
(1876) 06 CAL CK 0004

Calcutta High Court

Case No: None

Shona Malee Pat
Mahadai

APPELLANT

Vs

Adhiranee Narain
Coomary and Biddya
Dhur

RESPONDENT

Date of Decision: June 15, 1876

Citation: (1876) ILR (Cal) 365

Hon'ble Judges: L.S. Jackson, J; D.N. Mitter, J

Bench: Division Bench

Judgement

L.S. Jackson, J.

This special appeal was heard by the late Mr. Justice Mitter and myself. We took time to consider our judgment, and, shortly after, the illness of my lamented colleague, which continued for some months and was followed by his death, prevented our giving any joint decision, and the parties subsequently requested that I, as the surviving member of the Division Court, should give my judgment, which they agreed to treat as if it had been the judgment of both Judges. Public avocations have left me little leisure, and delay has occurred which I regret very much, but I have given the case my best consideration, and have now arrived at a conclusion. The facts were these: The plaintiff, Ranee Shona Malee, was the widow of one Ram Hurry, who in his lifetime was the Rajah of Killa Koojung. He had not been in the direct line of succession, but came in after the demise of his elder brother and of that brother's son. Rajah Ram Hurry, On his death was succeeded by the defendant No. 2, Rajah Biddya Dhur, and he, having refused to allow proper maintenance to the plaintiff, was sued by her, and she recovered a decree for maintenance at the rate of Rs. 100 per mensem. After that the Rajah being greatly indebted, Killa Koojung, which appears to have been the principal ancestral property of this Raj, was sold in execution of a decree, and was purchased by the first defendant, Moharanee Narain Coomary, who is the wife of the Maharajah of Burdwan, and the plaintiff alleges that no payment of the amount of her maintenance having been made

since the 19th May 1868, she has brought the present suit to recover Rs. 3,586, being the amount due for a little less than three years.

2. The defendant Moharanee pleaded that the decree which the plaintiff had obtained for her maintenance was one personal to the Rajah, defendant No. 2, and had no concern with the Immovable property Killa Koojung, which property, she said, had been sold on account of the debts of defendant No. 2 and of his ancestors. The Rajah defendant's answer was, that the decree for maintenance had been given against him with advertence to the profits of the Killa, which he held by inheritance, and this property having now gone out of his hands and passed to the defendant No. 1, he was no longer liable. Without going very fully into the course which the judgment of the first Court took, it may be stated shortly that, in the opinion of the Subordinate Judge, a claim on the part of a Hindu widow for maintenance is good, not only against the persons allied by relationship to the deceased husband, but also against any person into whose hands the husband's property may have come. In other words, he considered it to be a charge upon the estate. He says: "There is no evidence to show that there is any other paternal property in the hands of defendant No. 2, from which the said maintenance allowance of the plaintiff can be supplied," and therefore he thought that the second defendant Rajah was not liable, and that the first defendant who now held Killa Koojung was liable. He therefore gave a decree against her for the amount claimed. In support of this opinion, he referred to two authorities--of *Mussamut Khukroo Misra v. Jhoomuck Lall Dass* 15 W.R. 263 and the other a case which he does not seem to have consulted in the original reports, but to have found in the Indian Digest--the case of *Ramchandra Dikshit v. Savitribai* 4 Bom. H.C.A.C. 73.

3. The defendant Ranee appealed, and the District Judge who heard the appeal affirmed the judgment of the Court below upon what may be called general considerations of equity, but without adding anything to the strength of the decision. The defendant has appealed specially to this Court.

4. It is not alleged (indeed the contrary appears to be the case) that the defendant had any notice of the claim of the plaintiff to maintenance out of this property at the time when she purchased it, and the question therefore is whether in such circumstances the plaintiff's family and the property being subject to the Mitakshara law, a claim for maintenance would constitute a charge upon the Immovable estate of her husband into whosoever's hands it may have gone, and with or without notice of the claim, so that the defendant is liable to satisfy this demand. I have looked into all the authorities accessible to me, decided cases as well as works on Hindu law, and I am unable to find any authority, either in accepted rule or in decision, which expressly bears out the plaintiff's contention, the only text relied on, that of *Catyayana*, being much too vague.

5. It is necessary therefore to set out the result of such cases as have been decided on similar questions by the Courts in Bengal and elsewhere. As regards cases under the Bengal law I think it clear upon the authorities here that no such claim can be supported.

