

(1877) 05 AHC CK 0009

Allahabad High Court

Case No: None

Hurst

APPELLANT

Vs

The Mussoorie Bank

RESPONDENT

Date of Decision: May 3, 1877

Citation: (1875) ILR (All) 762

Hon'ble Judges: Robert Stuart, C.J; Spankie, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Robert Stuart, C.J.

This is a regular appeal from a decree of the Subordinate Judge of Dehra Dun dismissing the plaintiff's claim to property called the estate of Mohkampur in virtue of her separate and exclusive right as a legatee under her father's will, and by which he bequeathed to her a sum of Rs. 12,000. The will was dated the 16th February 1864, and there was a codicil dated the 24th February 1865. The testator, J.N. Heseltine, the plaintiff's father, died on the 8th March 1865. The nature and terms of the will had been the subject of a previous suit with respect to a mortgage directed by it to be made, in which the plaintiff's rights as a legatee came to be considered. This suit came up in regular appeal to this Court, and was heard by Oldfield, J., and myself, and determined by our dismissing the appeal and suit on grounds and for reasons which we fully explained in our judgments (see ante, p. 753).

2. The record in that previous suit containing the proceedings in the lower Court and this Court was put in as evidence in the present suit, and it thus appears that the facts which gave rise to the present litigation are these: On the 14th November 1868, Mrs. Hurst, the plaintiff, purchased the estate of Mohkampur from one Mary Wood, the price, as stated in the sale-deed (and correctly stated, for there can be no doubt on this point), being Rs. 6,000. This sum was not at once paid down in cash by the plaintiff, although it does not appear to be disputed that she, and she alone, was

the actual vendee, the money having been found by Mr. Hurst, the plaintiff's husband, she, the plaintiff, claiming that it was on the credit of her legacy that the sale to her took place. Subsequently to this purchase, that is, on the 25th November 1869, the plaintiff purchased from a Mrs. Walsh a certain property called Ashton Cottage, the consideration being Rs. 2,000, which had apparently been raised in the same way as the previous Rs. 6,000 for the purchase of Mohkampur. The two sums amounted to Rs. 8,000, which sum Mrs. Hurst swears in her deposition she repaid to her husband, first by endorsing over to him a draft for Rs. 7,875, being the sum, as explained by the plaintiff, to have been netted for her legacy, and by cash payment from herself of Rs. 125. The Subordinate Judge appears to sneer at and discredit this last circumstance, although it is not apparent why he should do so. For myself I do not see why it should be considered an "odd circumstance" that the plaintiff, situated as she was, could not command Rs. 125 on her own account, and there is not a particle of evidence to show that it was not her own money. The poor woman had suffered in pocket sufficiently already, for she tells us, and the fact plainly appears in the record of the other suit to which I have adverted, that after a good deal of negotiation she disposed of her legacy of Rs. 12,000 to Mr. Vaughan, one of the executors of her father's will, for Rs. 8,000. This, as remarked by me in the previous suit, was a very improper transaction on Mr. Vaughan's part, and it might have been set aside if she had been so minded and it had been worth her while, but no question of the validity of this transaction arises in the present case. I only now allude to the circumstance for the purpose of showing that the sum she thus obtained for the legacy was the precise amount of her purchase of Mohkampur and Ashton Cottage, and the question as to the identity of that payment, as regards its legal character as well as its amount, with her legacy, or whether the payment had been made by her husband from its own resources, or what must be taken to be such, is the first question that has to be considered. The next question is one of law, viz., whether, if the money was hers and not her husband's, it could be used and dealt with by him in the way stated by the Subordinate Judge.

3. The Subordinate Judge correctly states that the first of these is the one important question, although very inconsistently with that he thus expresses himself in his judgment: "That he (the plaintiff's husband) got the legacy money there is no doubt, but there is equally no doubt in my mind that he received it as any other husband would do money coming to his wife," adding, with apparent inconsistency, that "the issue drawn which need be considered is, was this Rs. 6,000, the price paid for Mohkampur, part of Mrs. Hurst's legacy under her father's will or not?" and he decides that it was the husband's money and not the plaintiff's. There is a confusion of mind and want of legal knowledge in all this on the part of the Subordinate Judge which I by no means desire to rebuke, for Mr. Alexander has done his best according to his light, although I could have wished that he had not been so dogmatical in the expression of his views. He ought to have known that Mr. Hurst could not deal with the legacy "as any other husband would do with money

coming to his wife," and that he could not defeat her rights under her father's will by any transaction of his own. His judgment appears to me to be altogether besides the case, and shows that he totally misapprehended the plaintiff's position and her rights under her father's will.

