Debi Doyal Sahoo and Others Vs Thakurai Bhan Pertap Singh and Others

Court: Calcutta High Court

Date of Decision: July 28, 1903

Final Decision: Allowed

Judgement

1. These are four analogous appeals from a judgment passed in two suits by the Subordinate Judge of Ranchi on the 20th December 1899. The

Plaintiffs, 1st party, Raja Rai Bhagwat Dayal Singh, and 2nd party Bhan Pertap and Kripa Narain Singh, brought two suits to set aside certain

alienations made by three Hindu widows in the favour of the Defendants. The Plaintiffs, 2nd party, claimed to be reversioners and entitled to the

properties on the death of the widows, and alleged that they had transferred their rights to the Plaintiff No. 1. The Plaintiff, 1st party, claimed to be

entitled to the properties under a family custom and also as the transferee of the rights of the Plaintiffs Nos. 2 and 3. The Plaintiffs brought two

suits: the one to set aside the alienation of mouzah Lalgarha and the other to se aside the sale by the widows of two other mouzahs named Chianki

and Ganka. The Subordinate Judge tried the suits together. He found the conveyance executed by the Plaintiffs Nos. 2 and 3 in favour of the

Plaintiff No. 1 on the 29th November 1895 void as unconscionable, of a gambling nature and opposed to public policy, and he dismissed the

Plaintiff No. 1"s claim partly as barred by the rule of res judicata and partly as founded on an invalid title. But he yet gave the Plaintiffs Nos. 2 and

3 a decree for the properties conditional on their paying to the Defendant No. 1 the sum of Rs. 11,198-13-6 in the one suit, and Rs. 6,400 in the

other.

2. The Defendants and the Plaintiffs now all appeal.

3. The Defendants appeal in Nos. 67 and 79 and the Plaintiffs in Nos. 85 and 86.

4. The Defendants contended in their appeals (1) that on the finding of the Subordinate Judge, the suits should have been dismissed: (2) that the

suits are barred by limitation : (3) that the Subordinate Judge should have held that the alienations in favour of the Defendants were made for legal

necessity: (4) that in any case the Defendants bond fide made due enquiry as to the existence of debts before purchasing the properties, and (5)

that the Subordinate Judge should not have alloyed the Plaintiffs to have the alienations set aside on payment of Rs. 11,198 and Rs. 6,400, as they

never asked for any such relief and never made any offer to pay off any debts properly chargeable to the estate.

5. The Plaintiffs in their appeals urge (1) that the Subordinate Judge was wrong in holding that the conveyance of the 29th November 1895 was

void, and (2) that the Subordinate Judge should not have made the setting aside of the alienations in favour of the Defendants conditional on their

payment of any sums.

6. It is necessary to deal in the first instance with the question of the validity of the conveyance of the 29th November 1895, as on its decision

depends whether the Defendants'' first plea arises or not.

7. This conveyance was executed in favour of the Plaintiff No. 1 to give him an alternative title to the property. He had already raised his title by

primogeniture or custom in a previous suit, which was dismissed. Hence, he anticipated that, as found by the Subordinate Judge, his title on this

ground would be held to be barred by the rule of res judicata, (a finding which has not been impugned in these appeals), and consequently

considered it necessary to base his claim on another title.

8. We agree with the Subordinate Judge that this deed is void for the reasons assigned by him. In the first place, the property conveyed is worth 3

lakhs. The consideration of the conveyance was Rs. 52,000, of which the sum of Rs. 600 only was said to have been paid. The balance was to be

paid in proportion to the Plaintiffs'' success in recovering the property. Although the English rule against champerty and maintenance does not

prevail in this country in its entirety, yet this would seem clearly an unconscionable and speculative agreement and one opposed to public policy as

fostering promoting gambling in litigation and, hence, void as found by the Subordinate Judge. See Ram Coomar v. Chunder Canto I. L. R. 2 Cal.

233 (1876) and Fischer v. Kamala Naicker 8 Moo. I. A. 187 (1860).

