

(1910) 04 CAL CK 0001

Calcutta High Court

Case No: None

Mrinalini Dasi and
Another

APPELLANT

Vs

Abinash Chunder Dutt
and Others

RESPONDENT

Date of Decision: April 29, 1910

Acts Referred:

- Land Acquisition Act, 1894 - 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novelty, and relates to the right of Hindu reversioners to compel payment into Court of a sum of compensation money withdrawn by a person who had a limited interest in property acquired under the Land Acquisition Act, in respect of which the claimants are the reversionary heirs.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 After the first defendant had withdrawn about Rs. 5,755, the plaintiffs were apprised of these transactions, and on the 27th January 1906, commenced this action for declaration that the conveyance,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had not been executed for legal necessity, and also for an order upon the first defendant to bring into Court the sum withdrawn by him, so that it might be invested in Government securities.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 Court 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 Nidhi v. Chintamani* 8 C.W.N. 11; *Hurry Das v. Rangamani Dasse* (1851) 2 Raylor and Bell 279 and *Hurry Dass v. Uppoornah Dasse* 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. Chintamani* 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 it 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 invested 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 widows 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 defendant 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 abuse 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 Debi* 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 been 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 entitled 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 title 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 class 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 he 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 Barrie 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 cannot 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 it." 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.