

Ram Singh and ors. Vs. Chet Ram and ors.

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Court : Allahabad

Decided On : Mar-11-1919

Reported in : AIR1919All415; (1919)ILR61All529; 51Ind.Cas.119

Judge : Muhammad Rafiq and ;Lindsay, JJ.

Appellant : Ram Singh and ors.

Respondent : Chet Ram and ors.

Judgement :

Muhammad Rafiq and Lindsay, JJ.

1. This appeal arises out of a suit brought by the grandsons of one Amar Singh to recover possession of property conveyed by him by a sale deed, dated the 16th of July, 1907. Amar Singh, it seems, had two sons, Bharat Singh and Kehar Singh, both of whom are alive, Bharat Singh has one son called Ram Singh, and Kehar Singh has two sons, named Mahabir Singh and Gajraj Singh. On the 23rd of March, 1904, Amar Singh executed a deed of mortgage of the property in suit for Rs. 8,000, in favour of Chet Ram and Himmat. Three years after, that is, on the 16th of July, 1907, Amar Singh executed a deed of sale in respect of the mortgaged property in lieu of Rs. 13,500, in favour of the mortgagees, i.e., Himmat and Chet Ram. Rs. 8,000 were set off towards the payment of the mortgage of the 23rd of March, 1904, and Rs. 5,500 were paid in cash before the Sub-registrar to Amar Singh. One Dalip Singh brought a suit to recover a portion of the property

sold on the ground of pre-emption. He obtained a decree and subsequently sold the property to Jawahir Singh. The sale deed of 1907 was attested, among others, by the two sons of Amar Singh. The latter died in 1909. On the 24th of July, 1915, the suit out of which this appeal has arisen was brought by his grandsons against Chet Ram, Jawahir Singh, Dalip Singh and the sons of Himmat. The plaintiffs impleaded their fathers as pro forma defendants in the case. The claim was brought on the allegation that Amar Singh was a man of immoral character, that the property sold on the 16th of July, 1907, was joint ancestral property; that it was sold for no legal necessity; that full consideration had not passed either on the sale deed or on the mortgage; that the signatures of the sons of Amar Singh were obtained under coercion, and that the property was sold for an inadequate price. The defendants resisted the suit by traversing all the allegations made in the plaint and further adding that they had made reasonable inquiry before entering into the transaction of sale and were satisfied that the property was sold for necessity and that they were bona fide purchasers for value. The learned Judge of the lower court held that the description of Amar Singh's character had been considerably exaggerated on both sides and that the most that could be said on the evidence in the case was that he had not led a moral life. Further, the learned Judge held that full consideration had passed both on the mortgage and the sale deed; that the allegation of coercion as to the signatures of the plaintiffs' fathers was not proved; that the value of the property was Rs. 13,500 and that the sum of Rs. 8,000, that is, the mortgage money, fell under the definition of an antecedent debt and that the sale was good to that extent. As to the balance of Rs. 5,500, he found that it was the pious duty of the plaintiffs to discharge the debt of their grandfather and hence they were bound to pay it. He accordingly decreed the claim of the plaintiffs for the recovery of 11/27 of the property in suit on the payment of Rs. 5,500. The money was to be paid within three months or the suit of the plaintiffs was to stand dismissed. In appeal to this Court it is contended on behalf of the plaintiffs that, in view of the pronouncement of their Lordships of the Privy Council in the case of *Sahu Ram Chandra v. Bhup Singh* (1917) 44 I.A., 120: I.L.R., 39 All., 437 (447), the mortgage of 1904 does not fall within the definition of an antecedent debt. As to the liability of the plaintiffs to pay Rs. 5,500, before recovering the proportionate amount of the property, it is contended that as their fathers, that is, the sons of

