

(1919) 07 CAL CK 0002

Calcutta High Court

Case No: None

Jagat Chandra Chowdhury and
Others

APPELLANT

Vs

Biswambhar Roy and Others

RESPONDENT

Date of Decision: July 22, 1919

Citation: 55 Ind. Cas. 743

Hon'ble Judges: Ernest Fletcher, J; Duval, J

Bench: Division Bench

Judgement

Fletcher, J.

In this case, the plaintiffs appeal against the decision of the learned District Judge of Dacca, dated the 21st January 1918, affirming the decision of the fifth Subordinate Judge of the same place. The plaintiffs brought the suit to recover possession of certain land. What happened is this. In 1856, the property belonged to one Ananda Mohan. He died leaving him surviving his widow Raj Mohi and a daughter by a predeceased wife, the name of such daughter being Janaki Dasi. On the 18th January 1908 Raj Mohi sold to the defendants Nos. 2 and 3 the property by a kobala of that date. Raj Mohi died in April 1909. On the 9th December 1909, Janaki Dasi, that is, the daughter of Ananda, Mohan, by a conveyance sold and conveyed the same property to the plaintiffs. To that conveyance, the then reversionary heirs, namely, the defendants Nos. 17, 18 and 19, who are the sons of Janaki Dasi, assented and they also joined in the conveyance. Janaki Dasi died in 1910. The plaintiffs brought the suit, as I have already stated, to recover possession. They have failed in that. In the Court of first instance, they failed and rightly failed because the findings of fact made by the learned fifth Subordinate Judge clearly established the right of the contesting defendants to possess the land. But when the case went on appeal to the Court of the learned District Judge, the learned District Judge thought it unnecessary to consider one question which is obviously a question of importance in the case, and that was whether the sale made by Raj Mohi on the 18th January 1908 was a sale by a Hindu widow for legal necessity and would, therefore, operate

to pass the fee simple in the property to the purchasers, the defendants Nos. 2 and 3. The learned District Judge thought that that issue was unnecessary, because in his view he considered that the conveyance by Janaki Dasi with the assent of her sons to the plaintiffs was inoperative. That view cannot be supported. The decision of the Judicial Committee in the case of *Bijoy Gopal Mukerjee v. Krishna Mohishi Debi* 34 C. 329 : 5 C.L.J. 334 : 11 C.W.N. 424 : 9 Bom. L.R. 602 : 17 M.L.J. 154 : 2 M.L.T. 133 : 4 A.L.J. 329 : 34 I.A. 87 (P.C.) shows quite clearly that a conveyance by a Hindu widow, when it is not for legal necessity, is not void but voidable, that is, capable of being avoided; and from the decision of this Court in the case of *Kishori Pal v. Seikh Bhushai Bhuiya* 3 Ind. Cas. 78 : 14 C.W.N. 106 it is obvious if any decision is required for that purpose that such a voidable conveyance cannot be avoided at the instance of a person having no interest in the matter. The persons who could avoid the conveyance of a widow would be either the reversionary heirs at the time that the Hindu widow died or the Hindu woman in this case or the persons who claimed through them. The case, therefore, turns on this. Did Raj Mohi transfer the whole of this property for legal necessity? If she did, then on her death nothing went to Janaki Dasi; and if nothing went to Janaki Dasi, the plaintiffs got nothing. But if the conveyance of Raj Mohi was not for legal necessity, then the conveyance by Janaki Dasi in favour of the plaintiffs, though voidable, is sufficient to support an action in ejectment and it can only be avoided at the instance of the reversionary heirs, who are the defendants Nos. 17, 18 and 19 in this suit, namely, the sons of Janaki Dasi. They have not come forward, nor could they come forward to say that this document was not binding upon them. In my view, the case ought to be sent back to the Court of the learned District Judge to have the appeal reheard; and the first point to be decided in this case is, what is the effect of the conveyance by Raj Mohi? If it is held that that operated to pass the whole property, being executed for legal necessity, then the matter comes to an end. But if it is held that it was not for legal necessity, then the learned Judge, if he adopts the finding that he has adopted in his judgment, should come to the conclusion that this conveyance by Janaki Dasi, which was with the assent of the reversioner, is sufficient to maintain the present action in ejectment, I would set aside the judgment and decree of the learned Judge of the lower Appellate Court and remit the case to him to have the appeal re-heard. Costs will abide the result of the rehearing by the learned Judge.

2. The cross-objection, not being pressed, is dismissed without costs.

Duval, J.

3. I agree.