

Babu Ram Vs. Ganesh and Badri

Babu Ram Vs. Ganesh and Badri

SooperKanoon Citation : sooperkanoon.com/449374

Court : Allahabad

Decided On : Nov-17-1914

Reported in : (1915)ILR37All72

Judge : Chamier and ;Piggott, JJ.

Appellant : Babu Ram

Respondent : Ganesh and Badri

Judgement :

Chamier and Piggott, JJ.

1. A suit brought by the respondent, Babu Ram, for possession of movable and immovable property was settled by an agreement dated the 17th of November, 1906, and duly registered, whereby the property then in suit was charged with the payment of an annuity of Rs. 200 to Babu Ram. In 1908 Babu Ram obtained a decree for arrears of the annuity against Brij Mohan, father of the respondent Badri, and in execution thereof part of the property, namely, a birt jajmani, some old books containing the names and genealogies of the clients (jajman) and a flag were brought to sale. The birt jajmani and the books were purchased by Babu Ram himself and the flag was purchased by the appellant Ganesh.

2. The appeal now before us arises out of a second suit brought by Babu Ram for recovery of further arrears of the annuity by sale of the movable and immovable

property charged by the agreement of 1906. Brij Mohan (since deceased) and his son, the respondent Badri, were impleaded as the persons in possession of the immovable property, and the appellant Ganesh was impleaded as the purchaser in possession of the flag. The claim was decreed by the first court and its decision was confirmed by the lower appellate court. This is a second appeal by the defendant Ganesh, in which he repeats all the pleas put forward by him unsuccessfully in the courts below.

3. His first point is that the flag having been once brought to sale by the respondent, Babu Ram, cannot be brought to sale by him again. It was indeed suggested that movable property cannot be charged with the payment of an annuity, but such a contention cannot be accepted. In the case of *Sahib Mirza v. Umda Khanam* (1892) I.L.R. 19 Calc. 444 both movable and immovable property was charged with the payment of an annuity. The property was sold repeatedly subject to the annuity in execution of decrees passed for arrears of the same, and there were many suits between the annuitants and the holders of the property, and between the holders of the property, inter se. *Sahib Mirza v. Syed Mohammad* Select Cases (Oudh) No. 306 is an example of them. It is clear that movable as well as immovable property, at all events movable property which is not perishable or necessarily consumed by use, may be effectively charged with the payment of an annuity and may be sold subject to the charge, even in execution of a decree for arrears of the annuity. The property now in question is of a peculiar character : the flag is one of those used by Pragwals at the confluence of the Ganges and the Jumna for the purpose of attracting pilgrims. Each flag bears a distinctive device which may be recognized by an old client. His flag and his books are the ordinary paraphernalia or stock in trade of the owner of a birt jajmani. Together, the birt jajmani, the books and the flag often form a valuable property, and we may assume for the purposes of this case that such property may be charged with the payment of an annuity and may be sold subject to that charge even in execution of a decree for arrears of the annuity.

4. This brings us to the appellant's second point, namely, that the flag J was not sold to him subject to the annuity, and that the respondent Babu Ram is by his conduct estopped from asserting that it was. Babu Ram was of course not bound

to have the flag sold subject to the annuity. It was open to him to have it sold free of the charge, and such a course would often be advantageous to the owner of the annuity in the case of movable property of a wasting character. Whether by accident or design, it appears that nothing was said about the property remaining subject to the charge. The case appears to be analogous to those cases in which it has been held that a person who brings property to sale in execution of a decree, without disclosing the existence of a mortgage which he holds on the property, cannot afterwards set up the mortgage against the purchaser, at all events where the purchaser had no notice of the mortgage. See for example *Muhammad Hamid-ud-din v. Shib Sahai* (1899) I.L.R. 21 All. 309, *Jaganatha v. Gangi Reddi* (1892) I.L.R. 15 Mad. 303, *Kasturi v. Venkatachalapathi* (1892) I.L.R. 15 Mad. 412 and *Ramchandra v. Jairam* (1897) I.L.R. 22 Bom. 686. It is not suggested that the appellant had any notice of the charge, or that there was anything to lead him to suspect that the flag was being sold subject to a continuing charge for an annuity. On the contrary Babu Ram's own action in allowing the birt and the books to be sold separately from the flag suggests that he intended that the flag, the birt and the books should all be sold free of the charge for the annuity, for the flag without the birt and the books will produce no income. For these reasons we are of opinion that the flag held by the appellant was sold to him free of the charge for the annuity and that the respondent Babu Ram is estopped from contending the contrary. We allow the appeal and dismiss the suit as against the appellant with costs throughout.