
(1871) 06 CAL CK 0016

Calcutta High Court

Case No: Special Appeal No. 48 of 1871

Bistobehari Sahoy

APPELLANT

Vs

Lala Biajnath Prasad
and Others

RESPONDENT

Date of Decision: June 14, 1871

Final Decision: Allowed

Judgement

Glover, J.

The plaintiff in this case sues for a declaration of his right to certain ancestral property as next reversionary heir, and also to have it declared that a sale of that property made in execution of a decree, in which the defendant became the purchaser, was invalid as against him the reversioner. The property in suit originally belonged to one Pariagnarayan, who died leaving a widow, Bhagwani, and two daughters, Krishna Pyari and Lachmi Pyari. The plaintiff in this case is the son of the eldest daughter of Pariagnarayan, Krishna Pyari, and consequently the grandson of Pariagnarayan. It appears that the widow Bhagwani on the 15th of March 1858 took a loan of Rs. 15,000 from three persons, Ramanath, Bhiku, and Bulatun, on a zuripeshgi of the property now in dispute. Ramanath assigned his interest in the zuripeshgi to one Mannu Lal, who, not being able to get possession of his share, brought a suit against the widow to recover the money advanced by him: he got a decree; and in execution of it, the sale, which is now the subject of dispute, took place on the 3rd August 1869. The plaintiff's object is to have it declared that that sale is, as against him, the reversioner, an illegal sale, not having been made for any of those necessities which the Hindu law allows. The substantial defence was that there were such necessities, and that the sale was therefore a good sale.

2. The Court of first instance decreed for the plaintiff. The Subordinate Judge considered that no necessity had been proved, and that the sale was not binding on the reversionary heir; he made an order, therefore, to the effect that possession under the sale should last only during the widow's life-time. The Judge on appeal, without going into the merits of

the case, decided that the plaintiff had no cause of action, and that his suit ought never to have been registered. He held that, as only the right, title, and interest of the widow Bhagwani passed at the auction-sale, and that such right, being the right of a Hindu widow, was only a life-interest, the plaintiff was not in any way undamaged, and had no right to bring the suit. This decision appears to us wrong for the very simple reason that, whether the plaintiff had or had not a cause of action, on account of the execution sale, would depend entirely upon whether the widow had, at the time she incurred the debt which burdened her husband's estate, such necessity for incurring that debt as the Hindu law contemplates. If she had, and if such necessity had been established, her right and interest would have included the entire estate, which would have passed under the decree to the purchaser in execution; whilst if she had sold without such necessity, then all that would have passed under the sale would have been her life-interest; and before it could have been decided whether or not the plaintiff had a cause of action, it must first have been decided whether or not there was any legal necessity for the widow to incur the debt. The case, therefore, must be remanded to the lower Appellate Court for a decision on this question. Costs to follow the result.