
(1874) 06 CAL CK 0002

Calcutta High Court

Case No: None

Gobind Chunder
Mookerjee

APPELLANT

Vs

Doorgapersad Baboo
and Others

RESPONDENT

Date of Decision: June 25, 1874

Final Decision: Allowed

Judgement

Sir Richard Couch, Kt., C.J.

The plaintiff in this suit and the second and following defendants, except the last, are the sons of Goluck Chunder Mookerjee, who died about the year 1858, leaving the plaintiff and those defendants and another son Okhoy Coomar Mookerjee surviving him; and the last defendant is the widow of Okhoy Coomar Mookerjee, who died about the year 1864. It appears that in December 1842, three persons, named Roy Bykuntanath Chowdhry, Roy Mothoornath Chowdhry, and Roy Preonath Chowdhry, executed a bond and warrant of attorney to confess judgment in the Supreme Court at Calcutta, the bond and warrant of attorney being in the names of the defendant Hurrish Chunder Mookerjee, and a person named Edward Hilder, who was called a jurisdiction trustee, and who has since died. They were given to secure the payment of Rs. 14,000, with interest at 12 per cent. and a judgment was entered up upon the warrant of attorney in the Supreme Court on the 21st of November 1843 for Rs. 28,001. The judgment-debtors having died, the last in November 1868, proceedings were taken to revive the judgment against their representatives. This having been done, and there apparently being no property within the jurisdiction of the Supreme Court upon which execution could be had of the judgment, the usual certificate was transmitted to the Judge of the Court of the 24-Pergunnas, in order that execution might be had by that Court. An agreement appears to have been entered into--by whom authorized it is not I think clear, but at least it has been recognized as a binding agreement between the judgment-creditor and the representatives--that part of the money due on the judgment should be remitted, and the remainder paid by installments. This being the state of things, the defendant Hurrish Chunder Mookerjee

entered into negotiations with the manager of the business of the first defendant, Doorgapersad Baboo, for the sale to the first defendant of the money secured by the judgment. And the case of the plaintiff is that, pending the negotiation and before the transfer of the judgment or order for execution had been effected in the Court at Alipore, the defendant received notice from the plaintiff that he was interested in it, and that Hurrish Chunder was not the sole owner of the money secured by it, but was a trustee for the plaintiff, and apparently also for other members of the family. It is uncertain upon the evidence what is the precise notice which was given by the plaintiff. I do not refer to the attorney's letter, because it is possible that it was not communicated in time to have the effect of a notice. But, on the other evidence, I think it is clear that the plaintiff did give to Ramnath, the defendant's agent or manager, notice that he was interested in the money. His own statement as to what notice he gave differs from that of his witnesses. Whatever he did tell Ramnath, I think it is clear that it was sufficient to oblige Ramnath, who must be taken as representing the defendant, to enquire as to what interest the plaintiff had. The general rule is that, if a person knows that another has or claims an interest in property for which he is dealing, he is bound to enquire what that interest is; and if he omits to do so he will be bound although the notice was inaccurate as to the particulars or extent of such interest. This is stated by Mr. Dart in his work on Vendors and purchasers, p. 794, quoting as his authority, *Gibson v. Ingo* 6 Hare, 124. The evidence in this case, although not altogether consistent, shows that enough was done to bring the first defendant within the operation of this rule. The effect of the notice is that the purchaser is bound to the same extent and in the same manner as the person was of whom he purchased. So that the first defendant would be bound to the same extent and in the same manner as Hurrish Chunder was, if he omitted to make the enquiry. Did he then make such an enquiry as he was bound to make, and as would prevent the operation of the rule? There are no doubt some cases in which an enquiry might be sufficient. The Lord Chancellor, in *Jones v. Smith* 1 Phillips, 245, at p. 253 says there might be a case where the information coming from the vendor and being of such a nature that the intending purchaser was bona fide misled by it, he would not be bound by the rule. But here we have not a case of that description. The notice of the plaintiff's interest came, not from the vendor Hurrish Chunder, but from the plaintiff himself. What then was the enquiry which Ramnath, representing the first defendant, thought proper to make? We must assume that at least he was informed that the plaintiff and Hurrish Chunder, the person in whose name the judgment was, were members of a Hindu family, and were brothers. He must also be taken to have known the presumption of Hindu law which I will refer to presently. With this knowledge he enquires, according to the evidence, of two persons. One was the vakeel, who was employed in the execution proceedings in the Alipore Court, but who could not be expected to know anything of the original transaction of the bond and warrant of attorney; that took place in any years before. There is nothing to show that the vakeel would know anything more than what he could gather from the proceedings that were put into his hands for obtaining execution upon the judgment in the suit in which Hurrish Chunder was the plaintiff and apparently the person entitled to the money. The vakeel might have told him that the plaintiff and Hurrish Chunder were brothers and members of

a Hindu family. The other person of whom Ramnath enquiry is the vendor himself, Hurrish Chunder of course, an enquiry of Hurrish Chunder whether the plaintiff's claim was founded in truth or not would be useless, because, being about to sell the judgment as his own property, he was not likely, to tell the intending purchaser that it was not his, or that other persons were interested in it. It cannot be said that there was such an enquiry as was sufficient, supposing any enquiry would in such a case as this be sufficient to prevent the defendant from being bound. I am not aware of any authority, and I have not been able to find any, that where a notice comes, as this notice did, from the person who claims an interest in the property, the purchaser can discharge himself from liability, supposing it is afterwards proved that the person really had an interest in the property.

