(1927) 12 CAL CK 0024

Calcutta High Court

Case No: None

Ananda Bandhu Das and Others		APPELLANT
	Vs	
Ambica Charan Bhattacharjee and Another		RESPONDENT

Date of Decision: Dec. 8, 1927

Acts Referred:

- Succession Act, 1925 - Section 269

Citation: AIR 1928 Cal 412

Hon'ble Judges: Cammiade, J; B.B. Ghosh, J

Bench: Full Bench

Judgement

B.B. Ghosh, J.

This is an appeal by some of the defendants, that is, defendants 7, 10, 16 and the representatives of the original defendant 14, against the judgment and decree of the Subordinate Judge, 2nd Court, Chittagong, dated 15th September 1925. The suit was originally brought by plaintiff 1. only by making plaintiff 2 a pro forma defendant who was subsequently transferred on his own application to the category of plaintiffs. These two plaintiffs claimed the property in suit as the reversionary heirs of one Bhabani Das Bhattacharya who died in October or November 1874 leaving a widow Bama Sundari surviving him. Bhabani had previously executed a will dated 28th July 1874, by which he had appointed several executors. The executors renounced their executorships and the widow applied for letters of administration with the copy of the will annexed which was granted to her on 8th February 1875. It appears that on 6th May 1879 the widow Bama Sundari executed two permanent leases in favour of one Gour Hari Das (Choudhury), the predecessor-in-interest. Of defendants 7 to 15, and the properties covered by these two leases are the only subject-matter of dispute in this appeal. The Subordinate Judge has made a decree for possession in favour of the plaintiffs making the defendants liable for mesne profits. Prom that decree these defendants have

appealed to this Court.

2. The history after the grant of the letters of administration is that the agnates of Bhabani Das oppressed his widow in various ways so that she was obliged to leave the family dwelling-house of her husband and had to go to live in her father''s residence. In September 1899 she applied to the District Judge for permission to sell certain properties. This permission was refused and in that order the District Judge made certain observations about the revocation of the letters granted to her. In November 1899 two of the executors applied for letters of administration with the will annexed of Bhabani Das and plaintiff 1 also made a similar application. In the meantime, on 28th September 1899, Bama Sundari sold her right to all the properties to the predecessor-in-interest of defendants 1 to 6. The learned District Judge granted letters of administration to one of the executors named Kebal Krishna Bhattacharji. On appeal the High Court set aside that order and the result was that the original grant to Bama Sundari was not interfered with. In September 1906 Bama Sundari brought the properties covered by the two pattas of 1879 to sale after having obtained a decree for rent. It will be noticed that this was after she had parted with all her interest in the properties left by her husband. The disputed properties were purchased by the predecessor-in-interest of defendants 16 to 19, who has been found to be a benamidar of the original lessee Gour Hari. Bama Sundari died on 10th January 1921, and this suit was brought by the plaintiffs to recover possession of the properties left by their maternal uncle Bhabani Das, of which the properties-subject to the aforesaid leases are now the subject-matter of this appeal. The'' ground urged by them is that there was no legal necessity for permanent leases; The Subordinate Judge in his judgment discusses various points and has come to the conclusion that the leases were not granted for legal necessity. He has further held that the widow had only limited powers of alienation as administratrix and had not the power before the passing of the Probate and Administration Act 1881 to grant permanent leases without the sanction of the District Judge. He has also held that the transaction entered into by the widow in granting permanent-leases was not a bona fide one. He appears to have been of opinion that the salami which was said to have been paid to the lady before the Sub-Registrar was not actually received by her, but that there was only a show of payment. In that view he has decreed the suit.

