
(1879) 04 AHC CK 0014

Allahabad High Court

Case No: None

Ram Prasad

APPELLANT

Vs

Chamaili Kuar

RESPONDENT

Date of Decision: April 16, 1879

Citation: (1880) ILR (All) 273

Hon'ble Judges: Spankie, J; Pearson, J; Oldfield, J

Bench: Full Bench

Final Decision: Disposed Of

Judgement

Pearson, J.

An answer to the first question must apparently be given in the negative, regard being had to the Hindu law as expounded by our Courts.

2. On the hypothesis that the purchaser acted in good faith, I should, notwithstanding the lower Appellate Court's unsatisfactory finding that the sale was made without any necessity, be inclined to answer the second question in the affirmative.

Oldfield, J.

3. The question of the power of a son to set aside a sale of joint ancestral property effected by the father, and the liability of the joint ancestral estate for a father's debts, was discussed by their Lordships of the Privy Council in *Girdharee Lall v. Kuntoo Lall* and *Muddun Thakoor v. Kantoo Lall* decided 12th May 1874 11 B.L.R. 187, and the principle there laid down will be a guide to the decision of the case before us. In the first of those cases, a son sued, as in the case before us, to cancel a sale made by his father of joint ancestral property, and to recover possession of the whole estate.

4. Their Lordships cited the authority of *Hanooman Persaud Panday v. Babooee Munraj Kooweree* 6 Ind. App. 393, to show the extent of the liability of the ancestral

estate, quoted the remarks in that case of Lord Justice Knight Bruce, and observed: "That is an authority to show that ancestral property which descends to a father under the Mitakshara law is not exempted from liability to pay his debts because a son is born to him: it would be a pious duty on the part of the son to pay his father's debts, and it being the pious duty of the son to pay his father's debts, the ancestral property, in which the son as the son of his father acquires an interest by birth, is liable to the father's debts. The rule is, as stated by Lord Justice Knight Bruce: "The freedom of the son from the obligation to discharge the father's debt has respect to the nature of the debt, and not to the nature of the estate, whether ancestral or acquired by the creator of the debt."" And they go on to observe: "It is necessary therefore to see what was the nature of the debt for the payment of which it was necessary to raise money by sale of the property in question. If the debt of the father had been contracted for an immoral purpose, the son might not be under any pious obligation to pay it, and he might possibly object to those estates which had come to the father as ancestral property being made liable to the debt." And further on in their judgment a case decided by the same Court, *Junnuk Kishore Koomuar v. Rughoonundun Singh S.D.A. L.P.* 1861 p. 213 is cited, in which it was held "that it was necessary for the son, in order to set aside the sale of property for the purpose of paying the father's debts, to show that the debt was illegal or contracted for an immoral purpose "; in that case sales had been made simply in order to raise money for some purpose or another. Their Lordships refused to set aside the sale in the case of *Girdharee Lall v. Kantoo Lall* 14 B.L.R. 187, finding that the sale had been made bond fide, and for value, in order to save ancestral property from sale in execution of a decree obtained on a bond, which it was not shown had been given for an immoral purpose.

5. In the case now before us, however, the facts, as found by the lower Appellate Court--and we must accept them--are widely different, and if we apply to them the principle which has been laid down, a case seems to have been made out for cancelment of the sale. It has been found that the sale was not made for the purpose of satisfying any debts due, nor for the use of the family, or from proper necessity, the family being in fairly easy circumstances, but entirely to provide money for the indulgence by the father of immoral and vicious pleasures. A sale under such circumstances would be liable to be set aside at the instance of the son. Nor can we say this is a case in which the purchaser, as dealing with the guardian of a minor, or the manager of joint ancestral property, can claim partition, for though the transaction was so far bond fide on his part that he paid value for the property, it is clear that, if he had made reasonable inquiry, he could have learnt the circumstances under which the sale was being made, and been placed on his guard.