4. That the Rs. 6,000 paid for Mohkampur was her money and not her husband's is, I think, very plain. In the first place, the Subordinate Judge himself says that Mr. Hurst got hold of the legacy money, in the next place the respondents, defendants, argued their case here, as they appear to have done in the Court below, on the assumption that it was her legacy that had been used in raising the purchase-money for Mohkampur, but that by conversion into cash it had changed its character and came under the control of her husband. Such a contention was totally unfounded in law, and I only refer to it now for the purpose of pointing out that, on the defendant's own showing, the money raised and paid by Mr. Hurst was really the plaintiff's and not his. But the plaintiff herself was examined in the Court below, and her evidence is before us. The Subordinate Judge put his gloss upon it, but I feel bound to reject this as altogether uncalled for. The plaintiff's evidence is not in any way contradicted or disputed, and I see no reason whatever for disbelieving it. It will be seen that it is clearly compatible and consistent with all we know of the facts. We have seen that her father made his will in 1864 and died in 1865, and the time that elapsed between the date of the purchase of Mohkampur is amply accounted for by the litigation and negotiations which had in the meantime been going on, and which prevented the payment to her of her legacy until the time mentioned by the Subordinate Judge. She states in her deposition as follows:--"My husband paid the money for me : I was negotiating the sale of my legacy with Mr. Vaughan, the executor : Mr. Vaughan sent me a cheque for the amount, viz., Rs. 7,875, on the Delhi Bank, and I endorsed the whole of it over to my husband; after this receipt I concluded the sale-negotiations for Ashton Cottage, which I had been carrying on for some time previously: the price of Ashton Cottage was Rs. 2,000: I paid Rs. 7,875 to my husband by the cheque, and Rs. 125 in cash; I sold my legacy for Rs. 8,000, and Mr. Vaughan made me go shares in the expenses, so I only got Rs. 7,875." And further on in cross-examination she says, "I bought the village (Mohkampur) in anticipation of my legacy money."

5. Then as respects the Mussoorie Bank's bond she says: Mr. Hurst signed the deed shown me because the loan was to him, not because he had any right in the property." And in regard to Mrs. Dick's mortgage she deposes: "The deed shown me was signed by Mr. Hurst and my self: I never read the deed in question, so I cannot tell how the words moveable and Immovable came into it: I did not get the loan, Mr. Hurst got the loan." The Subordinate Judge makes some unfavourable comments on this evidence, but it is, I consider, unsafe to argue as he does, against the conduct of a wife situated, as the plaintiff was, under the influence and control of a needy husband. I believe she spoke the truth when she said she had not read this deed, and I also believe that she was totally unaware that she was transferring by it any

rights of hers acquired by means of her legacy. In fact, she, could not legally have joined in any such mortgage-deed without making the usual acknowledgment required of married women before the officer appointed by law for that purpose (see Act XXXI of 1854, Section 3,* 4 ♦ and 5 ♦), and it is pretended that any such formality was observed on the occasion.

