Mrinalini Dasi and Another Vs Abinash Chunder Dutt and Others

Court: Calcutta High Court

Date of Decision: April 29, 1910

Acts Referred: Land Acquisition Act, 1894 â€" Section 32

Citation: 6 Ind. Cas. 508

Hon'ble Judges: Mookerjee, J; Carnduff, J

Bench: Division Bench

Judgement

1. The question of law which calls for decision in this appeal is one of some novelty, and relates to the right of Hindu reversioners to compel

payment into Court of a sum of compensation money withdrawn by a person who had a limited interest in property acquired under the Land

Acquisition Act, in respect of which the claimants are the reversionary heirs. The circumstances which have led to the present litigation are not the

subject of controversy between the parties, and maybe briefly narrated. The father of the plaintiffs, Purna Chandra Dutt and the first defendant,

Abinash Chandra Dutt, were two brothers, and held their ancestral properties jointly in equal moieties. Purna Chandra died about the year 1890,

and left a widow, Nistarini, who is the third defendant in this suit, and two daughters Mrinalini and Saiojini who are the plaintiffs-appellants before

us. In 1897, a part of the ancestral estate was acquired under the Land Acquisition Act, and Rs. 600 was fixed as the compensation thereof. As

there was a prospect of the acquisition of the other lands owned by the parties, the first defendant, upon payment of a consideration of Rs. 400,

took conveyance from the third defendant in respect of her share of the properties described in the schedule to the plaint. In 1904, the property

thus purchased by the first defendant was acquired under the Land Acquisition Act, and a sum of about Rs. 6,855 was deposited as the

compensation money. After the first defendant had withdrawn about Rs. 5,755, the plaintiffs were apprised of these transactions, and on the 27th

January 1906, commenced this action for declaration that the conveyance, executed by their mother in favour of the first defendant, (which had

been taken by him in the name of his wife Hemangini, the second defendant), was inoperative as against them, as it had not been executed for legal

necessity, and also for an order upon the first defendant to bring into Court the sum withdrawn by him, so that it might be invested in Government

securities. The plaintiffs further prayed for a temporary injunction to restrain the first two defendants from withdrawing the sum still in deposit in the

collectorate. The defendants resisted the claim substantially on the ground that the conveyance had been executed for valuable consideration and

for legal necessity, that it was consequently binding upon the plaintiffs as reversionary heirs, and that, in any view, the plaintiffs Were not entitled to

compel the defendants to bring back the money into Court. The Courts below have concurrently held that the transfer effected by the third,

defendant in favour of the first defendant was not made for legal necessity, and that there was no foundation for the suggestion that the transfer had

been made with the assent of the plaintiffs. In this view, the Courts below have declared that the transfer would not be binding upon the plaintiffs

after the death of their mother. But the original Court and the Court of appeal have disagreed upon a fundamental point, which is the subject of

controversy before us. The Come of first instance held that, in addition to the declaration, the plaintiffs were entitled to an order upon the

defendants to bring back the money into Court so that it might be invested in Government securities so far as practicable, the balance, if any, being

deposited in the Savings Bank with the result that the first defendant, as purchaser, would receive the interest during the life-time of the third

defendant, and the money would be made over to the reversionary heirs after the death of the latter. The learned District Judge, on the other hand,

has held that the Court has no jurisdiction to make an order of this description, that the plaintiffs must satisfy themselves with a declaration for the

present, and that when the succession opens out in their favour, they must take the chance of litigation against the first defendant for recovery of the

money. The plaintiffs have now appealed to this Court, and on their behalf, it has been argued that the Court has jurisdiction to compel defendants

to refund the sum withdrawn from the collectorate with a view to suitable investment, and also to give appropriate direction for the disposal of the

interest on the invested sum. In support of this proposition, reference has been made to Section 32 of the Land Acquisition Act, which, it has been

suggested, though not directly applicable, furnishes a useful analogy. Reference has also been made to a passage from Story on Equity

Jurisprudence, Section 845A, and to the cases of Johnson v. Mills (1749) 1. Ves. Son. 282; Foster v. Metcalf (1903) 2 Ch. 226 : 72 L.J. Ch.

