
(1876) 06 CAL CK 0009

Calcutta High Court

Case No: None

Luchmi Dai Koori

APPELLANT

Vs

Asman Sing and Others

RESPONDENT

Date of Decision: June 7, 1876

Citation: (1877) ILR (Cal) 213

Hon'ble Judges: Mitter, J; Markby, J

Bench: Division Bench

Judgement

Markby, J.

The Subordinate Judge took evidence in the case, but eventually without in any way going into the evidence held upon the strength of a decision of the Privy Council in the case of Muddun Thakoor v. Kantoo Lall 14 B.L.R. 187 that the decree under which the defendant purchased this property was conclusive in the matter, and that the defendant was not in any way bound to inquire further when this decree was existing.

2. Against this judgment the plaintiff appeals, and he contends, in the first place, that the Privy Council case relied on does not make the decree conclusive in the way the Subordinate Judge has held it to be; secondly, he contends that upon the evidence he has made out his case that this was a debt for which his interest in the property could not in any way be made liable; and thirdly, he contends that, under the terms of the decree itself, the property which should have been first sold in satisfaction of the decree was the property which had been mortgaged, and that, therefore, applying the Privy Council decision in all its strictness, the purchaser had notice upon the face of the decree that this property could not be sold.

3. Now, with regard to the first point, we think that the decision of the Subordinate Judge is right. The case that we have to deal with here is, for all material purposes, precisely the same as that which was dealt with by the Privy Council--in what is called the: "second appeal" in the case referred to--the appeal of Muddun Mohun Thakoor, whose position was precisely that of the present defendants. The Privy Council say, speaking of the

purchaser in that cage: "He found that a suit had been brought against the two fathers; that a Court of Justice had given a decree against them in favour of a creditor; that the Court had given an order for this particular property to be put up for sale under the execution; and, therefore, it appears to their Lordships that he was perfectly justified within the principle of the case of Hunooman Persaud Panday v. Mussamut Babooee Munraj Koonweree 6 Moore's I.A. 393 in purchasing the property, and paying the purchase-money bona fide for the purchase of the estate."

4. Here also there had been a decree of a Court of Justice against the father for this money, and an order of the Court that this property should be put up for sale.

5 Then their Lordships quote a well-known passage from the case referred to (6 Moore's I.A. 423), and then they say as follows: "The same rule has been applied in the case of a purchaser of joint ancestral property. A purchaser under an execution is surely not bound to go back beyond the decree to ascertain whether the Court was right in giving the decree, or, having given it, in putting up the property for sale under an execution upon it. It has already been shown that, if the decree was a proper one, the interest of the sons, as well as the interest of the fathers in the property, although it was ancestral was liable for the payment of the father's debts. The purchaser under that execution. it appears to their Lordships, was not bound to go further back than to see that there was a decree against those two gentlemen; that the property was property liable to satisfy the decree, if the decree had been given properly against them" (14 B.L.R. 199, 200).

6. Now it is contended upon those last words, that the intention of the Privy Council was that a purchaser at an execution sale should not only see that there was a decree, but that a decree had been rightly given against the judgment-debtor. That would be really unsaying all that the Privy Council had just before said upon the matter. What we think the Privy Council mean by those words is, that a party is not bound to look beyond the decree to see that that was a right decree, for they had said already just the contrary that he was not bound to do so, but he was bound to look to the decree to see that in point of form it was a proper decree. Then that being so, no objection can be taken in point of form to this decree, except the one which was taken by Baboo Mohesh Chunder Chowdry with which we have to deal now.

7. He contends that, even giving the Privy Council decision that interpretation, the purchaser was not bound in any way to go behind the decree to see what occurred prior thereto, still he was bound to look to the decree itself and as it stands; there was notice to him on the face of the decree that this was a debt which, under the Mitakshara law, the son was not liable to discharge, and for this reason, because it appears upon the face of the decree, that the interest, which was allowed upon this bond, amounts to somewhere about Rs. 1,600 for a period less than a year in respect of a principal of Rs. 2,800, giving a rate of interest somewhere over 50 per cent.

8. But, even assuming that the Hindu law contains a prohibition against the taking of interest at so high a rate, and that by the Hindu law interest at that rate could not under any circumstances be allowed, still we think that that is not a circumstance which within the principles laid down by the Privy Council in the case quoted above, can be treated as showing that this was a decree for a debt which the son was not bound to discharge. For that purpose, we must look into what the cases under the Mitakshara law are in which he is not bound to discharge the father's debt. That is expressed by the Privy Council in these words:

It is necessary, therefore, to see what was the nature of the debt for the payment of which it was necessary to raise money by the sale of the property in question" 14 B. L. P. 197. Now all we know, and all we can know, is what appears on the face of the decree itself. Their Lordships go on to say: "If the debt of the father had been contracted for an immoral purpose, the son might not be under any pious obligation to pay it; and he might possibly object to those estates which have come to the father as ancestral property being made liable to the debt. That was not the case here. It was not shown that the bond upon which the decree was obtained was given for an immoral purpose; it was a bond given apparently for an advance of money upon which an action was brought" 14 B.L.R. 197.

9. Can we say here upon the face of the decree, that, so far as it orders interest to be paid, it is a decree for an immoral purpose? One might almost say that such a question answers itself. It may be that, under Hindu law, there were some restrictions against the allowance of interest; but it is well known that those restrictions are no longer enforced by our Courts. There is no ground whatever for saying that, what our Courts allow in the shape of interest is money directed to be paid for immoral purposes. Therefore, upon that ground, it appears to us impossible to say, that, on the face of the decree it was one for a debt which the son was not bound to discharge.

10. This view of the case renders it unnecessary to consider the facts of this case, but, having heard the case very ably argued on behalf of the appellant, we think, even upon the facts of the case, that this was a debt which the son was bound to discharge.

11. Therefore, upon the evidence, if one was at liberty to go into the evidence, we should hold that the debt was one which, under the Mitakshara law, the son was bound to discharge.

12. Then the other question remains, namely, as to the form of the decree. Now we had the decree read to us, and we consider this to be not such a decree as we know is sometimes made, namely, a decree restricting the parties in the first instance to the sale of the mortgaged property. But it is a decree against the mortgagor generally coupled with what is called a declaration of the lien--a declaration which it is exceedingly common to insert in decrees against mortgagors upon a bond of this nature. The bond also, as has been pointed out by Mr. Advocate-General, was not only a bond pledging the property, but a bond which made the party personally liable for the money. Now, upon a decree of

that kind, we have no hesitation in holding that a person may in law proceed either against the person or against the mortgaged property specified in the decree. In saying that we do not at all mean to say that that is a course which in all cases ought to be allowed. There are undoubtedly cases in which that would operate greatly to the injury of the mortgagor. And we desire to say nothing which would in any way interfere with the discretion of the Court executing the decree to take such precaution as might be necessary against any injury of that kind. But we think that in the present suit no inquiry upon such a subject as that can take place. I have already quoted the passage from the Privy Council judgment, which points out the duty of a purchaser at an execution sale in such a case as this. We think that, under the law as there laid down, the purchaser had a right to assume that the property, which was sold at this sale, was liable to be sold under this decree, and that any questions which the judgment-debtor might have raised or did raise upon the order by which the property was brought to sale, were disposed of at the time when the sale was ordered to take place. Therefore whatever may be the judgment-debtor's right under such a decree as this, that question cannot be raised now as against the person who has purchased at a sale under a decree of Court. Therefore that ground also fails.

13. The result is that the regular appeal must be dismissed with costs.