

Syed Abu Mahomed Barkat Ali Shah Vs Saraswati Dasi and Others

Court: Calcutta High Court

Date of Decision: Nov. 18, 1925

Citation: AIR 1926 Cal 1068 : 97 Ind. Cas. 194

Hon'ble Judges: Cuming, J; B.B. Ghose, J

Bench: Division Bench

Judgement

1. The facts of the case out of which this appeal arises are as follows: The plaintiff who is a Hindu widow brought the suit against her two sisters-

in-law for maintenance. She alleged that her husband Barada Kanta died during the lifetime of his father Bhajan Bala Kapali who was her father-in-

law. Then Bhajan died and defendants Nos. 1 and 2 who are the daughters of Bhajan neglected to maintain her and hence this suit. Defendants

Nos. 1 and 2 contended that the plaintiff was not entitled to any maintenance and that the plaintiff's lands had been sold to defendant No. 3 with the

exception of the dwelling house. On this defendant No. 3 was made a party and he stated that he had purchased the lands bona fide for Rs. 500

and that, therefore, he could not be made liable for the maintenance.

2. The trial Court found that the defendant No. 3 was a bona fide purchaser of the property without any notice of the interests of the plaintiff and

hence it held that it could not declare that the plaintiff's maintenance was a charge on the properties in suit and it was ordered that the plaintiff was

entitled to get maintenance Rs. 4 a month from the defendants Nos. 1 and 2; the plaintiff's prayer for creating a charge, on the properties was

disallowed.

3. The plaintiff appealed to the District Court against this order so far as defendant, No. 3 is concerned. The District Court, held that the alleged

purchase by defendant No. 3 was not a real transaction and that the sale was not bona fide. He further held; that defendant No. 3 was aware of

the existence of the plaintiff as the son's widow of Bhajan Bala Kapali and, therefore, held that even though the transfer to defendant. No. 3 be a

genuine transfer for consideration, she would be entitled to maintenance against the properties of Bhajan Bala which had passed into the hands of

defendant No. 3, and he decreed the suit against all the three defendants declaring that the maintenance of Rs. 4 a month will be a charge on all

the properties of Bhajan including the lands covered by the kabala which had, been executed in favour of defendant; No. 3.

4. The defendant No.3 appeals to this Court, And the first argument that is put forward is that with regard to the purchase by defendant No. 3 the

learned Judge is not, entitled to come to the finding that the transaction was not a real and bona fide; one. He contends that it was never disputed

and was never suggested that that transaction was anything but a real one. He draws our attention to the finding of the learned Munsif where the

learned Munsif found that "it is undisputed that the defendant No. 3 purchased the properties excepting the dwelling house for a valuable

consideration" and it is argued that in view of this finding the learned Judge should not have come to the finding which he has. It is unnecessary to

determine whether the Judge was or was not justified, in the view of the pleadings and admissions of the parties in coming to the finding he has

with regard to the genuineness of the sale. For even supposing the sale to be a genuine, sale for consideration, the fact remains as has been found by

the learned Additional District Judge that the defendant No. 3 had notice of the existence of the plaintiff as, the son's widow of Bhajan.

5. The learned Vakil next contended that this notice must be of the intention to defeat the right of the widow and referred to the wording of Section

39 of the Transfer of Property Act. Whether the intention was or was not to defeat the claims of the widow is a fact which can be gathered from all

the circumstances of the case--one of them being that there was no other property excepting the small hut which has not been sold to defendant

No. 3. There is the further significant fact that defendant No. 3 himself did not venture to go into the witness-box to deny that he had notice or that

he did not know that it was the intention of the vendors to defeat the interests of the widow.

6. There is a suggestion by the learned Vakil for the appellant that a personal decree has been granted against the defendants as well decree

against the properties of Bhajan in their hands. Reading the judgment we do not think that this was the intention of the learned Additional District

Judge. Nor do we think that he has by his judgment given any personal decree against the defendants. We think it is quite clear on reading the

judgment that the decree is only against the properties of Bhajan which are in the hands of the defendants Nos. 1, 2 and 3. It is against these

properties only that the decree can be executed.

7. The Result is the appeal fails and is dismissed with costs.