2. I have said that the defendant must be taken to have known what is the presumption of Hindu law. That is stated by the Judicial Committee of the Privy Council for the first time, as far as I am aware, in *Luximon Raw Sadasew v. Mullar Raw Bajee* 2 Knapp, 60. Their Lordships there decided that in a suit for the division of the property of an undivided Hindu family, the whole of the property of each individual is presumed to belong to the common stock, and it lies upon the party who wishes to except any of it from the division, to prove that it comes within one of the exceptions recognized by the Hindu law. The suit was by a person claiming to be entitled to a share of the property as family property. And it was an appeal from a decision of Mr. Mountstewart Elphinstone when he was Governor of Bombay, to whom an appeal was then allowed. It is stated that the grounds upon which the claim was founded were, that "by the Hindu Law until a division of a joint property or inheritance from the father is effected between the members of a family, the acquired fortune of each member falls into and belongs to the common stock, and is divisible accordingly."

3. Sir James Colville, in *Sreemutty Jadoomonee Dussee V. Gungadhur Seal* 1 Boul., 600, which is quoted in Baboo Shamachurn Sircar's *Vyavastha Darpana*, 521, at near the end of his judgment, says:--"The question is always one of fact, though a fact determinable in the absence of evidence strong enough to rebut the presumption by the legal presumption that the property is joint." There is also a decision of the Sadler Court--*Gour Chunder Rai v. Hurish Chunder Rai* 4 Sel. Rep., 162--to the same effect. It was there held that, in the case of an undivided Hindu family, their acquisitions will be presumed to have been joint till proved otherwise--the onus probandi resting with the party claiming exclusive right. These cases were not quoted by me in *Tarruck Chunder Podder V. Jodeshur Chunder Koondoo* 11 B.L.R., 193. I did not consider it necessary then to refer to all the decisions on this question, there being the judgments of the Privy Council which I quoted. The cases which I have now quoted may be added to them, and it is unnecessary in this case to quote again the decisions of the Privy Council which were quoted in the former case. But there is one case which it is necessary to notice. *Pontifex, J.*, in a recent judgment in *Denonath Shaw v. Hurrinarain Shaw* 12 B.L.R., 349 refers to the case of 13 M.L.A. 542 (Privy Council) and says, that "it was an appeal from the unreported decision of Kemp and Pandit, JJ., who had held that in that case the mere fact

of commensality was not sufficient evidence of the being joint in estate, and that it was necessary to ascertain whether the nucleus of the estate was originally joint or separate: and although the Judicial Committee did not go strictly into the question, they say at p. 550:--"Both these cases of family and local custom, the burden of which was entirely on the defendant, have failed, and that brings it back to the case which the plaintiffs below had to prove,--that is, the simple fact that this was ancestral property of their common grandfather. That being so, and it being substantially admitted that there was no other source from which the acquisition could be made, the decree of the Court below seems to their Lordships to be right." The learned Judge then says:--"If the true doctrine is that an estate conveyed to an individual member of a family will, in the absence of proof to the contrary, be presumed to be joint with out any evidence of a nucleus of joint property, then it is difficult to understand why the Judicial Committee should have relied on a substantial admission."

4. I agree that if we had no other judgment on this subject than the passage which is quoted by Pontifex, J., it might be supposed that their Lordships thought it was necessary that there should be some evidence of a nucleus of joint property. But we must look at the other judgments of the Judicial Committee and I cannot from this passage infer that their Lordships intended to lay down a rule opposed to what had been laid down and acted upon by them in various cases. All that it amounts to is that there being this admission, their Lordships thought it strongly supported the presumption. In many cases, probably in most, there are facts in evidence which support the presumption but it does not follow from this that the presumption is not to have effect in the absence of any such evidence.

5. In these decisions I do not find anywhere laid down that the plaintiff need give any other evidence than that there is an undivided Hindu family. The presumption then applies. Nor need he in fact give evidence that the family is undivided, although it is advisable to give it when it is possible to do so; and so it is to give evidence that there was family property from which the acquisition could be made in anticipation of evidence that may be given to rebut the presumption. It is laid down by the Judicial Committee in *Neelkrishna Deb Burmah v. Beer Chunder Thakoor* 12 Moore's I.A. 523; see p. 540, and the same doctrine is stated in *Stranger's Hindu Law*, that presumably every Hindu family is joint in food, worship, and estate. This is the presumption, but of course the evidence may rebut it, and may throw upon the person who asserts that the family is joint the necessity of giving some proof of it.

