

Mohabir Prosad and Another Vs Bandi Prosad

Court: Calcutta High Court

Date of Decision: May 21, 1912

Citation: 16 Ind. Cas. 397

Hon'ble Judges: Beachcroft, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. This appeal is directed against a decree whereby the Court of Appeal below, in concurrence with the Court of first instance, has dismissed a suit

for declaration that the plaintiffs, who are members of a joint Mitakshara family, are not bound by a conveyance executed by their father on the 4th

November 1894, and by a consent decree obtained against themselves on the 12th August 1902, in a suit to enforce a mortgage security executed

by their father on the 80th August 1897.

2. In so far as the conveyance is concerned, it has been found concurrently by the Courts below that the plaintiffs have failed to prove that the

debts, for the satisfaction whereof it was executed, were either illegal or immoral; it has been found on the other hand that the debts were, as a

matter of fact, contracted mostly for legal necessity. In view of these findings, the decree of the Court below must be maintained in so far as it

disallows the claim for declaration that the conveyance is not binding upon the plaintiffs.

3. In so far, however, as the consent decree is concerned, matters stand on an entirely different footing. It appears that the mortgage was granted

as security for a loan of Rs. 450 and comprised two properties, of which one was a half share of the property whereof the other half had been

included in the prior conveyance. When the mortgage suit came on for trial, a petition of compromise was filed, under which the mortgagee in

effect released his claim upon a half share of the smaller property and agreed to accept the remainder of the security in full satisfaction of the

money due on the bond in suit and on a prior usufructuary mortgage. The essence of the transaction was that the properties were transferred to the

mortgagee in lieu of the sums due to him, but no conveyance was executed. The parties agreed that a mortgage decree would be drawn up, that a

very short period, namely, two weeks, would be allowed for re-payment of the judgment-debt, that, thereafter, the decree should be made

absolute, and that finally the properties would be sold, with the reservation that if they did not fetch a sufficient value for the satisfaction of the dues

on the two mortgages, the mortgagee would abandon the balance of his claim, while if they fetched a higher priced the balance of the purchase

money would belong to the mortgagee. In order to determine whether this compromise was or was not beneficial to the infants concerned, the

Court must have regard to the value of the properties which were practically conveyed away to the mortgagee. The record of the mortgage suit

however does not indicate that there was any inquiry on the point. We find merely an order recorded in the order sheet in the following terms: "The

guardian of the minor defendants permitted to file a solenamah on behalf of the minors. Decree in terms of the petition of compromise which should

be embodied in the decree." There is nothing to show that the terms of the settlement were explained to the Court or that the Court had materials

placed before it to enable it to determine whether the compromise was or was not for the benefit of the infants. But the Court below has held that

there is some evidence to show that the terms of the compromise were placed before the Court, and, on this finding, it has been argued by the

respondent that the compromise cannot now be assailed on behalf of the infants. In support of this proposition, reliance has been placed upon the

cases of *Aman Singh v. Narain Singh* 20 A. 98 : A.W.N. (1897) 205 and *Midnapore Zemindari Co. Ltd. v. Gobinda Mahto* 8 C.L.J. 31. The first

of these decisions appears to have been doubted by this Court in the cases of *Barhamdeo Prasad v. Banarsi Prasad* 3 C.L.J. 119; the second is

not in agreement with the earlier decision of this Court in the case of *Sharat Chunder Ghose v. Kartik Chunder Mitter* 9 C. 810 : 12 C.L.R. 455 or

with the later decision in *Biku Halwai v. Mohesh Halwai* 8 C.L.J. 266 although to must be admitted that one of the learned Judges, who was a

party to the decision just mentioned, took different view in the case of *Krishna Pershad Roy v. Bonnes Chunder Mandal* 8 C.L.J. 274. The matter,

however, is really concluded by the decision of their Lordships of the Judicial Committee in the case of *Manohar Lal V. Jadu Nath Singh* 33 I.A.

128 : 28 A. 585 : 4 C.L.J. 8 : 8 Bom. L.R. 489 : 10 C.W.N. 898 : 9 O.C. 219 : 1 M.L.T. 210 : 16 M.L.J. 291 : 3 A.L.J. 710. In that case, Lord

Macnaghten pointed out that Section 452 of the Civil Procedure Code, which prohibits a compromise on behalf of a minor by his guardian in the

suit without the leave of the Court, is not complied with unless it is shown that leave was formally given after the attention of the Court had been

directly called by petition or otherwise to the fact that the minor was a party thereto. In the absence of evidence to that effect, the compromise

must be declared not binding on the minor who should be relegated to his original rights. These observations are very pertinent in relation to the

facts of the case before us. The full effect of the terms of the compromise were, indeed, not realised on behalf of the respondent even in this Court,

till after they had been analysed and discussed at considerable length. In the absence of any evidence to show that the terms of the compromise

were considered by the Court in the mortgage suit, we are, consequently, not prepared to hold that the order recorded therein should be

interpreted to embody by implication a statement that the Court had on proper materials considered the terms and accorded its approval thereto.

4. The result is that this appeal is allowed in part. In so far as the plaintiffs seek to challenge the conveyance, the suit will stand dismissed. In so far

as they seek a declaration that they are not bound by the compromise decree and the proceedings based thereon, the suit will be decreed. As the

compromise was in relation to an indivisible mortgage security, the entire compromise decree will be declared inoperative. The mortgage suit will

stand restored and the parties will be relegated to the position they occupied in that suit on the 12th August 1902, when the petition of compromise

was filed. This is in accordance with the view of the Judicial Committee in the case of Khajooroonissa Bibi v. Roushan Jehan 2 C. 184 : 26 W.R.

36 : I.A. 291.

5. Each party will pay his own costs throughout this litigation.