in that

case, "" the touchstone is necessity."" I base my decision mainly on the Bombay case and Sir Lawrence Jenkin"s judgment, which fully deals with the

point.

26. I now propose to examine each of the transfers impugned; to see if I can find it possible to justify them, on any view of what constitutes

necessity,"" and I cannot forget that two of these transfers were made more than a quarter of a century ago, and only one as recently as 10 years

before suit.

(1) A deposit had been made in the family bank, and the depositor asked it to be refunded. It is in evidence that, at that moment, the bank was

unable to repay in cash: this may mean that it had not got sufficient funds or that it was inconvenient then to pay in cash. Let it be that the cash was.

not available. The widow agreed to liquidate the debt in the manner already described. The refund was due and had to be paid. She must pay or

go bankrupt;. Surely here was ""necessity "" which legalized the widow in transferring in part payment a portion of property which, although acquired

by the husband, and therefore in a legal sense part of the corpus of his estate, was in no sense a part of the ancestral property belonging to the

family. If she had sold the ancestral dwelling houses, or home farm which the reversioners might reasonably hope some day to inherit, it would

perhaps be otherwise. The property transferred can only technically be called ancestral; it never belonged to the reversioner"s family and was only

bought in and sold again in the course of the business. In any case, if I am wrong in my view that the widow was entitled to sell it, I agree with the

court below, that the reversioners must in equity pay back at least the Rs. 7,200 which had been paid into the family business; they cannot get

both, the benefit of the Rs. 7,200 paid to the firm and the property, and I would therefore dismiss the cross-objection.

(2) This is an insignificant item. The widow bought a small undivided fraction of a village and re-sold it at a profit of 100 per cent. which was

credited to the firm What possible complaint have the reversioners? It is true that, if she had not sold, in the course of years the property might

have become much more valuable. Landed property over many parts of India has appreciated, in some it has not. Here was a banking firm who

acquired a very small fractional share in a village. The widow thought fit to get rid of it at a profit of Rs. 100. The money was paid into the firm. I

think this is on the face of it, a prudent and sound transaction, and hold that in the absence of anything to the contrary, it must be held that there

was "" necessity "" to sell.

(3) In this case the decree obtained by Musammat Durga Dei was for Rs. 7 ,266-11-8 including costs. In execution she bought the property for

Rs. 5,920 and some years afterward sold it for Rs. 5,000. It may be fairly presumed that when she bought it, the property was not worth much, if

anything, more than about what she gave for it, and on paper, there would seem to be a loss of at least Rs. 920. The original mortgage was for Rs.

5,000.

27. But this included a sum of Rs. 3,371 due under an earlier deed, Rs. 1,612-8-0 were taken for purchasing another property, and only Rs. 16-

8-0 was paid in cash. The earlier mortgage of 1872 is not on the record, but it is clear that the actual amount of cash originally lent was a good

deal less than Rs. 5,000 and was probably not more than about half, or say Rs. 3,000. It is (true that the decree obtained in 1879 on the mortgage

was for something over Rs. 7,200, but that included interest and costs, and apparently this was more than the property was worth. When Durga

Dei purchased it in execution of her decree it must be remembered, she paid nothing in cash, she merely got the property in satisfaction of the

decree. She enjoyed the profits for some years; it all went into the business and when she sold it again for Rs. 5,000 this money was also paid into

the firm. There is nothing to show that her sale was not justifiable or one that a prudent man would not have made. Nor is it shown that there was

any actual loss to the estate. Under these circum-stances in my opinion the sale was valid and was made for necessity.

28. For these reasons would I decree the appeal in favour of the appellants concerned against respondents Nos. 1 to 5 and 7 as indicated above

in respect of these three items with proportionate costs and dismiss the cross-objections with costs.

Stuart, J.

29. I concur in the order proposed. I find that in all three instances there was an inherent necessity arising from the circumstances of the

transactions.

30. By the Court: The order of the Court is that the appeal is decreed accordingly with costs and the cross-objections dismissed with costs.