554 : 88 L.T. 619 : 51 W.R. 529; Durga Ndth v. Chintamoni 8 C.W.N. 11; Hurry Das v. Rangamoni Dassee (1851) 2 Raylor and Bell 279 and

Hurry Dass v. Uppoornah Dassee 6 M.I.A. 433, to show that the Court has ample power, if a proper case is made out, to secure funds in the

hands of a limited owner for the benefit of the ultimate reversioner. In answer to this argument, it has been contended on behalf of the respondent

that the case of Durga Nath v. Chintamoni 8 C.W.N. 11 formulates the principle of law applicable to the possession of movable properties by

Hindu widows in too comprehensive terms, and that unless actual spoliation is established, the Court will not, as a rule, interfere. In support of this

proposition, reference has been made to the case of Subba Reddi v. Chengalammam 22 M. 126; and the notes to Garth v. Cotton (1750) 1 Ves.

Sen. 524 : 2 Whit and Tudor 970 Atk. 751. After careful consideration of the arguments which have been addressed to us on both sides, we feel

no doubt whatever that the plaintiffs are entitled to compel the defendants to bring back the money into Court for the purpose of investment, and

that it is wholly unnecessary to consider the right of a Hindu reversioner to interfere with the enjoyment or disposal of movable property inherited

by a Hindu widow from her husband.

2. Section 32 of the Land Acquisition Act provides that if any money is deposited in Court u/s 31, Sub-section (2), and if to appears that the land

in respect whereof the sum was awarded, belonged to any person who had no power to alienate the same, the Court shall, (a) order the money to

be in vested in the purchase of other lands to be held "" under the like title and conditions of ownership as the lands in respect of which such money

shall have been deposited, was held, or, (b) if such purchase cannot be effected forthwith, then in such Government or other securities as the Court

shall think fit. There can be no doubt that this section was intended to be applied to the case of the acquisition of lands held by a qualified owner in

the position of a Hindu widow. It has been faintly suggested by the learned Vakil for the respondent that a Hindu widow in possession of the estate

of her husband cannot be properly described as a person who has no power to alienate the same. There is, in our opinion, no force in this

contention, for the Legislature obviously intended to apply the section to cases of persons who have no power to alienate the property acquired as

absolute owner. Indeed, it has been ruled in the cases of Sheo Rattan Rai v. Mohri 21 A. 354 and Sheo Prosad v. Joleha 24 A. 189 that Section

32 is applicable to the case of Hindu windows who hold possession of the property acquired as limited owners. This view is not opposed to the

decision in Mohammed Ali v. Ahmed Ali 26 M. 287, which related to the acquisition of property owned by a Mohamedan family governed by the

Morruma Katyain Law, and in which it was held that the Tarwad had power to alienate the land. It is clear, therefore, that, but for the conveyance

executed by the mother of the plaintiffs in favour of the first defendantm the property would have continued to stand in her name, and upon its

acquisition it would have been obligatory upon the Court, u/s 32, either to invest the sum awarded in the purchase of lands, or to invest it in

approved securities. That course, however, became impossible in the events which had happened, and the object of the law was defeated by

means of the conveyance executed by the third defendant in favour of the first defendant, by which she professed to transfer absolutely for a sum

of Rs. 3,000. Under these circumstances, it is contended on behalf of the respondent that, as Section 32 has been evaded successfully, the result

which might have been obtained by its application, ought not to be allowed to be achieved indirectly. Now, it may be a matter for controversy

whether when money has been withdrawn in violation of Section 32, the Land Acquisition Court can compel the refund of the money improperly

withdrawn, and can take adequate steps to enforce its order made in that behalf. The case of Nobin Kali Debi v. Bonalata Debi 32 C. 921 : 2

C.L.J. 595 indicates that the Land Acquisition Court has such authority, while the case of Gobindo Ranee Dassi v. Brinda Ranee Dassi 35 C.

