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Court : Allahabad

Decided On : Dec-22-1933

Reported in : AIR1934All423

Appellant : Mt. Kishan Devi

Respondent : Chand Mal

Judgement :

Kendall, J.

1. This is a defendant's application for the revision of a decree and order of the Judge of the Small Cause Court of Saharanpur, decreeing the plaintiff's suit in full with costs. The suit was based on a promissory note executed on the 20th April 1928, by Mt. Raj Kali, the widow of one Boocha. Mt. Raj Kali died and the suit was brought against Mt. Kishan Devi, the mother of Boocha, as the next reversioner to the estate of Boocha, and the main plea made in defence was that the debt incurred by Mt. Raj Kali was a personal debt and that: no decree could be given which would bind the assets of Boocha. The trial Court found that as the debt had been incurred by Mt. Raj Kali for the payment of Government revenue there was legal necessity for it, and consequently Mt. Raj Kali could bind the estate of her deceased husband, and a decree was given accordingly. It was part of the argument on behalf of the applicant that legal necessity was not proved and that the claim was barred by limitation, as Mt. Raj Kali, in making an acknowledgment

on the 4th March 1930, which has been held to save limitation, was not representing the estate of Boocha and could not therefore bind it. The main contention, however, was that even assuming that Mt. Raj Kali borrowed the money for legal necessity, she could not bind the estate of Boocha. In the case of *Dhiraj Singh v. Manga Ram* (1897) 19 All. 300, a Bench of this Court in 1897 in very similar circumstances held that the personal debt of the widow did not empower the creditor to bring to sale the ancestral property in the hands of the reversioner. In the course of that judgment, the Chief Justice Sir John Edge remarked:

The plaintiff, if he had chosen, could, before lending his money, have obtained from the Hindu widow the security of ancestral property by obtaining a mortgage. He did not choose to demand a mortgage before advancing his money; he accepted the personal liability of the widow. He now seeks to get a decree under which he can bring to sale the ancestral property in the hands of the reversioners. He seeks a decree which would bind that property. In other words, he is seeking a decree in this suit...which he could only have obtained if he had had a valid charge on the ancestral property. The plain answer to his suit is that the plaintiff lent his money on the personal liability of the widow, and the defendants reversioners having no assets of the widow in their hands, the plaintiff cannot get a decree against them.

2. In the case of *Kallu v. Faiyaz Ali Khan* (1884) 30 All. 394 a Bench of this Court held in 1908 that where money is lent to a Hindu widow on her personal security, a decree for such a debt and a sale of property late of the widow's husband in execution of such decree binds only the widow's estate, notwithstanding that the original debt may have been incurred for legal necessity. In the course of judgment the learned Judges remarked:

When Deekishen lent money to Mt. Gaura in 1883 he chose to do so on her personal security. He did not obtain from her any mortgage of her husband's property. That being so, we hold that any decree which he obtained on his simple money bond could only bind the rights and interests of his debtor on whose personal security he had advanced the money.

3. It has been strongly contended by Mr. Panna Lal on behalf of the opposite party that these decisions are no longer good law. He has referred to an earlier decision of the Calcutta High Court in the case of Jugal Kishore v. Jotendro Mohun (1884) 10 Cal. 985 which, however, only shows that the question whether the sale shall transfer the interests of the widow only, or of the family, depends on the nature of the suit in which the execution of the decree takes place. There is, however, certainly an implication that the creditor may seek to bind the family estate, and if he frames the suit properly by making it clear that he is proceeding against the widow as the representative of the family estate he may succeed. That decision is not one of this Court and it is prior to the decision of this Court, which I have quoted above, but in the case of Bhup Singh v. Jhamman A.I.R. 1922 All. 169 a somewhat similar question was brought before a Bench of this Court in 1921 and Mr. Panna Lal has pointed to certain passages in the judgment which seem to support him. The decision of the Bench, however, was merely that where a widow or other such female owner of an estate borrows money for purposes of the estate on a simple bond and subsequently gives the security of the estate for the payment of debt, it is within her power to bind the estate. The Bench referred to the decision in Jugal Kishore v. Jotendromohan (1884) 10 Cal. 985 without definitely dissenting from it. There is, however, clearly a distinction between a case where a widow has merely given her personal security and a case in which a widow, after borrowing money on a simple bond, subsequently gives the security of the estate. There is of course no doubt that she can bind the estate for legal necessity, but the point in the present case and in the two decisions of this Court to which I have referred above is that the widow did not bind the estate. Moreover the Bench in 1921 considered the decision of the cases reported in Dhiraj Singh v. Manga Ram (1897) 19 All. 300 and Kallu v. Faiyaz Ali Khan (1903) 30 All. 394 and did not dissent from them. Finally, Mr. Panna Lal has pointed to a recent decision of their Lordships of the Privy Council in the case of Lalit Mohan Pal Roy v. Dayamoyi Roy . In that case a creditor had advanced money to the guardian of a minor daughter for payment of debts of her deceased father, and obtained a simple money bond from the guardian. He obtained a personal decree against the minor, and their Lordships held that as the creditor's suit had not been properly framed and the decree obtained by him was merely a personal decree against the

minor daughter, he did not acquire by his purchase anything more than the daughter's life estate; and their Lordships remarked:

It is possible that although no charge was created, the original debt having been for lawful purposes, the creditor might have recovered his debt from the estate left by Bharat if he had chosen to do so. But in order to make the estate liable he ought to have framed his suit in a proper manner.

4. It is sought to argue from this that all depends on the frame of the suit and that as in the present suit the plaintiff did sue Mt. Kishan Devi as representative of the estate of Boocha, he ought to succeed. The circumstances in the Privy Council case are, however, clearly distinguishable. The debts were due from a male owner of the estate and not from the holder of a widow's interest, and, as their Lordships say, the original debt having been for lawful purposes the creditor might have recovered his debt from the estate left by Bharat if he had chosen to do so. It cannot be contended, however, that a widow can bind the estate of which she is a life tenant by creating debts which are merely lawful. Her personal debts cannot be made binding on the estate, and there is no reason to suppose that their Lordships would have made the remarks which I have quoted if they had been dealing with a matter in which the debt concerned, was the personal debt of a Hindu widow.

5. I find therefore that there is no authority for holding that the decisions of the two Benches of this Court reported in *Dhiraj Singh v. Manga Ram* (1897) 19 All. 300 and *Kallu v. Faiyaz Ali Khan* (1908) 30 All. 394 are no longer to be considered good law, and I am of opinion that following those decisions I am bound to hold that the personal debt created by Mt. Raj Kali, even if it was for legal necessity, cannot bind the estate of the last male holder. I therefore] allow the application with costs, set aside the decree and order of the trial Court and direct that the plaintiff be given a decree only to the extent of such assets if any, of Mussamat Raj Kali, deceased, as may be in the hands of the defendant.