6. From all these considerations I conclude and thoroughly believe that the Rs. 6,000 paid for Mohkampur was raised on the security of, and was in fact paid out of, the plaintiff's legacy, and from no other source; and that being so the plaintiff's legal rights are not as stated by the Subordinate Judge. I have looked into the record of the previous suit, and I find it there recorded that the bequest of the legacy to the plaintiff in her father's will and codicil is expressed in these terms: "I do hereby give and bequeath to my daughter Charlotte, wife of my said son-in-law, Joseph Hurst, and mother of my said grand-children Joseph and Isabella Hurst, the sum of Rs. 12,000 absolutely for her own sole use and benefit free from the control, debts, and liabilities of her present or of any future husband with whom she may hereafter intermarry, and I direct such said sum of Rs. 12,000 to be paid to my said daughter Charlotte, on her sole and personal receipt from and out of the sum of Rs. 16,000 charged upon my Ellenborough Hotel estate." The effect of such a testamentary disposition is to give the plaintiff not only separate and exclusive use of the legacy money, but sole and absolute control over its disposal. The law on this subject is clearly stated by Mr. Joshua Williams, Q.C, in his "Principles of the law of Real Property," 7th ed., 1865, p. 207 (an able and reliable work of great authority in England, although the author is still alive), as follows:-- "Not only the income, but also the corpus of any property, whether real or personal, may be limited to the separate use of a married woman. Recent decisions have established that a simple gift of a real estate, either with or without the intervention of trustees, for the separate use of a married woman, is sufficient to give her in equity a power to dispose of it by deed or will without the consent or concurrence of her husband. The same rule had long been established with respect to personal estate." Property is thus sometimes settled to wives so as to prevent even its anticipation by them. But it will be observed that there is no such clause in the will of the plaintiff's father. She did anticipate the legacy by accepting the Rs. 6,000 her husband raised for her on its security, and she was entitled to do this, nor by so anticipating did she in any way change the legal character and conditions of the legacy itself, for that, as I have said, could in no wise be defeated by any contrivance on the part of her husband or any of his creditors.

7. The facts and evidence to which I have adverted, and which bring me irresistibly to this conclusion, appeal to me to be clear beyond any doubt, and I see no necessity for a remand.

8. I have only to add that, if the plaintiff's husband took his loan from the Mussoorie Bank, either in ignorance of, or with the knowledge of plaintiff's exclusive rights

under her father's will, he and the Bank must settle it between themselves, but in no case can the one or the other make any claim on the plaintiff, or make use of her money, should they succeed in getting it into their hands without her own deliberate consent given in the manner required by law.

9. I would allow the appeal and, reversing the judgment of the Subordinate Judge, decree the plaintiff's claim. No other conclusion could satisfy not only the legal necessities but the justice of the case. The respondents must of course pay all the costs, those of the lower Court as well as the costs of this appeal.

Spankie, J.

10. The subject-matter of the dispute between the parties and the facts of the case are clearly set forth by the Subordinate Judge. The lower Court considered that the first issue laid down by him decided the case. That issue was, was the sum of Rs. 6,000, the price paid for Mohkampur, part of Mrs. Hurst's legacy under her father's will or not? Ordinarily speaking, the Judge remarks, when we look at a transaction like the one which took place between Mr. and Mrs. Hurst, we should say that the husband had bought the estate, entered his wife's name as purchaser for reasons of his own, and that the endorsement of a cheque or draft made over to him some eighteen or nineteen months afterwards had nothing to do with the matter whatever. The lower Court comes to the conclusion that the money was Hurst's own and had no connection with the Rs. 7,875, the proceeds of the legacy, paid over to him nineteen months after the purchase. The Subordinate Judge comes to this finding on the evidence of Mrs. Hurst which he considers contradictory and improbable. He holds also that Mr. Hurst got possession of the legacy as any other husband would do, money coming to his wife.

11. It is contended in appeal that mauza Mohkampur is the separate and absolute property of the appellant, Charlotte Hurst, and the Court was wrong in finding that her husband, Hurst, was the true owner. Secondly, that the purchase-money of the village in question, though paid in the first instance by appellant's husband, was eventually paid by appellant, who made over her legacy of Rs. 8,000 to her husband in satisfaction of the loan by means of which the said village had been originally purchased by her. Thirdly, that it is not shown that the legacy was paid for any other purpose. Fourthly, that the reasons by the lower Court for its decision are fallacious and erroneous, and do not support the conclusion upon which that decision is based. Fifthly, that the amount entered in the lower Court's decree as pleader's fee is improperly calculated.

