(1922) ILR (All) 649

Allahabad High Court

Case No: None

Bala Prasad and Another		APPELLANT
	Vs	
Mohan Lal and Chhadammi Lal		RESPONDENT

Date of Decision: April 25, 1922

Citation: (1922) ILR (All) 649

Hon'ble Judges: Walsh, J; Piggott, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Piggott and Walsh, JJ.
This is an appeal by the decree-holder in a mortgage suit. That suit was against a variety of defendants, but the only

point with which we are concerned here is that, while a decree for sale was passed affecting various mortgaged properties, there was also a simple

money decree enforceable against one Ganga Prasad alone. In execution of this decree there has been an attachment of certain immovable

property specified as being the property of Ganga Prasad, judgment-debtor. It is not property which was included in the mortgage upon which the

suit was brought, so that no objection can be taken on that grounds to its attachment in execution of a simple money decree. In fact, in so far as the

property attached is the property of Ganga Prasad, its attachment is not objected to. The objection taken was on behalf of Bala Prasad and

Nannhe, minor sons of Ganga Prasad. Their claim was that, the property attached being joint ancestral family property, they were joint owners of

the same with their father and that the remedy of the decree-holders was limited to execution against the share which their father would take on

partition, that is to say, one-third share of the whole. The execution court has allowed this contention and the appeal before us is against its

decision. The point of law raised was supposed to have been settled so far as this Court is concerned by the decision of a Full Bench in the case of

Karan Singh v. Bhup Singh ILR (1904) All. 16. That case has been followed and applied since that date in a number of other cases. We are

content to refer to two cases, to one of which one of us was a party, which are:Babu Singh v. Bihari Lal ILR (1908) All. 156 and Indar Pal v. The

Imperial Bank ILR (1915) All. 214. All these cases are against the view taken by the court below and, if they were correctly decided, then it is

competent for the holders of a simple money decree against Ganga Prasad to attach the joint family property of Ganga Prasad and his minor sons

in the hands of their judgment-debtor and to bring to sale the right, title and interest of the father and of the sons in satisfaction of their decree.

There has been a recent decision to the contrary, namely, the case of Sheo Dhan Singh v. Bhagwan Singh ILR 1921 All. 496. The respondents

were not represented at the hearing of that appeal and no reference is made to any previous decision of this Court. The learned Judges proceeded

upon a decision of the Judicial Commissioner''s Court of Oudh and based themselves upon an interpretation which they put upon certain passages

in the judgment of their Lordships of the Privy Council in the well-known case of Sahu Ram Chandra v. Bhup Singh ILR All. 437. We have given

our best consideration to the arguments on this point, but we think that as the matter stands at present we ought to follow the decision of our Full

Bench. The question for determination before their Lordships of the Privy Council in Sahu Ram Chandra''s case had nothing to do with the rights of

the holders of a simple money decree. If it be said that there are passages in the judgment then delivered which suggest that the older decisions of

the Courts in India, of which the Full Bench case of Karan Singh v. Bhup Singh ILR (1904) All. 16 is a specimen, proceeded upon a mistaken

view as to the effect of the pious duty of Hindu sons to discharge their fathers" debts when not tainted with immorality, it can be said, on the other

side, that only a few months before the decision in Sahu Ram Chandra"s case their Lordships of the Privy Council, in the case of Sripat Singh

Dugar v. Prodyot Kumar Tagore ILR (1916) Calc. 524, had re-affirmed in the clearest possible language the principles deductible from a number

of previous decisions upon which the Full Bench of this Court had proceeded. The words used at the bottom of page 532 of the report are as

follows:

The property in question was joint property governed by the Mitakshara law. By that law a judgment against the father of the family cannot be

executed against the whole of the Mitakshara property if the debt in respect of which the judgment has been obtained was a debt incurred for

illegal or immoral purposes. In every other event it is open to the execution creditor to sell the whole of the estate in satisfaction of the judgment

obtained against the father alone.

2. Unless, therefore, further light is thrown upon this question by some further pronouncement on the part of their Lordships of the Privy Council,

we think we ought to abide by the statement of the law as it was understood to have been settled by the Full Bench of this Court in the year 1904.

The same view has been taken by two other High Courts in India, vide ILR 43 Bom., 612, and ILR 48 Cal. 341. It has been suggested in

argument that a distinction should be made against the decree-holder in this present case because he had impleaded the sons in his suit upon the

mortgage and as against the sons his suit had been dismissed. It does not seem to us that this affects the question for determination. The sons were

impleaded in the mortgage suit with a view to making their interest in the mortgaged property available in satisfaction of the plaintiffs" claim. That

attempt failed and it is not now sought in the execution department to attach the interests of the sons in the mortgaged property. There could have

been no question in the suit as brought of a simple money decree against the sons. What is to be determined is, what property is or is not available

to the decree-holder in execution of his simple money decree against the father alone. That question, according to the older decisions of this Court,

which we desire to follow, must be answered in favour of the decree-holder. We, therefore, allow this appeal to this extent, that we send back the

case to the court below with orders to proceed with the execution of the decree on the assumption that the shares of the minor sons of Ganga

Prasad in the property sought to be attached are liable, unless the said sons can prove that the debt in respect of which the simple money decree

was passed was one tainted with immorality. The decree-holder should get his costs of this appeal.

Walsh, J.

3. I agree. In my opinion it is too late to contend that the joint family estate cannot be sold to satisfy a personal decree against the father of a joint

family; except in the one case of the sons being able to show that the debt was tainted with immorality. This appears to me to be established by a

long line of decisions by the Privy Council, namely:

4. Musammat Nanomi Babuasin v. Modun Mohun IL.R.(1885) IndAp 1 Bhagbut Pershad v. Musammat Girja Koer I L.R.(1888) IndAp 99;

Meenakshi Naidu v. Immudi Kanah Ramaya Kounden I L.R.(1888)16 IndAp 1; Rai Babu Mahabir Pershad v. Rai Markunda Nath Sahai I L.R.

(1889) 17 IndAp 11, reviewed and explained by a Full Bench in Karan Singh v. Bhup Singh ILR (1904) 27 All. 16 and finally by the Lord

Chancellor, Lord Buckmaster, in Sripat Singh Dugar v. Prodyot Kumar Tagore ILR (1916) Calc. 524. The opinion of their Lordships in Sahu

Ram Chandra ILR (1917) All. 437 relates to a case in which an alienation by mortgage was sought to be enforced and all other possible remedies

of the mortgagee had been extinguished. I agree with the view which seems already to have been expressed in India that it could hardly have been

intended by what was said in the opinion of their Lordships in that case to reverse everything that had been said before.