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Court : Allahabad

Decided On : Jul-17-1919

Reported in : AIR1920All310; (1920)ILR42All58; 67Ind.Cas.931

Judge : Stuart and ;Ryves, JJ.

Appellant : Dalip Narain Singh and anr.

Respondent : Parmaoti Bibi and ors.

Judgement :

Stuart and Ryves, JJ.

1. The plaintiffs in the suit, out of which this appeal arises, are two minors. They sued Parmaoti Bibi, decree-holder, the auction-purchaser, and, pro forma, their father, who was the judgment-debtor. It appears that the decree-holder, Parmaoti Bibi, obtained a decree against their father on a promissory note in the Court of Small Causes and that in execution of that decree the property in dispute was brought to sale and was purchased by the defendant No. 2. The father of the plaintiffs, that is, the judgment-debtor, made two unsuccessful attempts to have the sale set aside. This suit is now brought on behalf of the minors for possession of 2/3rds of the property on the ground that only the father's interest could be sold in execution of the decree, which is against him alone, and that their share in the property could not be sold.

2. In the court below, it was stated in the plaint that the father was extravagant, of weak intellect, and a simpleton, and that the debt had been incurred for immoral purposes. The actual wording of the plaint is as follows:

A simple money decree was obtained against defendant No. 3 on the basis of a pro-note which was executed, not for any family necessity, but for immoral pursuits.

3. Only one issue on this point was raised. It is the second issue, which runs: 'Whether the debt to realize which the suit was filed was tainted with immorality. '

4. There were two other main grounds of attack against the sale. One was that, the property being ancestral, it could not legally be sold by the Civil Court and that, as it had been sold by the Civil Court, the sale must be treated as a nullity. And, secondly, that an arrangement had been come to shortly after the auction sale, before it had been confirmed, by which the auction purchaser agreed to accept the amount bid at the sale plus 5% and to have the sale set aside.

5. These two last were apparently the main grounds on which it was sought in the trial court to have the sale set aside. On both these grounds the plaintiffs failed. The court found that the sale had been confirmed, and that, though it was an irregularity for the Revenue Court to have held it, as the property was ancestral, nevertheless that was a mere irregularity and did not render the sale void. On the other grounds it found that the immorality of the debt of the father had not been proved and also that the fraud alleged on behalf of the auction-purchaser had not been established. It therefore dismissed the suit.

6. On appeal before us six grounds are taken. They deal one and all with the validity of the sale. The learned Counsel who argued the appeal, however, raised another point. He argued that there was nothing to show that the suit in the Small Cause Court, which was decided *ex parte*, had been brought against the father in his capacity as head of the family or that the debt for which he was sued was one incurred for family purposes, and that, therefore, even if it be held that it was unnecessary to implead the father expressly as the manager of a joint Hindu family, nevertheless, in the words of Mr. Justice Banerji in the Full Bench case of

Hori Lal v. Munman Kunwar (1912) I.L.R. 34 All. 549 (561), ' it was essential that the manager was sued in respect of a family debt,' and he asked us to remit an issue on the point for further inquiry. It seems to us, however, that the matter is concluded by the way in which the suit was fought in the lower court. It was never alleged clearly that the debt incurred by the father was not one' for family purposes. What was all eged was that it was an immoral debt and therefore, of course, could not be for family necessity.

7. The only issue raised on the point, as we have stated, was on the question of its immoral nature, and that has been found against the plaintiff, and it has not been attempted to show to us that that finding is wrong. Their Lordships of the Privy Council in a very recent case, viz., Sripat Singh Dugar v. Prodyot Kumar Tagore (1916) I.L.R. 44 Calc. 524 (532), said:

The property in question was joint property governed by the Mitakshara Law. By that law a judgment against the father of the family cannot be executed against the whole of the Mitakshara property, if the debt in respect of which the judgment has been obtained was a debt incurred for illegal or immoral purposes. In every other event it is open to the execution creditor to sell the whole of the estate in satisfaction of the judgment obtained against the father alone.

8. It seems to us, especially as the point was not raised in the grounds of appeal, that we need not discuss the matter further.

9. The next ground raised was that, in view of the finding that the property was ancestral, its sale by the Civil Court was void in law, and for this proposition reliance has been placed on Fatmat-ul-Kubra v. Achchi Begam (1913) I.L.R. 36 All. 33. But that was an execution appeal. The sale had not then been confirmed, and alt that the court did was to order a proper procedure to be followed, namely, that the property being ancestral should be handed over to the Collector for execution of the decree. The point really is concluded by Behari Singh v. Mukat Singh (1915) I.L.R. 28 All. 273,: which is almost on all fours with this ease. The other grounds of appeal are not pressed. The result is that the appeal fails and is dismissed with costs.