The cases cited before us were that already mentioned--of *Mussamut Khukroo Misrain v. Jhoomuck Lall Dass* 15 W.R. 263 *Nilkant Chatterjee v. Peari Mohun Dass* 3 B.L.R.O.C. 7 *Srimati Bhagabati Dasi v. Kanailal Mitter* 8 B.L.R. 225 *Mangalla Debi v. Dinanath Bose* 4 B.L.R.O.C. 72 and *Nistarini Dasi v. Makhunlall Dutt* 9 B.L.R. 11. As to the case of *Mussamut Khukroo Misrain v. Jhoomuck Lall Doss* 15 W.R. 263 I am bound to say I am unable fully to understand it. The head-note, no doubt, states amongst other things, as the effect of the decision, that a Hindu widow's maintenance is a charge upon the family estate into whosoever's hands the estate may fall. Now the widow, who was the special appellant in that case, had her special appeal dismissed with costs. It is clear, therefore, that whether we might or might not be inclined to concur in the observation made, that was merely a dictum, and not a point decided in the case. The case of *Nilkant Chatterjee v. Peari Mohun Dass* 3 B.L.R.O.C. 7 bears only very distantly upon this case. What the learned Judge decided in that case and what was affirmed by the Court of Appeal was, that although the payment of debts is a charge on the property of a testator, it is not a charge on any specific portion of the estate. The case of *Srimati Bhagabati Dasi v. Kanailal Mitter* 8 B.L.R. 225 is as strong against the plaintiff as anything can be. In that case, according to the head-note, Phear, J. laid it down that, by the law of Bengal, a Hindu widow "has no lien on the property for her maintenance against all the world irrespective of notice, though she has a right to maintenance out of such property in the hands of any one who takes it with notice of her having set up a claim for maintenance against the heir;" and the learned Judge observed at page 229: "In truth, as I threw out in the course of the argument, if the heir has any power of alienation at all, it would be most unreasonable that a bond fide purchaser for valuable consideration should be subjected to the possibility of a charge springing up at any time, though it had no definite existence when he purchased;" and afterwards he says: "Obviously, the consideration received by the heir for the sale of the deceased's property will, so far as the widow's right of recourse to it is concerned, take the place of the property sold." The case of *Mangala Debi v. Dinanath Bose* 4 B.L.R.O.C. 72 is one where the Court of Appeal, referring to a passage in *Colebrooke's Digest*, 2nd Volume, page 133, or page 238 folio edition, which is a precept of *Catyayana*, held that *Mangala* the widow could not be turned out by her son from the apartments in which she lived (and which had been the place of residence used and appointed for her by her deceased husband), upon the son's coming of age. In the case of *Nistarini Dasi v. Makhunlall Dutt* 9 B.L.R. 11 *Markby, J.* following the decision of *Phear, J.* in *Bhagabati Dasi's* case, dismissed the suit, which was a suit by a Hindu widow for a declaration of her right to maintenance out of her husband's estate, which had been mortgaged to the defendant by the heir, and on appeal it was held that the suit should not have been dismissed by reason of a mistake in the form of the suit, but that the right of the plaintiff should have been enquired into and such relief allowed as she was entitled to consistently with the case made in her plaint.

6. Now I proceed to consider the cases decided elsewhere than in Bengal, viz., the Bombay case referred to by the Subordinate Judge, and others which I shall state in order. The case of *Ramchandra Dikshit v. Savitribai* 4 Bom. H.C.A.C. 73 it happens

