
(1875) 07 PRI CK 0002

Privy Council

Case No: None

Baijun Doobey and
Others

APPELLANT

Vs

Brij Bhookun Lall
Awusti

RESPONDENT

Date of Decision: July 3, 1875

Citation: (1875) 2 IndApp 275

Hon'ble Judges: James W. Colvile, Barnes Peacock, Montague E. Smith, Robert P. Collier, JJ.

Judgement

Barnes Peacock, J.

1. This is a suit brought by Brij Bhookun Ball against Baijun Doobey, to declare his right to the inheritance of lot Mowravnn, and to obtain possession of that estate. The Plaintiff claims the estate by right of inheritance from Chintamun as reversionary heir after the death of Doorga Kouwar, the widow of Chintamun. The Defendant claims by purchase under an execution of a decree against Doorga, the widow, and the question is, whether, under that decree, only the widow's interest or the absolute estate was sold. If only the widow's interest, then upon the death of the widow the Plaintiff succeeded to the estate as reversionary heir of Chintamun, and is entitled to recover; if, on the other hand, the whole interest passed under the sale, then the Plaintiff as reversionary heir upon the death of the widow took no interest, but the estate passed to the Defendant Baijun by reason of his purchase under the decree.

2. Now it appears that Sheo Churn and Muddun Mohun, two brothers, the sons of Deo Kishen, separated in estate. Muddun Mohun took one share of the estate and Sheo Churn the other. Muddun Mohun therefore obtained a separate estate. The lands are situate in the district of Gya, and are subject to the rules of the Mitakshara law. Muddun Mohun having got this separate estate died, leaving two sons, Balgobind and Chintamun; Balgobind died childless and the whole estate came to Chintamun. Chintamun consequently acquired the estate by inheritance, and it was ancestral estate derived from

the father, Muddim Mohun. Chintamun died child-loss, leaving two widows, Doorga Kouwar and Radha Komvar. Muddun Mohan, the father, left a widow, who was the mother of Chintamun. The mother, Net Kouwar, the widow of Muddun Mohun, was entitled to be maintained out of the estate held by Chintamun. The maintenance of Net Kouwar, the widow of Muddun Mohun, was a charge upon the inheritance which came from Muddun Mohun. The liability to maintain the mother passed to Chintamun when he got the estate of his father, and when the estate passed from Chintamun to his widow the liability to maintain Net Kouwar still attached to the inheritance, and Doorga was bound to maintain her out of the inheritance. It appears that she allowed the maintenance of the mother, which had been fixed by the two brothers at Rs. 200 a year, to fall into arrear for about five years, making Rs. 1000 for the five years. In consequence Net Kouwar brought a suit against her personally for the amount due for maintenance with interest.

3. The Plaintiff obtained a decree whereby it was ordered that the Plaintiff should recover from the Defendant on account of her claim Sicca Rs. 1033 5a. 6p., which is equivalent to Company's Rs. 1102 3a. 6p. The plaint prayed that the Defendant be ordered to pay that amount, and by the decree it was ordered that the Plaintiff do get from the Defendant that amount.

4. Now the decree being a personal decree against the widow, according to the case in the High Court cited from the 6th Weekly Reporter Page 304, all that would be sold under it was the interest of the widow. It was there held that where only the rights and interests of a Hindu widow in the property left by her husband were sold in execution of a decree against her on account of a debt contracted by her, and neither the decree nor the sale proceedings declared the property itself liable for the debt, the purchaser obtained an interest in the estate only during the widow's lifetime. This was a personal debt of the widow, and there is nothing to shew that the estate of Muddun Mohun was charged by the decree. The sale against her in discharge of her personal liability was of the interest which belonged to her, and not of the estate which belonged to her husband. It was the widow's property only that was liable to be sold, or was sold, in discharge of her personal debt.

