(1880) 11 PRI CK 0002

Privy Council

Case No: None

Baboo Kameswar Pershad		APPELLANT
	Vs	
Run Bahadoor Singh		RESPONDENT

Date of Decision: Nov. 23, 1880

Citation: (1880) 8 IndApp 8

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

Judgement

James W. Colvile, J.

1. The only material point to be decided upon this appeal arises in a somewhat peculiar manner. The suit was originally brought by the Plaintiff, Appellant, who is a mahajun carrying on business in the city of Benares, and also at Gya, to enforce a bond and mortgage against the late Rani Asmedh Konwar, the instrument being dated the 1st of March, 1872. It appearing, however, that the next reversionary heir was in possession of the property alleged to have been mortgaged under an ikrarnamah executed by the Rani putting him in possession, apparently, of the whole of her husband''s estate, he was joined as a party Defendant in the suit; and it was prayed that a decree might be made for the amount sued for, with costs and interest, and that it might be awarded " by sale of the mortgaged and hypothecated properties, and in case the same do not cover the amount by the sale of other properties, and from the person of the debtor." The suit, therefore, was framed for the purpose of obtaining, in case of need, an absolute decree for the sale of the property alleged to have been mortgaged, including the reversionary interest of the second Defendant therein; and, accordingly, the second issue was settled so as to raise the question how far the reversionary estate was bound by the widow''s disposition. It is in these words: " Whether or not was the amount claimed taken for a legal necessity; and whether or not is the amount of debt repayable by the property left by the husband of the widow, Mussummat Asmedh Konwar, who contracted the debt."

2. The Subordinate Judge, who tried the case in the first instance, found wholly in favour of the Plaintiff, and gave a decree for the amount sued for, and a further direction that in case it was not paid, the mortgaged properties should be sold out and out. The High Court, upon appeal, so far confirmed the decree of the Subordinate Judge, that it left the widow bound to the extent of being a debtor on the bond for the amount stated on the face of the bond to be due, but determined that the deed had not been properly explained to her; that she did not understand, or was not properly informed, that it was a deed mortgaging the property ; and, consequently, that all that could be given against her was a decree in the nature of an ordinary money decree.

3. The appeal to their Lordships is against the decree of the High Court, so far only as it was adverse to the Plaintiff. After the decree was pronounced, and before the appeal was presented here, the widow died, and the second Defendant, the only Respondent upon the record, became the absolute owner of the property in question.

4. Their Lordships concur with the High Court in thinking that, upon the evidence, there was a total failure of proof as to the proper explanation of this deed to the lady. It is not necessary for them to say whether, that being so, they should have gone so far as to make the money decree which was made against her. That is not the subject of appeal, and they must assume that so far the decree was properly made. Nor do they think it necessary to express any opinion whether in point of fact the bond sued upon, upon the face of it, purports to pledge more than the widow''s interest. They will assume that it was intended by those who prepared it to be a pledge of the mouzahs and property which she had inherited from her husband. The only question to be decided on this appeal is, whether the transaction created a charge on the inheritance; whether it made the property in question when in the hands of the Respondent liable to satisfy the bond debt for which a decree has been made against the widow.

5. In order to establish the affirmative of this proposition, it is necessary, in the first place, to shew that the widow intended to do that which the law allows her to do in certain specified cases ; viz., to make a pledge of her husband''s estate. But if the High Court was right in supposing that the document was not properly explained to her, there is a failure of proof that she did really intend to do that. The question whether the property was mortgaged at all depends upon the fact whether she intentionally executed a deed containing such a stipulation; and their Lordships have already intimated that, in their judgment, the High Court, dealing as it did with the evidence of Bishen Sahi and the other evidence in the cause, was right in coming to the conclusion that there was no such proper explanation of the bond as would bind her in respect of that stipulation.

