(1868) 06 CAL CK 0017

Calcutta High Court

Case No: None

Fatima Khatun and Another		APPELLANT
	Vs	
Mohammed Jan Chowdry and Others		RESPONDENT

Date of Decision: June 29, 1868

Judgement

1. This case, when divested of all that which is not material to the question before this Board, may be stated as follows:-- The appellants, two sisters, who had married individuals of the same family, became entitled, under what we should in this country call a marriage settlement, to dower in the form of a charge on an estate or property, which had belonged to a person of the name of Nyum Chowdry. He having died in debt, his heirs or representatives were sued by various persons, and among others by the respondents, or those whom the respondents now represent, to recover some very considerable debts alleged to have been due by him; in which suit they obtained judgment. Under that judgment, certain other properties were attached and sold and the judgment was in part satisfied. If it were necessary to look into the particulars of these numerous and somewhat complicated proceedings, it would probably appear (and that alone would be a ground upon which these respondents must be held disentitled to retain the money they have received) that this judgment was in effect satisfied; that all that the decree of the Court had entitled the respondents to take out of the different properties in question, had been paid and satisfied in one way or another; and were received by them so as to disentitle them to institute, or to continue any further proceedings against these properties in respect of the claim now in question. However, they did, in fact, obtain an authority, under one of the many proceedings that have taken place, to sell the estate or property upon which this dower of the appellants was charged. In order to prevent that sale, which would have been mischievous and prejudicial in the highest degree to the rights of the now appellants, they, upon a proceeding which they instituted, and under the authority of the Court not voluntarily, but under protest, and because they were compelled to take that step in

order to prevent the sale of the property, paid the sum of between 59,000 and 60,000 rupees into Court; and it appears that that payment into Court having taken place in order to prevent a sale of the property, under which the rights of all parties, and, among others, of these appellants, were expressly reserved, the question arose, and arose in rather a singular form, whether the money should remain in Court, or whether it might not be paid over to the now respondents. Undoubtedly, the pleader for the person who represented the now appellants consented at once that the money should be paid over to them.

2. The money that had been paid into Court, not voluntarily, but under this species of compulsion, and for the purpose of preventing this injurious sale of the property, was paid over accordingly; the only voluntary act which was done being the consent given by the now appellants that the money, instead of remaining in Court, should, in the meantime, and until the rights of the parties could be settled by the final decree of the Court, be paid over to the respondents, Afterwards, when all these circumstances came before the Zilla Court, and all the questions were raised which either party thought fit to raise, or had the power to raise, in the then state of the suit, the appellants obtained a decree in their favour, against the respondents, of the date of the 8th of June 1860, for the sum of 59,281 rupees and a fraction, being the amount paid to them out of Court as before mentioned. Against this decree an appeal was lodged, which was carried before the High Court of Judicature at Fort William in Bengal. The High Court, having heard the parties by their counsel, and having considered the whole case, did not in any way, enter into the merits of the case itself or of the decision of the Court below, at least upon the grounds upon which the case had been decided, but took the point for themselves that by the law this payment to the respondents of the money of the appellants, under the circumstances in which it was made, constituted a voluntary payment with the full knowledge of the facts; and, therefore, that the money could not be recovered back. If it had been such a payment, no doubt such is the law; but when we look at the circumstances, as they appear on the record, we find, in the first place, it was not a payment at all. It was originally a mere deposit in Court of the full amount recoverable by the decree-holder. It was deposited, under protest, for the purpose of preventing an injurious sale of the whole property. Then it appears that upon the reading of the petition, the pleader for the petitioners was asked whether his clients had any objection to the payment to the decree-holder of the amount which had been so deposited; and the answer was, "I will bring a regular suit for setting aside the summary order rejecting the claim, but the sale cannot be stayed unless the amount recoverable by the decree-holder is deposited. I, therefore, deposit the amount for the purpose of its being paid to the decree-holder, and pray that the said sum he paid to the decree-holder and the sale be stayed." Those were the circumstances under which the money was paid, the payment being clearly no voluntary payment, and the suit having been determined on its merits in favour of the appellants, they are clearly entitled to recover this money back again. Therefore,

the order that we shall advise Her Majesty to make is, that the decree of the High Court of Judicature, reversing the decree of the Zilla Court, be reversed, and that the decree of the Zilla Court be confirmed; and that the appellants be held entitled to recover 59,821 rupees and a fraction, as decreed by the judgment of the 8th of June, 1860. It is satisfactory to feel, as their Lordships have not entered into the merits of the case on the many points argued in the Zilla Court and in the High Court, that substantial justice is done by the order which they will now advise Her Majesty to pronounce; for it is perfectly clear, on the one hand, that the respondents had no right to this money out of that estate at all, they having been satisfied to the extent that the former decrees of any Court or Courts entitled them to recover out of that property and, on the other hand, it appears perfectly clear that the appellants paid this'' money merely for the purpose of preventing a sale of the property, so that they are, in justice, as well as in law, entitled to recover. The appellants must also be held entitled to the costs of the appeal, and of the reversal of the order, and to the usual interest, at the current Court rate, upon the sum to which they are so entitled.