

(1909) 07 CAL CK 0044

Calcutta High Court

Case No: None

Ishan Chundra Dutt

APPELLANT

Vs

Kunja Mohan Deb

RESPONDENT

Date of Decision: July 7, 1909

Judgement

1. This was a suit for recovery of possession of certain land on declaration of plaintiff's title thereto, The plaintiff claimed as purchaser from defendant No. 2 under a kobala of 19th Magh 1311. The defendant No. 1 resisted the suit claiming as purchaser from one Nobin Chandra Shome, who in his turn had purchased from Maheswari Debi. The only question argued before us was whether the alienation by Maheswari Debi was made for legal necessity, so as to bind the reversioner through whom plaintiff claimed. Both the Courts below concurred in finding that legal necessity was not proved, and decreed the plaintiff's claim. The legal necessity alleged was the raising of funds to enable Maheswari to make a pilgrimage to Gaya to perform her father's sradh. The kobala executed by her recited it to be her intention to perform the Gaya sradh. The Courts below have found that she had no such immediate intention; that she raised the money to carry on a money lending business; and that she did not go to Gaya until sometime afterwards. It was argued for the appellant that this expression of intention on her part was enough; and that the purchaser from her was not bound to see to the application of the money. In this connection he cited the case of Udai Chunder Chuckerbutty v. Ashutosh Das Mozumdar 21 C. 190. We agree that it is not necessary for the alienee in such cases to see to the application of the money : but in purchasing from a Hindu lady having only a woman's estate in the property it is incumbent upon him to satisfy himself that there is a genuine necessity for the alienation. Here Nobin Chandra Shome seems to have done nothing" of the kind. From his evidence given before the lower appellate Court it appears that he met Maheswari Debi one day on the road going along in her palki, that she said she intended to perform the Gaya sradh; and that he then and there agreed to buy the property in question. There is nothing to show that the lady had any necessity to sell it, or that she had no funds to proceed to Gaya

without raising money by such alienation. It may be noted that her husband was alive at the time, and presumably she was living with and being maintained by him. In these circumstances, we think, that the Courts below were correct in holding that no case of legal necessity was made out. This appeal is dismissed with costs.