(1913) 04 CAL CK 0030

Calcutta High Court

Case No: Appeal from Appellate Decree No. 188 of 1911

| | | |
|---|---|---|
| Pankhabati Chaudhurani | | APPELLANT |
| | Vs | |
| Nani Lal Singh | | RESPONDENT |

Date of Decision: April 30, 1913

Final Decision: Allowed

Judgement

1. This is an appeal by the Defendant in a suit for recovery of money. The circumstances under which this litigation was commenced are not in controversy. The Appellant is in possession of the estate left by her husband Mathur Lal Singh. One Ghanasyam Misser obtained a decree against her for recovery of arrears of rent of a tenure and in execution of that decree proceeded to sell a property other than the tenure in default. The sale took place on the 5th November 1908 and the property passed into the hands of a stranger to the proceedings. On the 5th December following, the Plaintiff made an application under sec. 310 of the CPC of 1882, for leave to deposit the amount requisite for the cancellation of the sale. He alleged that he was the reversionary heir to the husband of the Appellant and that he was entitled to have the sale set aside for the preservation of his reversionary interest. This application was contested, but was allowed on the 22nd February 1909 by the Subordinate Judge. On appeal to the District Judge the order was confirmed on the 12th May 1909. The sum required was deposited under sec. 310A and the sale was set aside. On the 23rd June 1909, the Plaintiff commenced this suit to recover from the Defendant the money paid by him. The Courts below have decreed the suit. On the present appeal the decree of the District Judge has been challenged on the ground that the payment was voluntary and that the sum paid by, the Plaintiff was not lawfully payable by the Defendant. In our opinion, there is no substance in this contention. The learned Vakil for the Appellant has argued that the payment was voluntary, because the effect of the sale would have been to leave untouched the reversionary interest of the Plaintiff. In support of this view, reliance has been placed upon the cases of Baijun Doobey v. Brij Bhukoon L. R. 2 I. A. 275 :

S.C. I. L. R. 1 Cal. Kristo Gobind v. Hem Chunder I. L. R. 16 Cal. 511 (1889), Brojolal v. Jiban Krishna I. L. R. 26 Cal. 380 (1898), confirmed on appeal by their Lordships of the Judicial Committee in Jiban Krishna v. Brojolal I. L. R. 30 Cal. 550 (1903) and Bireshwar v. Kamal Kumar 17 C. W. N. 337(1912). It has been contended in substance that as the sale had been held in execution of a money decree against a Hindu widow, her limited interest alone had passed to the purchaser and that the Plaintiff was not called upon to protect his reversionary interest which was really not in jeopardy. It is not necessary for our present purpose to determine what precise interest passed at the sale. It is sufficient for us to hold that the question of the true effect of the sale was a matter for serious controversy. The Decree-holder had professed to sell the entire interest in the estate ; the auction purchaser also claimed to have acquired such interest. It was in this view alone that the Plaintiff could be permitted to apply for reversal of the sale under sec. 310A of the Code of 1882. That section provides for an application by a person whose immoveable property has been sold under Chap. XIX of the Code of 1882. It was open to the decree-holder, the auction purchaser and the judgment-debtor at the time to oppose the application on the ground that all that had passed at the sale was the limited interest of the widow, that the immoveable property of the then applicant had not been sold, and, that, consequently, he was not competent to make the application. On the other hand, the reversioner asserted that the entire interest in the property had been sold and he was allowed to have the sale set aside on that footing. Whether, if he had not got the sale reversed, his interest would, as a matter of law, have been affected is a question which does not call for our decision on the present occasion. The effect of a sale of this description depends upon two factors, which involve matters of fact as well as of law, namely, first, the nature of the debt satisfied by the sale ; and secondly, the scope of the execution proceedings. If under these circumstances a reversionary heir makes a payment under sec. 310A of the Code of 1882, and obtains a reversal of the sale, there can be no room for serious controversy that the case does not fall within the rule enunciated in Ramtahal v. Biseswar L. It. 2 I. A. 131 (143) ; 23 W. R. 305 (1875), but that he makes such deposit as a person interested in the payment of money which the judgment-debtor was bound by law to pay. There is no foundation also for the contention of the Appellant that a payment of this description must be deemed a voluntary payment, unless and until it is established that the sale would have actually prejudiced the position of the person who pays the money. This argument is opposed to the decision of their Lordships of the Judicial Committee in the cases of Fatima Khatoon v. Mohammad Jan 12 M. I. A. 65 (1868), Dooli Chand v. Rum Kishen Singh L. R. 8 I. A. 93 (1881), Dakshhina Mohun Roy Chaudhuri v. Saroda Mohun Roy Chaudhuri L. R. 20 I. A. 160 : S. C. I. L. R. 21 Cal. 42 (1893) and Kanhaya Lal v. The National Bank of India 17 C. W. N. 541 (1913). The same view is supported by a long series of decisions of this Court amongst which may be mentioned Bindu Bashini v. Harendra Lal I. L. R. 25 Cal. 305 (1897), Suchand Ghosal v. Baloram Mardana I. L. R. 38 Cal. 1 (1910), Nabin Krishna v. Monmohun I. L. R. 7 Cal. 573 (1881), Smith v. Dinonath I. L. R. 12 Cal. 213(1885),