9. The next question which arises is whether the Plaintiffs'' suits should not have in these circumstances been entirely dismissed. It seems to us that

they should. The Plaintiff No. 1 has been found by the Subordinate Judge to have no title to the property. He is the only person who claimed

possession of it. When his suits are dismissed, it seems to us, the Subordinate Judge was not justified in giving the Plaintiffs Nos. 2 and 3 a decree

for relief, which they did not ask for, and in respect of which in their plaints they made no claim. In the plaints they alleged that they had entirely

transferred their interests to the Plaintiff No. 1. They asked for nothing for themselves. In para. 20, it is alleged that the Plaintiffs, second party, are

made parties to the suits merely in order that that the suits may be decided in their presence, so that they may be bound by the decisions. They

might therefore have equally well been Defendants,--if indeed they should not more properly have occupied that position. The Subordinate Judge,

however, says that he can give them a decree because there is a general prayer in the plaint for such further relief as the nature of the case may

require. But in the first place this prayer cannot be held to apply to the Plaintiffs Nos. 2 and 3. They asked for no relief and sought for no

possession. They made no claim on their own account. If they had been seeking for any relief, their claim would have been founded on a different

cause of action from that on which the Plaintiff No. 1''s claim is founded. The Plaintiff No. 1''s claim is founded on the facts (1) that the Plaintiffs

Nos. 2 and 3 are reversioners, and (2) that they have transferred their rights to him. If the Plaintiffs Nos. 2 and 3 had been making any claim in

these suits, it would have been based on the facts (1) that they were reversioners: (2) that they had transferred their rights to the Plaintiff No. 1: and

(3) that their conveyance to him had been found to be invalid. Their cause of action would therefore have been different from that of the Plaintiff

No. 1, and further more, their claim would offend against another well-known rule, viz., that a cause of action must be complete before the

institution of the suit, whereas the cause of action of the Plaintiffs Nos. 2 and 3, if they had any, could only be based on something that had

occurred in the course of the trial of these suits. They would therefore have had no cause of action, until the Subordinate Judge had decided that

the conveyance to the Plaintiff was invalid.

10. That the Plaintiffs Nos. 2 and 3 are not entitled to the relief which the Subordinate Judge has given them (without their asking for it) may be

demonstrated in another way. It has been laid down in Cargill v. Bower 10 Ch. D. 508 (1878) that a prayer for general relief must be regarded as

limited (1) by the facts alleged and (2) by the prayer for express relief. See also Hiralal v. Matilal 6 B. L. R. 682 (1870), Jugul Kissore v. Kartic

Chunder I. L. R. 21 Cal. 120 (1892). Now, in these suits the Plaintiffs Nos. 2 and 3 on the facts alleged in the plaint are entitled to no relief. They

make no claim and ask for nothing. They could not ask for possession or any other relief, as they had transferred their rights to the Plaintiff.

Secondly, the express relief asked for in the plaint was that possession should be given to the Plaintiff, 1st party. This prayer cannot be held to

cover a prayer that possession be given to the Plaintiffs Nos. 2 and 3. The Subordinate Judge seems to us to have been led away in these suits by

equitable considerations, for the application of which there is as a rule no room in matters of procedure.

11. We are therefore of opinion that the Defendants'' appeals should be decreed, and the Plaintiffs'' appeals dismissed on this ground alone. But it

is unnecessary on the view of the cases we take to base our decision entirely on this ground. We therefore go on to consider the other pleas raised

in the cases.

12. In respect of limitation, the Defendants'' pleas are two in number. It is contended 1st, that one of the widows Mussummat Etraj Koer was in

exclusive and adverse possession of the properties for more than the statutory period, and so no rights accrued to the Plaintiffs on the death of any

of the widows, and 2nd, that the properties in dispute were acquired by Tilakdhari Singh and Pahal wan Singh jointly and were in the joint

possession of the family till shortly after the death of Narain Saran Singh, when the widows took exclusive possession of them. We need say no

more with regard to these pleas than that we entirely agree with the Subordinate Judge in finding that they are not justified by the evidence. We

concur in his views regarding the evidence adduced on these two points. We accordingly find with him that the suits are not barred by limitation.

13. We now turn to the main issues raised in the cases, viz. (1) how far there was legal necessity for the alienations, and (2) whether the

Defendants made sufficient enquiries before purchasing the properties in dispute.