1104 : C.W.N. 1039, on the other hand, seems to hold that the Land Acquisition Court is helpless in the matter; but this latter view was adopted

on the assumption that the Civil Court, in a suit properly framed for the purpose, may afford adequate relief. The learned Judges observed, that

although a Court may have inherent power to order a refund of money which has been wrongfully obtained by any party by an abase of its

process, a District Judge is not entitled to order a refund of money paid by a Collector under the Land Acquisition Act without any irregularity

apparent at the time, and without any order from the Civil Court. It is needless for us to consider whether the view taken in the case of Nobin, Kali

Debi v. Bonalata Bebi 32 C. 921 : 2 C.L.J. 595; or that adopted in Gobindo Ranee Dassi v. Brinda Ranee Dassi 35 C. 1104 : 12 C.W.N. 1039,

is well-founded on principle. One position appears, to us to be beyond controversy, namely, that when a Civil Court gives a declaration, as the

Court below has done in the present case, that a defendant has a qualified interest in property, but under the pretence of absolute ownership has

taken possession of funds which he would not otherwise have been entitled to seize in view of the provisions of Section 32 of the Land Acquisition

Act, the Court has ample power to give necessary directions to render effective the declaration which it has made. If any authority is needed for

this proposition, reference may be made to the case of London North Western Railway v. Lancaster Corporation (1851) 15 Bev. 22. In that case,

a Railway company, under pressure, paid the purchase-money for lands acquired under the Lands Clauses Act, 1845, to the owners of the

property, instead of bringing it into Court u/s 69 of the Statute (8 and 9 Vict. C. 18); which corresponds with Section 32 of the Land Acquisition

Act. Sir John Romilly M.R. ruled that, upon a bill filed by the company who had acquired the land, the owners would be compelled on motion to

pay into Court the purchase-money in their hands for the purpose of interim protection. If we regard the matter as one of principle, it is obvious

that the contrary view urged by the respondent is entirely unsustainable. As was pointed out by Sir George Jessol, M.R. in Kelland v. Fulford

(1877) 6 Ch. D. 491 : 47 L.J. Ch. 94 : 25 W.R. 606, when land has beer converted into, money by reason of proceedings under, the Lands

Clauses Act, the money remains impressed with the character of real estate see also Ex parte Walker (1853) 1 Drewry 508; In re Harrop"s Estate

(1857) 3 Drewry 726. In other words, till the money passes into the hands of a person absolutely in titled thereto, there is a constructive

reconversion of it into land. To put the matter1 in another way, Section 32 makes it reasonably plain that, although an owner may be deprived of

his land for the sake of public purposes, the Legislature intended that tile protection enjoyed by reversionary heirs, when land is in the hands of

limited owners, should not, by reason of the acquisition alone, be completely withdrawn. This object would be defeated if upon the conversion of

the land into money, the limited owner was allowed to seize the fund and to deal with it as absolute owner. If such a state of things was tolerated,

the possibility would not, by any means, be too remote, that the ultimate owners may be deprived of the use of the fund upon the termination of the

limited estate. There is obviously a fundamental distinction between the class of cases now before us in which land in the possession of a limited

owner like a Hindu widow, or a transfer from her without legal necessity, is converted into money, and the other class of referred to by the learned

Vakil for the respondent, in which a Hindu widow has come into possession of valuable movables as title heiress of her husband. In the class of

cases now before us, but for the intervention of the state and the compulsory acquisition of the land, the reversionary heir would have ample

protection against unauthorized alienation by the widow. The sole question, therefore, is whether as a necessary consequence of the conversion of

the land into money, the protection which the reversioner would otherwise enjoy should be completely withdrawn. In the other Clause of cases,

where a, Hindu widow as heiress comes into possession of cash or valuable movables left by her husband, the question arises whether the

reversionary heir should be allowed to intervene, and restrict the enjoyment or disposition of the property by the qualified owner. In our opinion,

there is no room for doubt that the Court has ample authority to give suitable directions for the protection of the reversionary heir who can

legitimately contend that as land is capable of identification, while money is not ear-marked, his position ought not to be prejudiced needlessly by

the compulsory conversion of the land in which lie is ultimately interested into money by the intervention of the state. The learned Vakil for the

respondent has, however, argued that there is no express statutory provision which authorizes the Court to give such protection to the reversioner.