3. The first contention on behalf of the appellants is that the Subordinate Judge has misread the law as regards the powers of an administrator governed by the Hindu Wills Act before the passing of the Probate and -Administration Act as stated in Phillips and Trevelyan''s book, on Hindu Wills 2nd edn., p. 225, by omitting a not in the quotation made by him. This is true. Their argument is that before the passing of the Probate; and Administration Act an administrator acting under the Hindu Wills Act had the same authority as an executor u/s 269, Succession Act, which was made applicable to Hindus by Section 2, Hindu; Wills Act. Section 269, Succession Act, 1865, runs thus:

An executor or administrator has power to dispose of the property of the deceased, either wholly or in part in such manner as he may think at.

4. I am of opinion that the Subordinate-Judge was wrong in his view of the law as regards the powers of an administrator under the Hindu Wills Act before the passing of the Probate and Administration Act, 1881. Whether the leases are binding on the plaintiffs or not will depend on other considerations and the matter will be dealt with later on.

5. The next point urged is that in any view of the case under the terms of the will, it should be held that-the widow forfeited her right to succeed to the property by the sale of all her properties inherited from her husband on 28th September 1899 and that the plaintiffs were entitled to come in as heirs under the Hindu law on that date; and the suit, having been brought in January 1924, was barred by limitation. With regard to this point we are of opinion that the appellants'' argument cannot be sustained. Even assuming that the sale would work a forfeiture of the right of the widow, which we are not prepared to hold, there is no subsequent disposition of the property under the will and the result would be an intestacy. The widow was the heir under the Hindu law and she would be entitled to hold the property as the heir of the testator Bhabani Das under any circumstance when there was no gift over under the will; and so long as Bama Sundari was alive, the plaintiffs would have no title to the property left by Bhabani.

6. The first point is a more substantial one and requires careful consideration. It is contested on behalf of the respondents that Bima Sundari did not give the permanent leases of the property in question in the course of the administration of her husband''s estate, and, therefore, the power conferred upon an administrator u/s 269, Succession Act, 1865, does not come into play. Letters of administration were granted to her in 1875. The finding of the Subordinate Judge is that there were no debts to be paid by the administrator. It was not necessary for the administrator to alienate the property for the purpose of administration, nor does it appear that the administration had not already come to an end at the time when the permanent lease3 were given. The leases, therefore, granted by the lady were not granted by her as administratrix, but should be taken as granted by her as a Hindu widow, and not being supported by legal necessity are not binding on the plaintiffs. It is further argued that on the finding of the Subordinate Judge, that the leases were not bona fide, they are not binding on the plaintiffs under any circumstance.

7. The lease Ex. B(16) shows the reason why it was given. The other lease, we are told, was in the same terms. There the lady describes herself as the widow of Bhabani. It is stated that the istemrari mokarrari kaemi daemi patta was given for the purpose of her husband''s Gaya sradh, for the expenses of her residence at Benares and other necessary expenses. These are matters which cannot be held to be for the purpose of the proper administration of the estate of her deceased husband, and she does not describe herself in granting the leases as administratrix

nor does it anywhere appear that the lessee was aware that she was given letters of administration of her husband''s estate.

8. I apprehend that the powers given to an executor u/s 269, Succession Act 1865 were for the purpose of conversion of the testator''s estate into money for the payment of debts to the creditors and for the facility of division of the legacies. The powers granted under that Act were the same for all cases of administration, whether the testator died after leaving a will or died interstate. Where it is clear that no debt has to be paid and no legacies have to be divided, it would be difficult to say that an administrator has an unlimited power of sale for his own purposes. No authority in point has been cited at the Bar with regard to any restriction on the exercise of the power of an executor or administrator u/s 269, Succession Act, but as that section was taken from the English law, I think it is permissible to refer to English authorities in order to explain the nature of the power, which I shall presently do.