14. It is alleged on behalf of the Defendants that the alienations were made for (1) family debts not incurred by the widows: (2) marriage

ceremonies and (3) costs of litigation. There can be no question but that these are all objects for which the widows would be entitled to alienate the

estate (See Ram Coomar Mitter v. Ichamoyi Dasi I. L. R. 6 Cal. 36 (1880). On behalf of the Plaintiff it has been urged that the widows had ample

funds to meet these objects and that it was therefore not necessary for them in the circumstances to alienate any portion of the family property. On

behalf of the Defendants it has been replied that this was not the case, and further that the widows were not bound to defray these expenses out of

the income of the property.

15. It is perfectly clear that there were family debts accruing from the time of Ram Saran, who died in 1879, amounting as admitted by the learned

Counsel for the Plaintiff, to a sum of Rs. 7,440. This debt was subject to high rates of interest, viz., from about 18 to 24 percent, with interest at 24

per cent. on the instalments unpaid on the due date, and, as a rule, these instalments were not paid. This debt must therefore, have doubled, if not

trebled, by 1887, when the first alienation of Chianki and Ganka took place. Then, it is also certain that the widows had to pay for the marriage

ceremonies of 3 girls, who were members of the family, and to incur considerable expenses on this account. It is difficult to ascertain precisely what

amount had to be expended in these marriages. The Plaintiffs'' witnesses say the expenditure was about Rs. 5,000 or Rs. 6,000; but this is certainly

an under-estimate, considering the position of the family and the lavish outlay expected on such occasions. The Defendants'' witnesses estimate

them at from Rs. 20,000 to Rs. 22,000. This may be an exaggeration. But we are satisfied from the Plaintiffs'' evidence that the amount spent on

this account may reasonably be sought in a mean between these two estimates, and that (whether the raiyats offered any contribution or not) the

actual expense could not have been less than Rs. 12,000.

16. The marriages took place in 1884. The first alienation of Chianki and Ganka took place in 1887, and the second, of Lalgarha, in 1801, by

which time this debt must have swollen to a very large amount, not less than double or treble the original amount. This money was also borrowed

at heavy rates of interest, viz., 24 per cent. Then, it is also beyond doubt that the widows had to spend much money in defending law suits. The

grant of the certificates which Mussammat Etraj applied for and obtained was opposed by these very Plaintiffs and legal expenses had to be

incurred. Then the present Plaintiff No. 1, in the second year, after the widows obtained the property instituted a suit in which he claimed the whole

family property on the ground of custom and primogeniture. This suit was carried up to this Court and lasted from 1881 to 1883. This would cost

a very large sum of money. Then, the creditors of the family were continually suing the widows and obtaining decrees. What the exact amount

spent in this way was is uncertain. But it is shown that the pleader''s fees in the High Court case exceeded Rs. 7,000 and there are two bonds, K.

and G. (sic) for Rs. 1,000 and Rs. 2,000 respectively for debts incurred for costs of litigation. But the ladies'' expenses under this head must have

far exceeded these amounts and we do not think the estimate of the expenditure under this bead given by the Defendants in their written statement,

viz., Rs. 20,000 is in any way excessive. These expenses had to be borrowed at the usual rates of between 18 and 24 per cent. One of the bonds

executed by the widows shows that they on one occasion borrowed at the ruinous rate of 48 percent, per annum. It will thus be seen that the

widows had to pay off debts, which exceeded at a moderate computation the sum of Rs. 60,000. On behalf of the Plaintiff it has been contended

that the widows had an ample income and should have been able to pay off all these debts out of the profits of the properties. But the widows

were not bound to pay off the debts of Ram Saran and the costs of the marriages from their income, while the expenses of the litigation were debts

incurred to project and benefit the property, and were therefore properly chargeable on the estate (see Amjad Ali v. Moniram Kalita I. L. R. 12

Cal. 52 (1885) and Harry Mohun Rai v. Gonesh Chunder Doss I. L. R. 10 Cal. 823 (1884). Further, we are satisfied that the Plaintiff has grossly

exaggerated the profits arising from the property and that they were not more than sufficient for the maintenance of the widows and other members

of the family living with them, viz., 3 girls, and 2, if not 3, grandsons Lalan A daughter''s son of Jileb Koer if he did not stay altogether with the

widows, paid them frequent visits. Then, two sons-in-law also visited them on one occasion and got a present of Rs. 500 between them. The

Defendants allege that the income from the property came to only Rs. 1,494 per annum ; while the Plaintiffs aver it was not less than Rs. 6,000

formerly and increased to Rs. 10,000 per annum when the widows came into the property. There can be no doubt that the latter figure is an over-

statement; for Ram Saran contracted debts of above Rs. 7,000. It appears that the income was increased by Ram Saran who traded in ghee and

pack bullocks. These sources of income no doubt fell off on his death. Further, the widows lost one mouzah Nowa in 1883 in the suit instituted

against them by the Plaintiff No. 1, and their income was reduced by two usufructuary mortgages given in 1877 and 1880 (Exs. E and T).

