(1942) 02 CAL CK 0001

Calcutta High Court

Case No: None

Joychand Seraogi and Another		APPELLANT
	Vs	
Shyama Charan Nath and Others		RESPONDENT

Date of Decision: Feb. 2, 1942

Citation: AIR 1942 Cal 448

Judgement

1. This is an appeal on behalf of the defendants and it arises out of a suit commenced by the plaintiffs for establishment of their title to a 2/3rds share of the property in suit and for recovery of possession to the extent of that share. There was a prayer for mesne profits also. The facts so far as they are material for our present purpose may be briefly stated as follows: According to the plaintiffs, the property in suit belonged to one Rakhaldas Boral who died sometime in 1295 B.S. leaving behind him one Nrltyakali Dasi as his sole heir under the Hindu law. Rakhaldas had considerable properties, both debutter and secular, and Nrityakali succeeded to these properties in the limited interest of a Hindu widow. In 1923 Nrityakali took an advance of a certain sum of money from the defendants appellants on a promissory note. In 1927 the defendants instituted a suit upon the promissory note and got a decree against Nrityakali herself. They wanted to have a declaration that the decretal dues might be realised from the estate left by Nrityakali''s husband, but this prayer, it. may be noted, was refused, Nrityakali died in the year 1932 and the present suit, was instituted in July 1933. The plaintiffs'' case was that the decree obtained by the defendants was a mere personal decree and could not bind the estate of Bakhaldas Boral. The purchaser in execution of, such a decree oould not therefore, acquire, any interest in the property which would enure beyond the lifetime of the widow. It was contended, therefore, that the interest which the purchasers acquired ceased on. the death of Nrityakali and the plaintiffs, who were two out of the three reversioners to the estate of Eakhaldas, were entitled to recover possession of the property to the extent of their share. Both the Courts below have decreed the plaintiffs'' suit and the defendants have come up on appeal to this Court. Mr. Hiralat Chakravarty who appears for the appellants has put

forward a two-fold contention. He has contended in the first place that the properties should have been held to belong to Nrityakali herself and not to-Rakhaldas and consequently the reversioners had no claim to these properties. The second point taken is that the plaintiffs were estopped from denying that the debt due to the present appellants was binding on the estate left by Rakhaldas.

2. Now, so far as the first point is concerned, the facts stand thus : The property in dispute is a putni property which belonged to several persons. It was acquired at different times by three different instruments. The first purchase was in 1294 B.S. made by Rakhaldas himself and that related to a four annas share of the putni property. The next purchase was of an eight annas share and that was also in the lifetime of Eakhaldas. The ostensible purchaser on this occasion was one Srinath, an officer of Rakhaldas, but it is found by both the Courts below that Srinath was a mere benamidar of Rakhaldas and this finding has not been challenged before us by Mr. Chakravarty. The controversy really centres round the remaining four annas share acquired a year after Rakhaldas'' death by Nrityakali herself. Both the Courts below have found that this was really an accretion to the estate left by Rakhaldas and the propriety of this finding has been assailed by Mr. Chakravarty. It is now well-settled that a widow has absolute power of disposition over the income of her husband''s property and she is not bound to save a single farthing. If, however, she chooses not to spend the entire income and invests a portion thereof in the acquisition of immovable properties, the question arises as to whether such properties are to be treated as an accretion to the husband''s estate or are to be regarded as stridhan properties of her own. The oases go to show that in such suits the true test is to ascertain the intention of the limited owner under the Hindu law : vide Isri Dutt Koer v. Mt. Hunsbutti Koerin 10 WB. 324. If the widow evinces an intention to appropriate the property to herself and separate it from the corpus of the estate, it would certainly be her absolute property. But if she deals with it in the same way as the rest of her husband''s property it would follow the estate from whence it came. Mr. Chakravarty argues that the presumption in such cases must be that the property was the stridhan property of the widow and the burden of proving the contrary would lie heavily upon the reversioners. There seems to be some amount of divergence of judicial opinion as regards the question of onus in a case like this. The Madras High Court favours the contention of Mr. Chakravarty and enunciates the view that as the widow has absolute power of disposition over the income derived from her husband''s estate she must be presumed to retain the same control over the investment of such income unless there is an indication to the contrary : vide Akkanna v. Venkayya 25 Mad. 351. There are also some observations of this Court in Nirmala Sundari Dassi Vs. Deva Narayan Das Choudhuri and Another, which at first sight seem to support the contention of Mr. Chakravarty. The facts of that case, however, were quite different and as a matter of fact the widow in that case had purchased the property in the benami of another person a fact which would un-mistakeably show what really her intention was. In one of the

earliest pronouncements of the Judicial Committee which is to be found in Babu Sheo Lochan Singh v. Babu Saheb Singh 14 WB. 387 the law was laid down that:

Where a Hindu widow invests the accumulations from her deceased husband''s estate, prima facie it is her intention that they should be regarded as accretions thereto, and not as a separate estate descendible in a different line of succession.

3. It is true that the widow has uncontrolled powers over the income of her husband''s property and is in a position to spend everything she likes without any control whatsoever, but if she does not choose to spend the entire income but prefers to invest it in immovable property it can be argued that prima facie, it was her intention to increase her husband''s estate. The same view was reiterated by the Judicial Committee in Nabakishore Mandal v. Upendrakishore Mandal AIR 1922 P.C. 39. Mr. Chakravarty has drawn our attention to certain observations of the Privy Council in Raja of Ramnad v. Sundara Pandiyasami Tevar AIR 1918 P.C. 156--the passage occurring at p. 71. It appears that the decision of the Madras High Court in Akkanna v. Venkayya 25 Mad. 351 was cited before their Lordships and their Lordships observed in course of their judgment that it may be that the presumption was the other way as laid down in that case. "But at the outside," so runs the judgment, "it is a presumption and it is a question of fact to be determined, if there is any dispute, whether a widow has or has not so dealt with her property." We do not think that the Privy Council has really gone back upon its pronouncements in the earlier cases referred to above, but even assuming that the initial onus is upon the reversioners, I do not think that it is of any assistance to the appellants in the present case. The facts found by the Courts below would conclusively go to show that the widow really treated the subsequent acquisition as a part of the original corpus. As I have said already, a twelve annas share of this identical putni property was acquired by Rakhaldas during his lifetime. The subsequent purohase by the widow was in the nature of an acquisition which had the effect of enlarging the original nucleus. It has been found by the last Court of facts that accounts of the sixteen annas putni were kept together and rents were realized similarly and as a matter of fact the whole thing was treated as one integral property throughout the lifetime of the widow. At the top of all, we find this significant fact that the appellants themselves, when they put up the property to sale, described it as the property of Rakhaldas. If the presumption was in favour of the defendants and the initial onus was upon the plaintiffs, even then we are of the opinion that the onus has been sufficiently discharged in the present case. The result is that the first contention of Mr. Chakravarty fails.

4. The second point raised by Mr. Chakravarty relates to the question of estoppel and the question arises in the following way : It appears that in 1918, when Nrityakali was alive, a suit was instituted by the present plaintiffs against her, praying inter alia for removing her from the shebaitship of the debutter estate and for the appointment of a receiver. The matter came up on appeal to this Court and

this Court held concurring with the trial Judge that Nrityakali could not be removed from the shebaitship but that a receiver should be appointed. Leave was prayed for and granted, to appeal to the Privy Council against this decision and at this stage the parties came to a compromise which is embodied in Ex. P. Under this compromise, the two plaintiffs became the managers of the property during the lifetime of Nrityakali on certain terms and they agreed further to pay off the debts due to the creditors of Nrityakali from the income of the properties left by Rakhaldas. It is argued that as the present plaintiffs bound themselves personally to pay the debts due to all the creditors of Nrityakali and as the debt due to the defendants was not paid, the plaintiffs are precluded from challenging the sale which took place in execution of the decree obtained by the defendants. In our opinion, this contention has got absolutely no substance. In the first place, the defendants were not parties to the compromise at all and could not take any benefit under it and we are unable to agree with Mr. Chakravarty that the plaintiffs by any means constituted themselves trustees for the benefit of this particular creditor. But be that as it may, this particular compromise cannot be said to have influenced the conduct of the plaintiffs in any manner and it cannot be said that they were misled into acting in a particular way which they would not have done but for the compromise. In these circumstances there is no foundation for a case of estoppel. The result is that we agree with the view taken by the Courts below and dismiss this appeal with costs, hearing fee being assessed at two gold mohurs, to the plaintiffs-respondents.