5. The notification of the sale under the decree was that a sale would be held of whatever right and interest the judgment debtor had in the estates. It does not say that it is to be levied by sale of the husband's assets, but that it is to be realised by the sale "of whatever right and interest the judgment debtor had in the estates." Then it is specifically pointed out: " Besides the right and interest of the judgment debtor the right and interest of no other person will be sold at the said auction." The right and interest of the judgment debtor which was to be sold, was that to which she was entitled, that which was liable to make good her default in non-payment of the maintenance. The sale took place under that notification, and it is clear, if that is important, that Brij Bhookun, the Plaintiff, understood that what was to be sold was the widow's estate, not his own reversionary interest as the heir of his uncle. He wanted to sell the widow's estate, not his own interest. The real question is what was liable to be sold under the decree, and what in fact

was sold. The purchaser may have made a mistake. He may have thought that the Court was selling something which it did not sell, but he was informed distinctly by the notification that the Court was selling the interest of the Defendant in the estate, and that besides that interest no other interest was being sold. The Plaintiff having purchased the interest of the judgment debtor obtained a certificate of the purchase, which stated that whatever right, title, and interest the judgment debtor had in the said property had ceased from the date of the sale, and had become vested in the auction purchaser.

6. It appears, therefore, to their Lordships that what was intended to be sold was the widow's interest only and not the absolute estate in the lot, and that consequently upon the death of the widow the lot descended to the Plaintiff as the reversionary heir of her husband, and that the purchaser did not obtain the absolute estate, but only the widow's interest in it, which continued only so long as the widow lived.

7. Several cases have been cited. The first case which was referred to was the case in Marshall Page 614. That case was fully gone into, and it was explained in the course of the argument that the suit was against the widow not in her own right as widow, but as representative of her son. In that case the widow had no estate at all to be sold, and when the decree and the order for sale are examined, it is clear that what was intended was the sale of the interest of the debtor, that was the interest of the son to whom the widow was the guardian; and when it was said that the interest of the Defendant was sold, the widow's interest was not intended, but the interest of the person who was liable, and that was the son. That decision was subsequently approved by this Board 14 Moore's Ind. App. Ca. p. 605. It appears to their Lordships that those cases are no authorities to shew that, under the judgment and execution in this case, anything further passed to the purchaser than the widow's interest. Then two cases were cited, one from the 12th Weekly Reporter Page 504. That was a very different case from the present. It was there held, that "Where a widow's estate is sold for arrears of rent it is not merely the widow's life interest that is transferred, and the reversionary heir cannot follow the estate after her death." There the widow was sued for rent under Act X. of 1859. Section 105 of that Act enacts that, "If the decree be for an arrear of rent due in respect of an under tenure which by the title deeds or the custom of the country is transferable by sale, the judgment creditor may make application for the sale of the tenure, and the tenure may thereupon be brought to sale in execution of the decree." The rent was due to the landlord. He recovered a decree and under it the tenure, not the widow's interest, was sold.

8. The other case which was cited was from the 15th Weekly Reporter Page 264. That was the case of a suit brought for arrears of rent. It was there held, that "When neither the Hindu widow who has succeeded by inheritance nor the reversioner chooses to pay the arrears of rent which have fallen due upon a tenure, the tenure, if sold for such arrears, passes to the purchaser by the sale;" that is to say, if the rent is not paid the tenure is answerable, and the landlord has a right to look to the tenure. Those cases therefore are not at all applicable to the present, and are no authorities in favour of the Defendants.

9. Then another case was cited which, in their Lordships' opinion, bears out the position already laid down. It is in the 11th Moore's Indian Appeals Page 257. It was there held that the decree in that case was not a decree against the land but a personal decree. It bears out the view which their Lordships have taken with regard to this decree, that it was a decree in a suit against the widow personally, that the decree was against her personally; that the attachment was to sell her property, that is, the interest which belonged to her in the estate, and which was liable to make good her default.

10. Looking, therefore to the whole case, their Lordships are of opinion that the decision of the High Court was correct, and they will humbly recommend Her Majesty that that decree be affirmed, with the costs of this appeal.