Moreover, they soon bad to sell two other mouzahs Mukta and Datum, Taking Rs. 5,000 or even Rs. 6,000 per annum as the income of the

family, it is clear that the widows could not maintain themselves the members of the family living with them, their servants and agents and pay for

the costs of management, and have any margin to pay off the debts, marriage expenses and costs of litigation. They therefore appear to us to have

been justified in selling off portions of the family property to meet these expenses, even if they were only entitled to charge these debts to the

property, if their income was insufficient to meet them, which we do not consider they were bound in law to do.

17. Again, Chianki and Ganka were sold in 1887 for Rs. 20,916. At that time there were 3 mortgage bonds on these properties (see Exs. I, P and

Q) the amounts of which with interest came to Rs. 19,716. These bonds were paid off with the consideration money, and the balance Rs. 1,200

was paid in cash. This amount is shown by the evidence of Lalan (at p. 202, 1, 32) to have been at once paid away to other creditors. He says:--

Rs. 1,200 were taken to pay off creditors, viz., Bhagwan Shah of Chainpur, another of Garbwa who had supplied utensils during the marriages of

the 3 daughters. These creditors were paid off."" Similarly, in 1891 when Mr. Hodges bought Lalgarha, of the purchase money the sum of Rs.

23,077 was applied to paying off mortgage bonds. Mr. Hodges also deducted a sum of Rs. 2,866-8 for a further debt due to him, and the balance

was devoted to the payment of other creditors. The debts then due are partly specified in the bond itself (Ex. C.) and the witness Misser Chatu

Ram proves the then existing debts (of which he gives details) to have amounted to Rs. 41,800.

18. There is not the slightest ground for supposing that any of the properties were sold off for less than their real value. As a matter of fact, Mr.

Hodges, when he bought Lalgarha made a bad bargain. He had contracted to buy it for Rs. 34,000, but according to Misser Chatu Ram he was

induced ""on account of the helplessness of the Mussammat"" to pay an extra Rs. 7,000. He therefore bought the properties for Rs. 41,000, which

seems to have been above its actual value ; for he sold it again to the Defendant No. 1 in 1893 for Rs. 40,000, which was Rs. 1,000; less than he

had paid for it. This comparison no doubt requires some modification, for while Hodges gave the extra Rs. 7,000; he yet took payment to himself

of the full amount of Rs. 9,100 of Nand Ram''s claim, which he had acquired for only Rs. 5,700, so that he really gave only Rs. 3,600 extra. Still

his sale to the first Defendant was after he had spent Rs. 5,000 in improving the property, so that Mr. Hodges lost by the transaction ; and, even

so, he did not get the price at once, for the purchase money was to be paid in annual instalments of Rs. 5,000 each. Similar remarks apply to the

other properties, and there is considerable exaggeration in the evidence regarding the value of property in that locality.

19. For these reasons we find that there was legal necessity for the alienations and that they were made for adequate consideration.

20. In the circumstances it is unnecessary to consider whether the purchasers made due enquiries as to the existence of legal necessities for the

sale. But it has been contended that they did not do so. We would observe that in our opinion it is clear from the evidence that they did make full

enquiries on this point. The evidence shows that Debi Doyal made many enquiries and was most careful to get his bonds signed by all the three

widows. The evidence of Mr. Sowton the attorney, and of Mr. Mathew, who was in Mr. Hodges employ, shows that Mr. Hodges made similar

enquiries. On behalf of the Plaintiffs it has been argued that these enquiries were directed only to the existence of debts and the causes of these

debts, and that they were not directed as to the fact whether the widows had money enough to pay off the debts without selling the properties. But

it appears to us to be beyond all doubt that the debts were so large and the income of the widows so small that no enquiries on this point were

needed. The Defendant No. 1 was well acquainted with the affairs of the family. He began lending money to Ram Saran in 1868. This is proved by

