(1881) 02 CAL CK 0008

Calcutta High Court

Case No: None

Goburdhon Lall		APPELLANT
	Vs	
Singessur Dutt Koer and Others		RESPONDENT

Date of Decision: Feb. 11, 1881

Citation: (1881) ILR (Cal) 52

Hon'ble Judges: Mitter, J; Maclean, J

Bench: Division Bench

Judgement

Mitter, J.

Who, after stating the facts as above, continued.---Upon these findings of fact by the Subordinate Judge he framed the following judgment:

It is hereby declared that only four-eighth-anna of Nirpur and 7/8th-an "share of Chuck Ibrahim are liable to be sold in satisfaction of the defendant, "decree against Chundermun Koer, dated 20th July 1875. The remaining portions of four annas share and seven annas share of those estates belong to the "plaintiffs, and their shares should be separated from Chundermun''s share, and "would be equally partitioned between themselves." We think that this decree is erroneous, because it seems to us that there could not be a partition between a person who is already dead and his sons. No doubt, according to the case of Suraj Bunsi Koer v. Sheo Proshad Singh (L. R. 6 I.A. 88), if the property under attachment had been sold, and if it had been proved that the decree was a personal decree against the father, and that the debt for which the decree was passed was contracted for immoral purposes, the purchaser would have acquired only the interest of the deceased father, and a partition might have taken place between the purchaser on the one hand, and the sons and the widow on the other. That is not the case here, because although there was an attachment in the lifetime of the father, that attachment was not followed by a sale. It may be that the defendant, decree-holder, would not proceed upon that attachment. In that case, the decree which has been passed by

the lower Court would be wholly infructuous. We are, therefore, of opinion that the decree passed by the lower Court cannot stand. It appears to us that the only declaration which in this suit the plaintiffs can obtain is, that they are not liable to pay the debt due to the defendant under the decree of July 1875. The lower Court has gone into that question in its judgment, and has decided it in favour of the plaintiffs.

2. This question has been set at rest by the decision in the case of Muddun Thakoor v. Kantoolall (L. R. 1 I. A. 321). In the course of the judgment in that case, their Lordships of the Judicial Committee observe:---"In the case, "which has been referred to in argument, of Hunooman Persaud Panday v. "Mussumat Babooee Munraj Komweree (6 Moore I. A. 421), Lord Justice " Knight Bruce, who delivered the judgment of the Privy Council, says,---"though an estate be ancestral, it may be charged for some purposes against the "heir, for the father''s debt, by the father, as indeed the case above cited---"Oomed Rai v. Heera Lall (6 S. D. N. W. P. 218) ---incidentally shows. Unless "the debt was of such a nature that it was not the duty of the son to pay it, "the discharge of it, even though it affected ancestral estate, would still be an "act of pious duty in the son. By the Hindu law the freedom of the son from "the obligation to discharge the father''s debt has respect to the nature of the "debt, and not to the nature of the estate, whether ancestral or acquired, "by the creator of the debt." It is quite clear from this passage that, whether the original debt was a personal debt of the father or not, the ancestral property in the hands of the sons would be liable to satisfy it, unless it be proved that it was contracted for immoral purposes. This is clearly an authority to show that, unless the debt is proved to have been contracted for immoral purposes, the defendant is entitled to recover it by the sale of the ancestral property in the hands of the sons. In this case, although the plaintiffs did not allege that the debt was contracted for immoral purposes, still that question has been gone into by the lower Court and found to be not established. That being so, we are of opinion that the lower Court was wrong in holding that the whole of the ancestral estate in the hands of the sons is not liable for the money which is due to the defendant under the decree of July 1875.

3. The plaintiffs'' suit must, therefore, be dismissed with costs in all the Courts.