6. It remains to be seen whether the sale is valid to the extent of the father's interest in the property. Referring to West and Buhler, page 289, we find that it is stated that a single member cannot, according to the Shastras and to Colebrooke, deal directly with any portion of the common property, but that, acting on the

dictum of Colebrooke, that, in case of an alienation for valuable consideration, equity would perhaps award partition to the alienee, the Court has allowed execution against the common property to ascertain the individual share, and make it available to the creditor, and has recognised that a single co-parcener may sell or incumber his own share for valuable consideration, the vendor acquiring a right to partition; and the Madras and Bombay High Courts have acted on this principle in the case of both voluntary and involuntary sales.* But the principle cannot be said to have been hitherto recognised on this side of India. In a recent decision, however, of the Privy Council, *Deendyal Lal v. Jugdeep Narain Singh* dated 25th July ILR 1877 Cal. 198, the question has been discussed. In that case a father had executed a bond in favour of defendant who had obtained a decree on it, and taken execution by sale of the father's interests in ancestral property which he himself bought. The son brought the suit to recover the property. A question arose whether under the law of Mitakshara the share of one co-sharer in a joint family estate could be taken and sold in execution of a decree against him alone. After commenting on the cases decided by the Madras and Bombay Courts, and remarking that they affirm not merely the right of a judgment-creditor to seize and sell the interests of his debtor in a joint estate, but also the general right of one member of a joint family to dispose of his share in a joint estate by voluntary conveyance without the concurrence of his coparceners, and admitting that the latter proposition is opposed to several decisions of the Courts of Bengal, the Privy Council decided that the law, as respects the rights of an execution-creditor and of a purchaser at an execution-sale, should be declared to be the same in Bengal as that which exists in Madras; and in the case before them they varied the decree which had been given for possession of the property to be held for the benefit of the joint family, by adding a declaration that the purchaser at the execution-sale has acquired the share and interests of the father in that property, and is entitled to take such proceedings as shall be advised to have the share and interest ascertained by partition. No decision was made in that case whether the same principle should apply to the case of a purchaser in a voluntary sale, which is the case before us; but their Lordships went on to observe that, "however nice the distinction between the rights of a purchaser under a voluntary conveyance and those of a purchaser under an execution-sale may be, it is clear that a distinction may, and in some cases does, exist between them." The objection that the sale is invalid even to the extent of a coparcener's share is based mainly on the texts of Mitakshara, ch. i, Sections i, vv. 27 to 30, and the constitution of the joint Hindu family as defined in *Appovier v. Rama Subha Aiyan* 11 Ind. App. 75. The opposite view is supported by dicta of Colebrooke, Ellis, and Strange, and is that followed in the Madras and Bombay Presidencies, and the question was fully discussed in *Vasudev Bhat v. Venkatesh Sanbhav* 10 Bom. H.C.R. 139. But the question cannot be said to be at this time an open one on this side of India. There is no doubt a current of decisions by this Court, invalidating sales by one coparcener without the consent express or implied of his coparcener, and I have not been able to find any case where a voluntary sale was

held valid to the extent of the seller's own interest,--Ajoodhya Pershad v. Lalta Pershad S.D.A. N.W.P. 1864 vol. ii p. 315; Baboo Ram v. Gajadhar Singh N.W.P. H.C.F.B.R. 1866-67 p. 86; Byjnath Singh v. Rameshwar Dyal S.D.A. N.W.P. 1864 vol. i., p. 299; Jeynarain Singh v. Roshun Singh S.D.A. N.W.P. 1860 The question has been decided in the same way by the Calcutta High Court in Sadabart Prasad Sahu v. Foolbash Koer 3 B.L.R. F.B. 31. The law may be said to have been settled by a course of decisions, and it would be undesirable to disturb it.

7. On this view the sale must be set aside, and the plaintiff is entitled to have possession of the property to be held as joint family property.

Spankie, J.

8. I accept the opinion of Mr. Justice OLDFIELD on the point referred to the Full Bench.

-----Foot Note-----

* See Palanivelappa Kaundan v. Mannaru Naikan 2 Mad. H.C.R. 416; Vasudev Bhat v. Venkatesh Sanbhav 10 Bom. H.C.R. 139, Udaram Sitaram v. Ranu Panduji 11 Bom. H.C.R. 76; and Mahabalaya v. Timaya 12 Bom. H.C.R. 138.