Radha Madhab v. Sastiram I. L. R. 26 Cal. 826 (1899), Bama Sundari v. Adhar Chandra I. L. R. 22 Cal. 28 (1894), Farbhu Narain v. Beni Singh 14 C. W. N. 361 (1909), Mohendra v. Bhuban 12 C. L. J. 566 : S. C. 14 C. W. N. 945 (1910) and Jognarain v. Badridas 16 C. L. J. 156 (1911). As was pointed by Sir John Stanley, C. J., in the case of Tulsa Kunwar v. Jogeshwar Prosad I. L. R. 28 All. 563 (1906), the terms of sec. 69 of the Indian Contract Act lay down a more comprehensive rule than is supported by any English authority. The words "interested in the payment of money which another is bound by law to pay" may include the apprehension of any kind of loss or inconvenience and not merely the actual detriment capable of assessment in money (c. f. Valpy v. Manley 1 C. B. 594 ; 68 R. R. 778 (1845). Reliance, however, has been strongly placed upon the cases of Bepin Behary Sarnakar v. Kalidas Chatterjee 6 C.W.N. 336 (1911) and Baikuntha Nath Dey v. Udoychand Maiti 2 C. L. J. 311 (1905) as authorities in support of the contrary view. In our opinion, the cases mentioned are plainly distinguishable. In these cases the person who made the payment had no interest at all in making the payment. By no conceivable method of reasoning whether upon the facts of the case or of the law applicable thereto, could it be maintained for a moment that the sale would have affected the position of the person who made the payment. A payment made under these circumstances might rightly be held to have been made by a person who has no interest in the payment of money. Nor do we feel pressed by the decision in Yogambal v. Naina Pillai I. L. R. 33 Mad. 15 (1909) which has been already doubted in the cases of Dorilal v. Pattiram 8 All. L. J. 622 (1911) and Jognarain v. Badri Das 16 C. L. J. 156 (1911). We must hold accordingly that, in the case before us, the Plaintiff was interested in the payment of the money which he did actually pay. The only other question which requires consideration is, whether the Defendant was bound by law to pay this money. It has been argued before us that as the payment was made after the sale had actually taken place, the Defendant at that stage was no longer bound by law to pay the money. This contention is ingenious but manifestly unsound. The sale had not then been confirmed and consequently the debt had not been satisfied, indeed, it is conceivable that execution might be taken again for recovery of the judgment-debt if the sale was not confirmed on account of irregularity or any other valid reason. Besides it is clear that when payment is made under sec. 310A, the payment is made in satisfaction of the judgment-debt. Mohendra v. Bhuban 12 C. L. J. 566 : S. C. 14 C. W. N. 945 (1910), Jognarain v. Badridas 16 C. L. J. 156 (1911). This reason, however, does not apply to that portion of the sum deposited which represents the damage payable to the execution purchaser. From this stand point it was suggested in the case of Suchand Ghosal v. Balaram Mardana I. L. R. 38 Cal. 1 (1910) that a person in the position of the Plaintiff might not be able to recover that portion of the deposit. The propriety of this view has not been contested on behalf of the Respondent.

2. The result is that this Appeal is allowed in part, and the decree of the Court below modified. The Plaintiff will have a decree for Rs. 1,825 with interest and costs in all the Courts. As the appeal has substantially failed the Respondent will be entitled to

his costs in all the Courts. We assess the hearing fee in this Court at five gold mohurs.