curiously, is explained by the learned Chief Justice Sir Richard Couch, who decided it, during the argument in the case of *Nistarini Dasi v. Makhunlall Dutt* 9 B.L.R. 11. In that case Savitribai sued the defendant, who was one of three sons of a person named Moreshvar Dikshit, her husband's father, who, she alleged, had supported her after her husband's death, and the defendant contended that as he was only one of three brothers, the suit did not lie against him alone, and the Chief Justice in delivering judgment is reported to have said: "By Hindu law the maintenance of a widow is a charge upon the whole estate, and therefore upon every part thereof. The special appellant is liable for the maintenance." This as I have said was explained by the Chief Justice himself in the case of *Nistarini Dasi v. Makhunlall Dutt* 9 B.L.R. 11 at p. 27 where he says: "The question there was as to whether one brother could be sued alone, and it was held that he could." This case therefore does not help the plaintiff. Then there is the case of *Mussamut Golab Koonwur v. The Collector of Benares* 4 Moore's I.A. 246 relied upon by the plaintiff. In that case three brothers, sons of Ujaib Singh, were charged as being implicated in an insurrection. They were summoned to appear and answer, but they absconded, and thereupon, under Regulation XI of 1796 (since repealed), an order was pronounced by the Governor-General in Council declaring their estate to be forfeited. Thereupon Golab Koonwar seems to have petitioned the Governor-General for the restoration of the estates to her, claiming them as her hereditary property. She was referred by the Governor-General to the Courts of law. She sued and obtained a decree in the Provincial Court but that decree was reversed by the Sudder Dewanny Adawlut. Thereupon a further appeal was made to Her Majesty in Council and amongst the things contended before the Judicial Committee was this, that supposing all other pleas of Golab Koonwur failed, she was at any rate entitled to maintenance out of the whole property of Ujaib Singh whose widow she was, and their Lordships say in the conclusion of their judgment after disposing of the rest of the case; The only other question is the right of Mussamut Golab Koonwur to maintenance out of the whole of the property held to be ancestral Nothing was urged at the bar against this right, and it appears to us S on the principle of the decree, it ought to have been recognized," and according? she was declared entitled to maintenance thereout. Now the ground of that Dart of their Lordships' decision is explained by Phear, J. in giving judgment in the case of *Gunga Bae v. The Administrator-General of Bengal* 2 I.J.N.S. 124. The report begins at page 124, but the page I refer to is 133 Phear, J. points out that the plaintiff's right to maintenance had, by the death of her husband, become an actual charge on the estate in question before the cause of forfeiture had accrued. Her claim was an existing burden on the share which her sons took in those estates at the time that those shares were confiscated and of course the Government took subject thereto;" and looking at the report of the case I find that the forfeiture accrued in the year 1800, whereas Golab Koonwur had become a widow in 1786, some thirteen or fourteen years before so that it may be fairly supposed that she had been receiving maintenance out of the estate, and it appears from the Privy Council judgment that the Government, as might be expected, did not think fit to object to her so receiving maintenance.

7. Then there are two cases from the reports of the High Court North Western Provinces, which are of great importance, because they bear direct upon the subject-matter, the parties there being also subject to the Mitakshara law. The first case is *Heeralal v. Mussamut Kousillah* 2 Agra H.C. 42. In this case where the widow succeeded, it appears that the widow had asserted her right to maintenance and objected to the conveyance of the property, so that the purchaser had full notice of her claim, and he had even sought to defeat its operation by causing a stipulation to be inserted in the kabala, that Rs. 4 a month should be paid to the widow in satisfaction of that claim of hers by the vendor. The Court accordingly very naturally held that this constituted a charge of which the purchaser had notice, and that it consequently was binding on the property in his hands, the stipulation as between vendor and purchaser of course not affecting the widow's rights, but it is noticeable that the Court observed that the decree ought to have been against the heir first, and failing him against the other defendant holding the property, and they altered the decree accordingly. Now it was contended in special appeal before us with reference to this case that, where the lien existed, notice was immaterial. I observe, however that the learned Judges in deciding that case laid distinct stress upon the fact of notice, and it appears to me very reasonably. The other case from the North-Western Provinces is *Mussamat Goolabi v. Ramtuhai Rai* 1 All. H.C. 191. In that case the converse decision took place. The learned Judges observe, speaking of the judgment of the Court below: "Admitting the widow's right against her deceased husband's property, and that it avails, and is a charge on such property in the hands of a purchaser by private sale who buys from the descendants of the husband with notice of the husband with notice of the widow's claim as has been decided in the case of *Heeralal v. Mussamut Kousillah* 2 Agra H.C. 42 which I have just cited in the Courts below, the Judge distinguishes the present case The purchaser buying at a sale in execution of a decree bought the rights and interests of the judgment-debtor in the 2-anna share which was sold, and which the widow seeks to charge in his hands with her maintenance. At the time of the sale, and subsequently in a regular suit, the widow, who is now appellant, claimed one-half of the 2-anna share as her own property and put forward no claim to maintenance." There the learned Judges say: "The special circumstances of the property which has thus been redeemed by the son after his father's death, and which the latter had never held except in its encumbered condition, and the conduct of the widow in asserting her right as proprietor to three-fourths of it, and making no mention of any claim on account of maintenance, are certainly distinguishing circumstances in the present case. The Judge held that a purchaser buying under such circumstances was justified in believing that no claim for maintenance would be advanced. The proprietary title relied on was wholly inconsistent with such a claim. We think his conclusion that the widow could not enforce her right against the purchaser is open to no legal objection, and his decree should be maintained; "so that, finding the purchaser to have bought the property under circumstances which did not lead him to suppose that any claim for maintenance would be advanced, they refuse to enforce that claim against the property in his hands.