9. It was contended by Mr. Chandra Sekhar Sen in reply that the fact that the lady did not describe herself as administrator did not affect the right of the lessee and he relied on the case of Preonath Karar v. Suraja, Coomar Goswami [1892] 19 Cal. 26, where the Court held that the fact that the vendors did not describe themselves as administrators but described themselves as heirs did not affect the case because either as administrators or as heirs they were entitled to sell, though, as heirs they could not sell anything more than their own shares. This would be applicable only to the case of bona fide purchasers who had no knowledge that the money was to be applied otherwise than for the payment of the testator''s debts. see Corser v. Cartwright [1876] 7 H.L. 731, referred to in the above case. In Solomon v. Attenborough [1912] 1 Ch. 451 one of two executors without the knowledge of his co-executors, pawned articles of plate belonging to the testator''s estate with certain pawnbrokers, who had no notice that he was not the absolute owner thereof, and he misapplied the money advanced upon them for his own purposes. At the date of the pledge all the testator''s legacies and debts so far as they were known had been paid, but the residuary estate had not been completely realized and distributed. On the death of the pledgor the transaction was. Discovered and an action was brought by his co-executor and a new trustee against the pawnbrokers to recover the plate. The Court of appeal held, reversing the trial Court, that inasmuch as the pledgor had not purported to act as executor, and the defendants had no notice that he was executor, the latter had no title to the plate and must deliver it up to the plaintiffs. The House of Lords affirmed the decision on appeal on the ground that the proper inference from the facts was that the executors at the time held the plate not as executors but as trustees and, therefore, the deceased executor had no power to pledge the plate Attenborough v. Solomon [1913] A.C. 76. In Ricketts v. Lewis [1882] 20 Ch. D. 745 it was held that an administrator has no power to mortgage leaseholds of an interstate under leases not containing repairing covenants in order to raise money for repairing the property. And such a mortgage will be set aside as

against a mortgagee who has notice of the purpose or which the money is raised. Fry J., (as he then was) observed:

What authority had the administratrix to raise money for the purpose of repairing the property? It may be that she was liable to repair by virtue of covenants in the lease, but having regard to the length of the terms and the time when they were granted that does not appear probable, and the onus of proving that there was such a liability is on the mortgagee, and he has not discharged it. It comes then, shortly, to this that at the date of the mortgage Mrs. Lewis did not require the money for any purpose which it was her duty to perform as administratrix, and that she did require it for the purposes of her own beneficial enjoyment.

10. Applying the principles laid down in these cases there cannot be any doubt, in my judgment, that the leases in dispute cannot be sustained. There was no debt to pay off the testator; the lessor did not purport to grant the leases as administratrix; she did so rather as the widow of Bhabani Das; the lessee does not appear to have any knowledge that letters of administration had been granted to the lessor, there was clear notice in the lease to the lessee that the money was required for purposes quite different from what it was the duty of the lessor to perform as an administratrix; all these circumstances establish that the leases are not binding on the estate left by Bhabani Das, even assuming that the lessee did actually pay the premium to the lady as stated in the leases. An executor or administrator does not appear to have according to the law an absolute power to dispose of the property of the deceased if it is not necessary for the purpose of administration of the estate, but a bona fide purchaser may be protected in certain cases where a transfer is not for that purpose There can be no doubt that she could make alienations for necessity as a Hindu widow. But the Subordinate Judge has found that there was no necessity for such alienation and no attempt has been made to show that that finding is correct. It is further argued on behalf of the respondents that the will itself does not give a free power of alienation by way of leases even to the executors. Para. (8) of the will says:
In case it becomes necessary to grant any permanent leases to tenants, the executors shall be competent to grant them under the signature ,pf my wife, and at the end of each year, they shall submit and explain an account of the income and expenditure to her.

11. It is urged that it cannot be reasonably said that when the executors had renounced, the widow, would according to the will itself, get an unfettered power of making alienation by way of permanent leases by taking letters of administration with the will annexed.

12. I am not quite sure that if it was necessary for the purpose of administration the widow could not grant a permanent lease by reason of these provisions. But on the grounds already stated we are of opinion that the leases which were granted by the

lady were granted by her in the exercise of her right as the owner of a widow''s estate as heir of Bhabani, and, as such, not being supported by legal necessity, the reversioners are entitled to recover possession after the death of the widow.

13. On these grounds the ''appeal must be dismissed with costs.

Cammiade, J.

14. I agree.