Ex. XVIII which is a bond in renewal of a bond of that year. Mr. Hodges, too, was well acquainted with the pecuniary position of the family,

which was no doubt a matter of notoriety. Further, the witness Chatu Ram proves the absence of funds on the part of the ladies to meet these

debts for he says: ""The Mussammat had no money nor income to pay the debts."" Hence, it was no doubt unnecessary for the purchasers to inquire

as to the cash balances of the ladies at the time of contraction of each loan. It is clear, however, that the purchasers made sufficient enquiries as to

the existence of necessities which would have justified the ladies in alienating the family property, even if the debts they had to pay off were debts

of their own contracting or debts for the liquidation of which they would not be legally entitled to sell the property. In every aspect of the matter,

then, the sales appear to us to be good and valid sales, which the Plaintiffs are not entitled to set aside.

21. The Subordinate Judge has found that the purchasers, Debi Doyal and Mr. Hodges, were themselves partly to blame for the debts and that

they took advantage of the ladies. In our opinion there is not the slightest ground for coming to this conclusion. Debi Doyal no doubt lent money to

the ladies at very high rates of interest. But it is not shown that the ladies could have borrowed the money from any one else at lower rates, Debi

Doyal in no way induced the ladies to contract debts. The ladies were fully aware of what they were doing. They were in the difficult position in

which all purdanashin ladies are placed when they are called upon to manage property. Their nearest relatives the Plaintiffs, from whom they might

have expected help, were the first to assail them and to throw them into the difficulties of litigation. Afterwards they appear to have been left to

their own devices and to have been to some extent badly served by their servants, who certainly paid the pleaders Devendra Lall Basu and Nil

Ratan Banerji at extravagant rates. But Debi Doyal and Mr. Hodges were in no way responsible for this. The Plaintiffs seem to have been as much

responsible for this as any one. They lived next door to the ladies and never came to their assistance or gave them help of any sort in their

difficulties. On the contrary, they forced them into litigation. Mr. Hodges seems to have been exceedingly forbearing towards the ladies and we do

not believe that he gave the additional Rs. 7,000 or more, strictly speaking the additional Rs. 3,600 for Lalgarha out of any other motive than

generosity, and as the witness Chabi Ram says, because he saw ""the helplessness of the Muasammat."" Debi Doyal has been blamed for not

pressing the ""ladies at the time of the sale of Chianki and Ganka to pay off two Zarpeshgi"" bonds, or rather usufructuary mortgages for Rs. 1,200,

executed in his favour. He says he did not do so, because he was in possession of the lands and the investment was a profitable one. But the ladies

do not appear to have wished to pay off these bonds. Probably they did not wish to pay them off, because they had no interest to pay on them.

They apparently preferred to take Rs. 1,200 in cash and pay off their more pressing creditors, Bhagwan Shah and the Garhwaman to whom they

had probably to pay interest.

22. We therefore feel no doubt that he sales disputed in these suits were good sales, made for legal necessity, and after due enquiries had been

made by the purchasers, which in the circumstances they were not required to make. The suits seem to belong to a class very common in the

country, in which reversioners endeavour to recover property, alienated by Hindu widows for legal and pressing necessities and in which

purchasers of property from such widows too often lose both their property and the money they have paid for it.

23. It is unnecessary we think to discuss the last plea raised by the Defendant, viz., whether the Subordinate Judge was justified in giving the

Plaintiffs decrees for the recovery of the property conditional on their payment to the Defendant of the sums of Rs. 11,198 and Rs. 6,400, We

would only say that we do not think he was. The Plaintiffs made no offer to pay off any sums which might be found to have been borrowed for

legal necessities. The Plaintiffs deliberately chose to rest their cases upon allegations of wasteful, extravagant and unnecessary borrowing and they

have failed to substantiate their allegations. They never offered to repay any portion of the purchase-money and we do not consider that the

alienations were in excess of the legal requirements of the case and that the purchasers in any way failed to make proper enquiries. We therefore

dismiss appeals Nos. 85 and 86, with costs in both Courts and decree appeals Nos. 67 and 79 with costs in both Courts. We allow one set of

costs for both suits.