Amar Singh, are still alive, there is no pious obligation on the plaintiffs to discharge the debt of Amar Singh. To take up the question of antecedent debt first. In the Privy Council case already referred to their Lordships observe as follows: 'In their Lordships' opinion these expressions, which have been the subject of so much difference of legal opinion, do not give any countenance to the idea that the joint family estate can be effectively sold or charged in such a manner as to bind the issue of the father, except where the sale or charge has been made in order to discharge an obligation not only antecedently incurred, but incurred wholly apart from the ownership of the joint estate or the security afforded or supposed to be available by such joint estate. The exception being allowed, as in the state of the authorities it must be, it appears to their Lordships to apply, and to apply only, to the case where the father's debts have been incurred irrespective of the credit obtainable from immovable assets which do not personally belong to him but are joint family property.' It is apparent from this expression of opinion that the obligation incurred by a father which would be binding upon his sons must have two attributes, namely, first that it must have been incurred antecedently to the transaction in suit, and, secondly, it must have been incurred wholly apart from the ownership of the joint estate or the security afforded or supposed to be available by such joint estate. In the present case the sum of Rs. 8,000 was borrowed by Amar Singh on the security of the joint estate. There is nothing to show that the money was advanced to him on his personal credit. In fact, on the contrary, it appears that the mortgage was a usufructuary mortgage under which Amar Singh, the mortgagor, incurred no personal liability. Applying, therefore, the test laid down in the case of *Sahu Ram Chandra v. Bhup Singh* (1917) 411. A., 126; I.L.R., 39 All, 437, we find that the mortgage of 1904 cannot be considered to be an antecedent debt as defined in the said case. The point was again considered by their Lordships of the Privy Council in the case of *Jogi Das v. Ganga Ram* (1917) 21 C.W.N., 957, where Lord Haldane interpreted the judgment in the case of *Sahu Ram Chandra v. Bhup Singh* (1917) 411. A., 126; I.L.R., 39 All, 437 as follows: 'In that case it was laid down in effect that joint property could not be alienated as against co-sharers by way of mortgage, or otherwise, except for necessity or for payment of an actual antecedent debt, quite distinct from the debt incurred in the mortgage itself, and that in consequence the transaction in that case could not

stand, and it was added that the mere circumstance of a pious obligation does not validate the mortgage.' A similar point arose in the case of *Brij Narain Rai v. Mangal Prasad* (1918) I.L.R., 41 All., 235, decided by a Bench of this Court to which one of us was a party. It was held in that case that the mortgage in suit, having been ostensibly created in order to pay off two prior mortgages, that is, debts which had been incurred prima facie on the security of the joint family property, would not, in view of the decision in *Sahu Ram Chandra v. Bhup Singh* (1917) 411. A., 126; I.L.R., 39 All, 437, be one created to pay off antecedent debts. The next point to be considered in the appeal is the obligation of the plaintiffs to pay the sum of Rs. 5,500, before recovering any portion of the property. The lower court has found on the evidence in the case that the plaintiffs have failed to prove that the sum in question was borrowed by Amar Singh for immoral purposes, and, on the other hand, the contesting defendants have not proved that the money was taken for any legal and valid necessity, But as the money actually passed, the lower court, in view of some of the authorities cited before it, held that the plaintiffs were under a pious obligation to pay the said sum, In connection with this point we would here refer to an argument urged on behalf of the defendants respondents by their learned Counsel to the effect that even if the Rs. 8,000 secured by the mortgage of 1904 were not payable because the loan did not fall under the definition of an antecedent debt, the plaintiffs were liable for the amount as the personal debt of then grandfather, for the same reason that they were liable to pay the sum of Rs. 5,500. As to this argument one of the objections is, as we have already pointed out, that the mortgage was a usufructuary mortgage and there was no personal obligation under which the mortgagor was liable to pay the money. Moreover, the doctrine of pious obligation comes into operation only against the sons, or, in case of their death, against the grandsons. The doctrine is based on spiritual considerations apart from the ownership of any property. Even in the case of a Hindu pauper, it is the pious duty of his sons to pay off his debts in order to secure him a passage to Heaven. The sons of Amar Singh are still alive. The pious obligation to pay the debts of Amar Singh lies upon his sons and not upon his grandsons. *Vijnaneswara*, commenting on the sloka bearing on the point now under discussion, says as follows: 'If the father not having paid the debt due has died or has gone to a distant country or is

overpowered by incurable disease, etc, then the debts contracted by him must be paid by his son or grandson even in the absence of the father's property. Thereon this is the order, on the father's default, it is the son, on the son's default, it is the grandson (who should pay). Therefore by a son born giving up his self-interest should the father be carefully released from debt so that he may not go to Hell.' We, therefore, find that there is no pious obligation on the plaintiffs to pay the sum of Rs. 5,500, before recovering the property. It is, however, conceded before us that a portion of the mortgage money, that is, Rs. 1,000, was applied towards the payment of a personal debt of Amar Singh owing to a Bank at Meerut. The sum of Rs. 1,000, therefore, paid to the Bank at Meerut may be considered to come under the definition of an antecedent debt. We, therefore, hold accordingly. It represents a small portion of the sale consideration. The plaintiffs are, therefore, bound to pay that amount and they cannot have the sale set aside and recover the property without paying it. We accordingly decree the claim of the plaintiffs for the recovery of the property in suit on the payment of Rs. 1,000, plus interest at 12% per annum from the 25th of March, 1904, to the date of the suit. After the date of the suit the sum of Rs. 1,000 to carry 6% per annum interest till the date of payment, the money to be paid by the plaintiffs within six months from the date of the decree of this Court, or in default, their claim shall stand dismissed. Proportionate costs here and hitherto are allowed to the parties.