

(1879) 07 PRI CK 0003

Privy Council

Case No: None

Bissessur Lall Sahoo

APPELLANT

Vs

Maharajah  
Luchmessur Singh

RESPONDENT

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Date of Decision: July 15, 1879

Citation: (1879) 6 IndApp 233

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

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### Judgement

Robert P. Collier, J.

1. The points to be decided in this case arise in this way: One Nath Dass died in the year 1853 leaving a son, Ramnath Dass, who died in the year 1855; and Ramnath Dass left two sons, Mosaheb and Chooman. The Rajah of Ramnugger, as he has been called in the argument,--that is to say, the guardian of the infant Rajah of Ramnugger--brought three suits in the year 1862 in respect of rent due from members of the family of Mosaheb and Chooman. In the first suit the judgment was given on the 22nd of March, 1862, and it seems that the Plaintiff in that suit sued the widow of Nath Dass and the widow of Ramnath Dass as guardians of two young men who are assumed to be Mosaheb and Chooman under other names. The claim was for the recovery of rent, about Rs. 3000 odd, which amounted to about Rs. 8000 with interest and costs, and the statement is that Nath Dass and Ramnath Dass took a lease of a certain mouzah Rudarpore, and that the rent accrued in respect of that mouzah. Then it is ordered " that this decree will not be executed against the person and self-acquired property of the judgment-debtors, but it will be executed against the property left by the deceased leaseholders."

2. Upon this judgment execution was issued against a certain mouzah Muddunpore, which appears to have been bought in the year 1847 in the name of Ramnath Dass. Whether it was bought by Ramnath Dass for himself and separately, or as a member of the joint family, is a question to be hereafter discussed.

3. There were two other judgments, the nature of which will be subsequently referred to, dated respectively the 9th of April, 1862, and the 16th of April, 1862, whereby large sums were decreed beyond the Rs. 8000 which was obtained by the first decree; and an order was obtained by the Plaintiff empowering him to put up mouzah Muddunpore for sale in satisfaction of all three decrees. This was done, and it was bought in by the Plaintiff at, in round numbers, Rs. 35,000. Mosaheb and Chooman made no objection to this proceeding at the time, or indeed at all; but some three years afterwards they sold to the Plaintiff in this suit their right to recover the difference between the Rs. 8000, the sum obtained by the first decree, and the Rs. 35,000 for which Muddunpore was sold; that is to say, they claimed to recover the sum which mouzah Muddunpore was charged with in execution of the last two decrees; and whatever rights they had the Plaintiff has, neither more nor less.

4. It is necessary in the first place to advert to what was the main contention in the case. It was contended on the part of the Plaintiff that the family of Nath and Ramnath became separate about the year 1839. It was alleged that at that time there was a quarrel between Ramnath Dass and his father, and that they ceased to be joint in food. But on the part of the Plaintiff there was scarcely any evidence of separation of estate; in fact, on his own case, there was some evidence that there was no separation in estate, and that Ramnath Dass acquired no separate property. The first Court held that the separation had been proved, and that mouzah Muddunpore was bought by Ramnath Dass for himself and with his own property, although it certainly does not appear, according to the evidence of the Plaintiff, how he could have obtained the funds for purchasing it. The High Court reversed the decision on this point of the Lower Court, and came to the conclusion that the family was joint and had never separated; and their Lordships agree with the High Court.

5. This being so, the consequence follows, as has been laid down before in the very well-known case of *Gopeekrist Gosain v. Gungapersaud Gosain* 6 Moore's Ind. Ap. Ca. 53., that the purchase of Muddunpore by Ramnath Dass would be assumed to be a purchase, not on his own account, but for the joint family, and that Muddunpore would be joint family property.

6. It now becomes necessary to examine the two decrees subsequent to that of the 22nd of March, 1862, with respect to which there is no dispute. The next decree is dated the 9th of April, 1862, and in that suit Mosaheb Dass is sued as the heir of Nath Dass, and the decree is for the recovery of Rs. 39,000 on account of the rents of a certain mouzah Ramnugger, and it is stated that Nath Dass had taken a lease of that from 1847 to 1854. Then it is further ordered that this decree is not to be executed against the person and self-acquired property of the Defendant, but against the property left by the deceased leaseholder Baboo Nath Dass only.

7. It appears to their Lordships that acting on the principle which follows from their finding that this family was joint, it must be assumed that Mosaheb Dass is sued as

a representative of the family, and that it must further be assumed that Nath Dass in taking the lease of the mouzah here referred to--Ramnugger, in respect of which the rent was due--must be assumed to have taken it on behalf of the family, and that the debt must be deemed to be a debt from the family. With respect to the order as to the execution, it appears to their Lordships that the fair construction of it--though it may not be drawn up with much accuracy--is that the decree is not to be executed against the self-acquired property of Mosaheb, but against the family property which is there described as that left by Nath Dass for the purpose of distinguishing it from the separate property which may have belonged to Mosaheb. The only difficulty with reference to the second and third decrees arises from a certain informality with which they have been drawn up. It appears to their Lordships that looking to the substance of the case, this second decree is a decree against the representative of the family in respect of a family debt, and that it is one which could be properly executed against the joint property of the family, and that Muddunpore was a part of that joint property.

8. The same reasoning applies to the third decree, although curiously enough the action seems to have been brought against the widow as the guardian of Mosaheb. Here there is the same direction with reference to the property, but substantially the same observations apply which have been applied to the former decrees.

9. Their Lordships have therefore come to the conclusion that although there may have been some irregularity in drawing up these decrees, they are substantially decrees in respect of a joint debt of the family and against the representative of the family, and may be properly executed against the joint family property. Their Lordships have therefore come to the conclusion that the High Court has been right in dismissing the appeal from the Lower Court.

10. This being their Lordships' view of the case, they do not think it necessary to go into the questions which were touched upon but not decided by the High Court, whether the vendors of the Plaintiff, or either of them, were bound to dispute the sale of mouzah Muddunpore in the execution proceeding, and whether the Plaintiff was in consequence debarred from bringing this suit.

11. Two cases have been referred to, *Ishan Chunder Mitter v. Buksh Ali Soudagur* Marsh. Rep. 614, *The General Manager of the Raj Durbhunga v. Mararajah Coomar Ramaput Singh* 14 Moore's Ind. Ap. Ca. 605, the effect of which may be stated thus: that in execution proceedings the Court will look at the substance of the transaction, and will not be disposed to set aside an execution upon mere technical grounds when they find that it is substantially right.

12. Under these circumstances their Lordships are of opinion that the judgment of the High Court was right, and they will humbly advise Her Majesty to affirm that judgment and to dismiss this appeal with costs.