8. Then a case was cited of Varden Seth Sam v. Luckpatty Royjee Lallah 9 Moore's I.A. 303 at p. 322. That was a case of an equitable mortgage, and their Lordships observe: "The question to be considered is, whether the third and sixth defendants respectively possessed the land free from that lien, whatever its nature. As one who owns property subject to a charge can, in general, convey no title higher or more free than his own, it lies always on a succeeding owner to make out a case to defeat such prior charge. Let it be conceded that a purchaser for value bond fide and without notice of this charge, whether legal or equitable, would have had in these Courts an equity superior to that of the plaintiff, still such innocent purchase must be not merely asserted, but proved in the cause, and this case furnishes no such proof." Now upon that I think it may be observed, deferring entirely to what is stated by the Judicial Committee there, that the holder of a lien on specific property is in a different position from a person possessed of a right which is held to constitute a charge on the general estate of a deceased person. In the former case the innocent purchase has no doubt to be proved before the prior charge can be defeated. In the latter I should be inclined to hold that the purchaser must be affected with notice of the charge, and so the North-Western Provinces Court appears to have held.

9. Now, one of the arguments used by the Subordinate Judge in favour of his judgment is this: He says: "As the plaintiff could lay claim against him into whose hands the property belonging to her husband first passed, so she can prefer a similar claim against the female defendant, as the said property has now passed into her hands." That argument seems to amount to this, that the suit against this purchaser is no more than a logical sequence of the first suit against the heir. But is that so? It appears to me there is a distinction, because the widow, in bringing her first suit against the heir, was in this position, that she had a claim for maintenance firstly against the estate of her deceased husband, nextly against her husband's relations. Now as against the Moharanee, the purchaser of this property, she had no personal claim whatever. Therefore, I think, there is no analogy between her claim in the two cases. It was a point of some importance raised upon the defendant's answer, that the debts which led to the sale of this property were not entirely the debts of the present Rajah. That is a statement which at least is exceedingly probable, and if these debts were partly ancestral, I think it must be said that the widow's right to maintenance would be subject to the duty of paying those debts, that is, that her claim to maintenance would be upon the residue after paying such debts and would be regulated by the amount thereof, and the other claims to maintenance then valid. It is also as it seems to me a matter of doubt whether the widow by obtaining a definite personal decree against the Rajah did not modify the nature of her right so as to place herself in an inferior position as regards the lien over the property which she originally had. Why did she not, in bringing her first suit have it declared that the maintenance which she claimed was a charge upon the husband's estates and amongst other things upon Killa Koojung? and this suggests a very cogent reason, as it seems to me, why the Court should not be ready to recognize such claims against purchasers of estates from Hindu heirs. The consequence of admitting such a claim as this would probably be to bring in a crowd of other claimants to the great peril of, and possibly fraud

upon, the purchaser. From the statements made in the plaint, it seems pretty clear that this Raj has changed hands several times in a comparatively short space of time. It seems that of the persons mentioned Junardon first became Rajah. On his demise, his son, Lukshindur, succeeded. After his decease, the plaintiff's husband became Rajah, and after him came defendant No. 2, whose precise relationship is not clear, but who is spoken of as being the nephew of the plaintiff's husband. The result of that would be that there might easily be many Ranees all as widows having claims to maintenance upon this estate, of all which claims the purchaser would have no notice at all, and he might be overwhelmed with claims of that description. Again, the Subordinate Judge, when saying that it does not appear that any other ancestral property was in the hands of the Rajah defendant, quite omits to notice the claim which the plaintiff might have made against the surplus proceeds of this property when sold. Why did she not get those attached and obtain an order for the payment of her maintenance thereout. There is nothing on the face of either of these decisions to show that the whole of the Rajah's estate has been sold, and considering that the plaintiff's first claim was undoubtedly upon the Rajah, it lay upon her to show that his estate has been exhausted, before she could come upon the property in the hands of the first defendant. On all these grounds, it appears to me that the plaintiff's suit as against the Moharanees defendant was not good, that the judgments of the two Courts below were erroneous, and that those judgments ought to be reversed with costs.