This may be conceded; but it is well-settled that Courts in this country, in the absence of statutory provisions precisely applicable to a particular set

of circumstances, are to act according to rules of equity, justice and good conscience; see, for example, Act XII of 1887, Section 37. As

observed by Domat in a well-known passage (Civil Law 12, 17), which is quoted with approval by Sir Barries Peacock, C. 1., in his judgment in

the Full Bench case of Hurro Chunder v. Sooradhoonee 9 W.R. 402 : B.L.R. Suppl. 985: Since laws are general rules, they ca nnot regulate the

time to come, so as to make express provision against all inconveniences which are infinite in number and that their dispositions should express all

the cases that may possibly happen. It is, therefore, ""the duty of the Judges to apply the laws not only to what appears to be regulated by their

express dispositions, but to all the cases where a just application of them may be made, and which appear to be comprehended within the express

sense of the law, or within the consequences that may be gathered from if."" In other words, the Court must be careful to see that the ultimately

successful party does reap the fruits of the litigation and not obtain a merely barren success, otherwise the result would be a failure of justice for the

administration of which alone Courts exist. It is clear that the Court has in suits of this description, which fall within the class of suits to quit title or

to prevent or remove clouds on title, much wider powers than the grant of a mere declaration; the Court may, for instance, grant an injunction or

any other incidental relief as the justice of the case may demand; (Pomeroy on Equity Jurisprudence, Volume 6, Chapter 36, Section 743, and

Volume 3, Section 1128). In the case before us, though the provisions of Section 32 of the Land Acquisition Act are not directly applicable in the

contingency which has happened, a contingency due entirely to the action of the defendant by, which he has defeated the application Of Section

32, and seized the compensation money under colon of a deed of absolute transfer, there is no room for reasonable default that the Court should

give such directions as would effectuate the purpose which the Legislature had undoubtedly in view. In our opinion, the Court has ample power to

compel the defendant to bring the money back into Court for the purpose of investment.

3. The learned Vakil for the respondent has suggested that if his contention should be overruled, he should be allowed to retain the money and be

merely called upon to furnish security in immovable property to the satisfaction of the Court. We are clearly of opinion that this suggestion ought

no, to be entertained. If a security were accepted questions might arise as to its sufficiency, and it is not improbable that when upon the death of

the widow, an attempt will be made to enforce the security, protracted litigation may result besides, there is no reason why after the death of the

widow, the reversioners should be compelled to have recourse to that at all to realise money o which they are lawfully entitled to take possession

immediately upon her death. The order of the Court of first instance, therefore, so far as it goes, is appropriate; but the scope of ought to be

widened in one direct ion Section 32 of the Land Acquisition Act provides that the compensation money may be invested approved securities, if it

cannot be applied in the purchase of other lands to be held under the like title and conditions of ownership as he land acquired. We think that

direction to this effect should be incorporated in the decree of the Court of first instance, namely, that the Subordinate Judge may, in his discretion,

invest the money in the Purchase other hinds, that, if this is done, the first defendant would be entitled to hold possession of it as limited owner

during the life-time of the widow, and that upon her death the property would pass into the hands of the then reversioners of the original owner

4. The result, therefore, is that this appeal must be allowed, the decree of the Distinct Hudge set aside, and that of the Subordinate Judge restored

with the variation just indicated. The appellants are entitled to their costs both here and in the Court of appeal below.