6. Therefore it appears to me that the first defendant was fixed with such a knowledge as showed that at least the plaintiff was entitled to a share of this property; that it was property which Hurrish Chunder was not entitled to deal with as solely his own, because no facts appeared or were proved which show that Hurrish Chunder was so entitled.

7. Then the question is what decree ought to be made in this case. The plaintiff put forward a case which is not proved. His case was that the money was his own, and that Hurrish Chunder was not representing the joint family, but was representing the plaintiff

only. He has failed to prove this, and he is not entitled to the decree, which he asks for in the prayer of the plaint, that he should be declared entitled to the whole of the property. But he has, I think, established a case in which, upon this plaint and the general prayer for relief, he is entitled to a decree. The plaintiff substantially claims to be interested in the property, and that appears upon the evidence to be true. He made defendants the other members of the family, besides Hurrish Chunder, who would be entitled to shares. Two of them appeared and put in a written statement and were examined as witnesses, and they did not dispute the right of plaintiff to receive the money. They admitted that some arrangement was made with the various members of the family by which the plaintiff was to receive the money and it was to be divided in a certain way. The other defendants have not appeared, and do not dispute the right of the plaintiff to receive their shares. I therefore think that the decree, which we should make, after reversing the decree of Pontifex, J., is a decree declaring that the first defendant is a trustee for the plaintiff, and for the other defendants except Hurrish Chunder, of their shares of what may be recovered upon the judgment, and that the shares of all of them, except Hurrish Chunder, be paid to the plaintiff. If any application should be made to us for the appointment of a receiver, we can entertain it, and we need not appoint a receiver now. We shall make a decree in the terms I have stated. The appellant will have the costs of this appeal on scale No. 2. The parties will pay their own costs of the suit on the same scale.

Macpherson, J.

I also think that this decree ought to be reversed. The purchaser unquestionably had notice that the plaintiff claimed a beneficial interest in this fund, and that he objected to the sale, and there was the presumption of Hindu law in favor of his having a beneficial interest in it. Having that notice, the purchaser chose to go on and to complete the transaction without really making any substantial enquiry in the matter. Under such circumstances, it appears to me clear that the purchaser took no more than the interest of Hurrish Chunder, his vendor, and therefore that the plaintiff is entitled to the decree proposed to be made.

⁽¹⁾This latter was in the following terms:--"Dear Sir,--Baboo Gobind Chunder Mookerjee having been informed that some client of yours has engaged with Baboo Hurrish Chunder Mookerjee for an absolute assignment of a certain judgment of the (Supreme Court, standing in his name against the representatives of Roy Mathooranath Chowdhry and brothers, sent for execution to the Court of the Judge of Alipore, as the absolute proprietor of the money realizable under the said judgment has instructed me (who was acting in the matter of the revival of the judgment and of sending it out for execution) to inform your client through you that Baboo Hurrish Chunder Mookerjee is not the absolute owner of the said judgment, and cannot claim the whole money realizable under it, and that your client purchasing the decree from Baboo Hurrish Chunder Mookerjee will do it at his own risk sad peril."

(2)8th paragraph of the written statement of the defendant Doorgapersad Baboo:--"On the 9th or 10th of the said month of June, the plaintiff called at the defendant"s kothi, accompanied by Rajcoomar Banerjee. This was the first time this defendant or his gomasta ever heard of the plaintiff; and he the plaintiff and the said Rajcoomar Banerjee then stated to the said gomasta that he, the plaintiff, was the brother of the said Hurrish Chunder Mookerjee, and as such was entitled to a share in the consideration-money; and that be most bare some of the money which was to be paid to the said Hurrish Chunder Mookerjee; and threatened that, if he did not give some of the money, he would raise objections to the sale of the judgment. The defendant"s gomasta then and; there told the plaintiff that he would not give him a notice, and that, if he had any rights in the matter, he should petition the Court, and suggested to him to do so, and told him that the deed" (of assignment to the defendant) "was not signed, which however as, this defendant believes the plaintiff well knew"

(3)The material portion of this letter, which was in answer to the letter written by the plaintiff"s attorney on the 13th June 1872, was as follows.--"I believe the party who has gone to you has been instigated to oppose Hurrish Chancier Mookerjee, because he would not yield to certain extortionate demands made by two other persons, and it certainly is most strange that, although I have reason to believe your present client has been for the last three or four days aware that the deed has not been completed, he has not thought fit to make known his claims to the 24-Pergunnas" Court. I was told at 11 this morning that the deed would be completed to-day at the 24-Pergunnas" Court, which I have no doubt your client is fully aware of. It was his duty to have adopted measures before the proper tribunal to prevent it if he really has any right in the matter."