
(1960) 07 CAL CK 0033

Calcutta High Court

Case No: Appeal From Appellate Decree No. 616 of 1955

Nitya Nanda Ghorai

APPELLANT

Vs

Sneha Lata Deyee and
Others

RESPONDENT

Date of Decision: July 22, 1960

Acts Referred:

- Transfer of Property Act, 1882 - Section 6, 6(dd)

Citation: 65 CWN 1115

Hon'ble Judges: Chatterjee, J

Bench: Single Bench

Advocate: Lala Hemanta Kumar and Rabin Mitra, for the Appellant; Shyama Charan Mitter, for the Respondent

Judgement

Chatterjee, J.

This is a second appeal by the husband-defendant in a suit by the wife plaintiff for cancellation of a Nadabi-Patra or a deed of "non-claim". There were various disputes between the husband and wife at an earlier stage. The wife instituted a suit for maintenance and other reliefs and the husband instituted a suit for restitution of conjugal rights. There were some other matters, which are not necessary for me to reiterate at the present stage. Finally, while such suits were pending, they entered into an agreement, which is described as a Nadabi Patra, by which the rights of the parties were amicably settled and the suits were dismissed. The plaintiff instituted the suit for setting aside the document on the ground of fraud and also for declaring that the said document was a void one.

2. The only point, which has been agitated in this High Court, is whether the document is vitiated on is of public policy and, therefore, void in law. I would, therefore, restrict myself to that part of the case alone. The relevant provisions, which are necessary to be considered from this point of view, are (i) the wife gave up her rights to inherit the

husband's property; (ii) the wife agreed to a maintenance at the rate of Rs. 12 per month and also separate residence was agreed to and (iii) the wife agreed not to charge anything other than the maintenance of Rs. 12 per month. With regard to the first question there is no dispute between the Advocates here. That part of the agreement is not valid in law. It may be said that this part of the agreement is void on the ground that after the husband dies, supposing the wife lives, the agreement would not affect the mutual rights of the reversioner and the wife because there is no agreement between them. Further such an agreement is undoubtedly bad as against public policy for the reason that section 6 of the Transfer of Property Act forbids transfer of a chance of succession. In this case, at most, the wife was transferring or surrendering or relinquishing her inheritance in favour of the husband after his death; this means nothing. Hence, this part of the contract must be considered to be void. The next thing is the agreement relating to maintenance of Rs. 12 per month and separate residence. There is nothing immoral nor illegal in it. They tried their best but they failed to live amicably and then they agreed to separate and on that condition the wife was given maintenance. This part of the contract is, therefore, valid.

3. The difficulty arises with regard to the third part. According to this part, the plaintiff will not be entitled to get anything more. It has been stated that, it refers to a right to get a higher maintenance if the circumstances required it or if there are particular occasions where more money would be required; but she would not be entitled to have it, say, -for treatment of herself or, in other words, this rules out cases where the husband would otherwise be bound in law to look after the interest and well-being of the wife; this, it is stated, is against the public policy. Mr. Mitter has referred to a decision reported in (1) [Pirojshah Bharucha Vs. Hirabai Bharucha](#), . According to Mr. Mitter. "a wife cannot barter away her future rights". In order to consider whether it is against public policy, we shall have to consider whether there is any law which directly or indirectly forbids such transaction or there is some such inherent defect in the contract as would not be in keeping with the best interests of the society. Section 6(dd) of the Transfer of Property Act is as follows:-

A right to future maintenance in whatsoever manner arising, secured or determined, cannot be transferred.

4. This section says that the wife cannot transfer her right to get maintenance at the rate of Rs. 12 per month for a future period or, in other words, she cannot transfer her maintenance, which has been determined by the agreement but which is not yet due. This section does not specifically say that a right to get an enhanced maintenance cannot be given up. The Transfer of Property Act lays down that a wife cannot alienate her future maintenance. The question here is whether the wife can give up her right to get enhanced future maintenance. If there is no right to alienate future maintenance when the right to maintenance exists, a right to give up further maintenance in future is as bad as the former.