6. Again, if this were otherwise, there would remain the question whether the Plaintiff had satisfied the burden of proof which every Plaintiff who seeks to charge

the inheritance after the death of a widow, by virtue of a security executed by her, has to sustain. Their Lordship in no degree depart from the principles laid down in the case of Hunooman Persaud Panday v. Mussumat Babooee Munraj Koonwaree 6 Moore, Ind. Ap. Ca. 393., which has been so often cited. They have applied those principles in recent cases, not only to the case of a manager for an infant, which was the case there, but to transactions on all-fours with the present, namely, alienations by a widow, and to transactions in which a father, in derogation of the rights of his son under the Mitakshara law, has made an alienation of ancestral family estate. The principle, broadly laid down, is, that although the lender is not bound to see to the application of the money, and does not lose his rights if upon a bond fide inquiry he has been deceived as to the existence of the necessity which he had reasonable grounds for supposing to exist, he still is under an obligation to do certain things. The words of the judgment in that case are: " Their Lordships think that the lender is bound to inquire into the necessities for the loan, and to satisfy himself as well as he can, with reference to the parties with whom he is dealing, that the manager is acting in the particular instance for the benefit of the estate ; but they think that if he does so inquire and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge, and they do not think that under such circumstances he is bound to see to the application of the money." And the judgment ends thus : " Their Lordships do not think that a bona fide creditor should suffer when he has acted honestly and with due caution, but is himself deceived."

7. It appears to their Lordships that, such being the law, any creditor who comes into Court to enforce a right similar to that which is claimed in the present suit is bound at least to shew the nature of the transaction, and that in advancing his money he gave credit on reasonable grounds to an assertion that the money was wanted for one of the recognised necessities.

8. In this ease there is hardly any evidence on the part of the Plaintiff to show what negotiations took place with him, and what representations induced him to advance the money ; still less is there any proof that, having those representations before him, he made the necessary and proper inquiries. The chief witness that has been called, Fakir Chand, says of himself, that, although he is a village wasil-baki-nuvis and writes certain zemindary books, he has nothing to do with the books relating to the mahajani business. It is true that he speaks to having been present when persons purporting to come from the Rani asked for a loan of money for payment of Government revenue and the like; but one would expect in such a case as this that the gomashta, who had the management of the books, and who was responsible for lending money from the kooti, would be the person to come forward and shew upon the faith of what representations and after what inquiry he advanced the money. There is no evidence at all of that kind.

9. Then, again, the servants who are called from the Defendant''s establishment give evidence which cuts both ways, because, although Dost Mahomed, calling himself one of the dewans of the Rani, professed to have gone to the Plaintiff and to have taken money from him, he shews prima facie that there was no real necessity for the Plaintiff to borrow money under the power which she could exercise only in the case of certain necessities. His evidence goes to shew that the lady was in fact in very easy circumstances, and that she had a net revenue of about Rs. 130,000. He says: " The amount of collections used to remain in the custody of the dewan. A certain amount, when required, used to be paid to the Rani. I cannot say off-hand what amount of collection comes to my hands. The expenses of the Rani, whatever they may be, are restricted to charitable and pious purposes and distribution to people, &c. Besides this, she does not spend anything with a lavish hand." So again Mahadeo Lal, who was called on the part of the Defendant, puts her income at even a larger amount, and says: " The balance, exceeding a lac and thirty thousand, used to be a saving to the Rani as profit. This amount used to be lodged in the custody of the dewan. The necessary expenses used to be supplied to the Rani. The money would not be lodged in the cutcherry."

10. The evidence of those two persons seems to their Lordships to be consistent with this state of things; that the Rani''s servants, the dewans, chiefly managed her affairs ; that if they had immediate occasion for a sum of money they may have gone to the Plaintiff''s kooti and got a temporary loan, but it fails to prove a necessity so serious as would justify a pledge of her husband''s estate in excess of the ordinary powers of a Hindu widow, or reasonable grounds for the belief of such a necessity.

11. Then as to the latest transaction there is little or no evidence at all given by the Plaintiff as to the settlement of the former accounts or the circumstances under which he advanced the small sum which made up the amount sued for upon the last bond. All that the witnesses state is that one Baboo Ram Coomar, who is said to be also a dewan of the Rani''s, told the moonshi to get this bond signed, some speaking to the making of the bond; but as to the part taken by the Plaintiff in making the last bond, or as to any inquiries made on that occasion, there is no evidence whatever.

12. It appears to their Lordships that the High Court Was right on both grounds in treating the transaction as not binding upon the estate; and they will, therefore, humbly advise Her Majesty to affirm the decree of that Court and to dismiss this appeal.