12. The suit appears to me to have been insufficiently tried, and Charlotte Hurst's evidence to have been set aside on apparently too slight grounds. There is no reason to doubt that she had the legacy in prospect when the purchase was made, a legacy to herself, and for her own use and benefit and quite independent of her husband's control. With this prospect before her it was not unlikely that she might

contemplate the purchase of Immovable property, and it was not improbable that her husband should have found the money for her in the first instance, and have received it back from her on payment of the legacy. She stated that, when the village was bought, they were well off as compared with their present position, and were then perfectly solvent. She appears to have given her evidence freely. It was not damaged in cross-examination or by the Court when the Judge examined her. She may have been flurried by the Court, but I certainly do not trace in her evidence confused and contradictory statements. These statements at least remain uncontradicted. The other party produced no evidence at all. If the lower Court thought that Charlotte Hurst's evidence was not satisfactory, she should have been allowed the opportunity of bringing forward some proof in corroboration of it. It would seem, however, that the Subordinate Judge was of opinion that the husband must needs have the control of the legacy, and that it was paid to him as any other money coming to his wife would be paid. This, in fact, was doubtless pressed upon him at the hearing, and indeed was contended here by respondent's pleader, Mr. Quarry. There is no doubt that, when from the terms of the gift, settlement or bequest, the property is expressly, or by just implication, designed to be for a woman's separate and exclusive use (for technical words are not necessary), the intention will be fully acted on, and the rights and interests of a wife sedulously protected in equity. There is no difficulty in this case as to the words used. The will of J.N. Heseltine gives the money to Charlotte Hurst "absolutely for her sole use and benefit, free from the control, debts and liabilities of her present or any future husband." The money is to be paid to her "on her sole and personal receipt." These words exclude the marital rights of a woman's husband, and the property will be regarded as being for her exclusive use.

13. So far then Charlotte Hurst, having certainly the exclusive control of this money left to her, might not unreasonably, as remarked above, have entertained the idea of buying Mohkampur, and as her statements remain uncontradicted there was prima facie no reason to doubt the truth of the claim. There are, however, alleged to be certain circumstances, such as the condition of Hurst's affairs for some time past, and the fact that he had treated Mohkampur as his own, regarding which it would have been desirable that further inquiry should have been made. Hurst himself should have been examined, and he should have been questioned regarding the alleged advance to his wife of the sum necessary to pay for Mohkampur, and also respecting the mortgage of that village, amongst other properties, to Mrs. Dick. On the other hand, the defendant should have the opportunity of showing from any other evidence that he could produce, that the money used was not Mrs. Hurst's. The defendant, indeed, should have had evidence ready on this point, as it was in issue on the day fixed for trial. I do not understand why it was not produced if at hand, and if this suit were dismissed now the defendant would have himself to blame. But I would prefer, having regard to the fact that there are some suspicious circumstances in the case, that there should be

further inquiry, and would remand the case to the Subordinate Judge in order that he should try and determine whether the purchase of Mohkampur was made by Charlotte Hurst on her own account and with money advanced by Hurst as a loan, which she subsequently repaid to him, or whether Hurst was the real purchaser and owner, and the money paid was his own.

14. The determination of this issue in a satisfactory way would, I think, dispose of the case. The remand might be u/s 354, Act VIII of 1859. On return of the finding a week might be allowed for objections, and on the expiration thereof the appeal would be disposed of.

*A married woman, with her husband's concurrence, empowered to dispose of her estate by deed acknowledged, etc.

[Section 3:--Every married woman who, either alone or jointly with her husband, is possessed of or entitled to any estate or interest in or any power to be exercised over any lands or hereditaments, which, but for the passing of this Act, she might have disposed of or extinguished by levying a fine, or suffering a recovery, or by joining in either of such assurances, shall have power, by deed, to be acknowledged by her as hereinafter mentioned, to dispose of, release, surrender, or extinguish any such estate, interest, or power, as fully and effectually as if she were an unmarried woman.]

◆ Provision to apply to money subject to be invested in lands.

[Section 4:--The provisions of the last two preceding sections shall, so far as circumstances will admit, apply to money subject to be invested in lands or other hereditaments.]

◆ Execution of deeds by married women

[Section 5 :--No deed to be executed by a married woman under the provisions hereinbefore contained shall, so far as regards the interest of such married woman, be valid or effectual, unless her husband concur therein, nor unless the deed be acknowledged in manner hereinafter prescribed before a Judge of one of Her Majesty's Supreme Courts, or before a Judge or other covenantal officer of the East India Company exercising civil jurisdiction in the place where in such deed shall be acknowledged, or before some Commissioner appointed either specially for the occasion, or appointed as a permanent Commissioner by one of Her Majesty's said Courts to take such acknowledgments.]