5. The relationship of husband and wife has always been considered in society as well as in law to be something, which should not be allowed to be violated, and such violation has always been considered in every society as against public policy. Infringe merit of mutual rights and liabilities of the parties has been considered to be more than a mere personal matter and has been considered to be something which affects the entire society and, therefore, they have never been allowed to contract to the detriment of each other if that contract affects the society in any way. It is the duty of the husband to maintain the wife. It is also the duty of the husband to look after the wife when she is ill or requires money for some particular purpose. If the husband does not pay, the husband fails in his duty in such a manner which is not independent of repercussion on the entire society. It is, therefore, that a willing husband and a willing wife cannot contract in any manner they like. Mr. Mitter also refers to the Hindu Marriage Act and says, no party can contract out of that statute. I am of opinion that, if occasions arise where the wife would be entitled to some other relief against the husband, the present contract would not stand in their way. What the present contract does determine is the right to get a maintenance at the rate of Rs. 12 per month. If the circumstances require a higher or a lower maintenance, the Court should be at liberty to consider the circumstances when such circumstances arise. All that I need say is that nothing stated in the contract would debar the parties from raising such questions if and when occasion arises nor would take away the jurisdiction of the Court in the matter.

6. A case of somewhat similar nature came in English Courts. That is a decision reported in (2) 1929 PD 1. That was a case in which by a deed of separation, a wife covenanted not to take proceedings to compel her husband to allow her alimony or maintenance beyond a stipulated amount and thereafter the wife obtained a decree for dissolution of the marriage on the ground of the husband's adultery. It was held "she no longer remains bound by the covenant but is free to take proceedings for permanent maintenance." But that case was decided not on the basis that the document was void in law by itself. It was decided on the basis that after divorce the wife was no longer a wife and the contract was no longer binding. In appeal therefrom reported in (3) 1929 A.C. 601: 1929 All E.R. 245, (Hyman v. Hyman) the House of Lords affirmed the order but based their judgment on the ground that by a voluntary deed the wife cannot by her covenant preclude herself from invoking the jurisdiction of the court or preclude the court from the exercise of that jurisdiction. We may here remember that under the present law in our country the wife has already a cause of action for divorce and, if there is divorce, these authorities at least say that the contract would not then be binding. What seems to me is that in all these disputes between the husband and wife the Court has jurisdiction to fix the maintenance in the circumstances arising at a particular time. If by any covenant such jurisdiction is outside, I am afraid, that will affect public policy as well. I would respectfully follow what Lord Shaw said in (3) 1929 A.C. 601 at p. 622: 1929 All E.R. 245 at page 255: "The Court is bound to look at such an agreement and to decline to be turned from the performance of its judicial duty or the exercise of its judicial rights when the agreement so tabled is of a nature repugnant to and defiant of those obligations which are inherent in the sanctity of

marriage itself. To hold that, it would bring the law into confusion and the Courts into contempt for, as already indicated, it would be using Courts of law for "purpose essentially subversive of society" Lord Atkin thereafter held in (3) 1929 A.C. 601, at page 629, i.e. 1929 All E.R. 259, that "a wife"s right to future maintenance is a matter of public concern which she cannot barter away". Mr. Lala on behalf of the husband said, these conditions are conditions of divorce and in relation to divorce. All that can be said is that most of these cases have direct relationship to cases for divorce and that is all. In the words of Lord Shaw at p. 255-256 (1929 All E.R. 245) "the principle so put, applies all round, that is to say, not only to applications for alimony in case of divorce, but in those also of judicial separation." Every society requires the husband to maintain the wife as a matter of public policy unless there is something in some law which disentitles the wife to get the maintenance. In Hindu law as well there has been provision like that and it went so far as to say that a husband has to maintain an immoral wife after she renounces her immoral relations but the wife"s maintenance would then be only bare maintenance. Hence, I hold Court"s power to grant enhanced maintenance or other relief to wife as she would be entitled to get in law, cannot be ousted by mutual contract.

7. Hence, the appeal must be allowed in part. The contract that the parties agreed to a maintenance of Rs. 12 per month is declared to be a valid contract but the rest of it is not valid in law. A contract not to get maintenance at a higher rate is not valid in law. Each party will bear his costs throughout.