

Ram Kumar Singh and anr. Vs. Param Singh and anr.

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Court : Allahabad

Decided On : Oct-06-1939

Reported in : AIR1940All118

Appellant : Ram Kumar Singh and anr.

Respondent : Param Singh and anr.

Judgement :

Verma, J.

1. The appellants were the plaintiffs in the suit. The principal reliefs claimed in plaint were these:

(a) It may be declared that the property bounded as set forth below and owned by the plaintiffs is not liable to be sold at auction in satisfaction of the decree, dated 17th December 1931, passed in suit No 50 of 1930, Param Singh v. Chaudhari Narain Singh by the Court of the Additional Subordinate Judge, Moradabad.

(b) If in the opinion of the Court the plaintiffs may be entitled to the relief in respect of a portion of the property instead of the entire property the plaintiff's right may be declared in respect of that portion of the property.

2. The Court below has granted to the plaintiffs a declaration that the property in question is liable to be sold in execution of the mortgage decree No. 50 of 1930

for the amount due under the decree minus Rupees 3588-3-0 being part of the principal of the mortgage of 1st February 1926, and interest allowed on this part of the mortgage consideration by the decree.

3. The plaintiffs have filed this appeal and the defendant mortgagee decree-holder, Param Singh, has filed cross-objections with regard to this sum of Rs. 3588-3-0. The plaintiffs are the minor sons of Raghunath Singh who is the son of Umrao Singh and Umrao Singh's father was Narain Singh. Thus, the plaintiffs are the great-grandsons of Narain Singh. Between the years 1921 and 1924 Narain Singh purchased by means of several deeds zamindari property in a village called Athain. The family also owned a village called Kuchauli. It has been found by the Court below that this was the ancestral property of the plaintiffs and this finding has not been challenged by the respondent. One Shiam Singh was the owner of a village called Uchaiti. In the year 1925 it was agreed between Shiam Singh on one side and Narain Singh and his son Umrao Singh and grandson Raghunath Singh on the other that these two villages namely Kuchauli and Uchaiti, be exchanged between the parties. Accordingly, on 25th May 1925 a deed of exchange was executed. It is Ex. 16 and is printed at p. 101 of the paper book. The parties to this transaction were agreed that Kuchauli was worth Rs. 40,000 and Uchaiti was worth Rs. 60,000. Narain Singh and his son and grandson had therefore to pay the difference, namely Rs. 20,000 to Shiam Singh. The manner in which this payment was made was this. Shiam Singh had on 14th July 1921 borrowed a certain sum of money from Param Singh, the present defendant-respondent and had hypothecated half of Uchaiti. On the date of exchange, it was found that the amount due on this mortgage from Shiam Singh to Param Singh was Rs. 10,656-8-0. Narain Singh, Umrao Singh and Raghunath Singh took this liability upon themselves. There was another debt which Shiam Singh had to pay to Kanhai Lal and Kalyan Rai. The details of this debt are these. At one time Shiam Singh did not own the whole of Uchaiti and his cousin Ganga Dutt had a share in it. By a deed of exchange dated 3rd January 1923 Shiam Singh gave to Ganga Dutt certain property situated in villages Sultanpur and Phalenda Ishapur and took from him in exchange his share in village Uchaiti. Ganga Dutt it appears had borrowed Rs. 2500 from Kanhai Lal and Kalyan Rai under a deed of simple mortgage of 5th July 1922 and Shiam Singh had undertaken this liability.

4. On 25th May 1925 the amount due to Kanhai Lal and Kalyan Rai was found to be Rs. 3300 and Narain Singh, Umrao Singh and Raghunath Singh took over this liability of Shiam Singh also. A sum of Rs. 457-8-0 was paid in cash by Narain Singh, Umrao Singh and Raghunath Singh to Shiam Singh. The total of these three items came to Rs. 14,414 leaving a balance of Rs. 5586. The payment of this amount to Shiam Singh was made by means of another transaction. Narain Singh owed money to Kanhai Lal Kallu Mal under a registered bond dated 22nd June 1921 and the amount was Rs. 5414. Along with the deed of exchange a deed of simple mortgage was executed by Narain Singh on 25th May 1925 in favour of Shiam Singh for Rs. 11,000 and the zamindari property in village Athain mentioned above was mortgaged. Out of the mortgage money, Rs. 11,000, the sum of Rs. 5414 was left in the hands of Shiam Singh for payment of the debt due from Narain Singh to Kanhai Lal and Kallu Mal and the balance, namely Rs. 5586, was acknowledged by Narain Singh as having been received because of the liability under the deed of exchange. Narain Singh and his son and grandson were unable to discharge the liabilities which they had undertaken under the deed of exchange and failed to pay the amounts due to Param Singh and Kanhai Lal Kalyan Rai. Consequently they executed on 1st February 1926 a deed of simple mortgage in favour of defendant-respondent Param Singh for Rs. 20,000 and mortgaged village Uchaiti. The mortgage money, Rs. 20,000, was made up of four items. The amount due to Param Singh under the mortgage deed dated 14th July 1921 executed in his favour by Shiam Singh, had by this time become Rs. 11,095-10-0 and this sum was allowed credit for. A sum of Rs. 1792-6-0 was left in the hands of Param Singh for payment to Shiam Singh in liquidation of a portion of the liability that rested on Narain Singh and his family in respect of the sum of Rs. 5586 mentioned above. The amount due to Kanhai Lal and Kalyan Rai under the deed executed by Ganga Dutt on 5th July 1922 had by this time reached the figure of Rs. 3529-3-0 and this sum was also left in the hands of Param Singh for payment to those creditors. The balance, namely the sum of Rs. 3588-3-0, was paid by Param Singh to Narain Singh in cash before the registering officer at the time of registration of the mortgage deed. Param Singh brought suit No. 50 of 1930 against Narain Singh for the recovery of the amount due on foot of this mortgage and obtained a mortgage decree for sale. The declaration prayed for by

the plaintiff in the suit out of which this appeal has arisen is in respect of this decree. The Court below has held that the consideration of the mortgage deed in question was valid to the extent of Rs. 16,411-13-0 as it constituted antecedent debt and that no legal necessity for the balance Rs. 3588-3-0 was proved.

5. Learned counsel appearing for the plaintiff-appellants has urged that the Court below is not right in holding that the liabilities incurred by Narain Singh, Umrao Singh and Raghunath Singh under the deed of exchange of 25th May 1925 constituted antecedent debt. His argument is that at the time of the execution of the deed of exchange Narain Singh, Umrao Singh and Raghunath Singh must have known that they would not be able to pay the debts which they were undertaking to pay and that therefore it follows, as a matter of necessary inference, that the mortgage which was ultimately executed on 1st February 1926 was in contemplation even at that time. We are unable to accept this argument. It is clear, and is not disputed, that Param Singh had absolutely nothing to do with the deed of exchange which was executed on 25th May 1925. It is conceded that there is absolutely nothing to show that he in any manner brought it about or had any connexion with it. The argument thus resolves itself into this, that the mortgage deed subsequently executed in favour of Param Singh must be invalidated because of a certain frame of mind which Narain Singh, Umrao Singh and Raghunath Singh are alleged to have had on 25th May 1925.

6. In the first place there is absolutely no evidence to show that Narain Singh, Umrao Singh and Raghunath Singh at that time contemplated the execution of a deed of mortgage in future in favour of Param Singh or of anybody else for the liquidation of the liabilities which they had undertaken. For aught we know to the contrary, they may have hoped to be able to meet those liabilities out of the income of their property. Secondly, we fail to see how Param Singh can be penalized for what Narain Singh, Umrao Singh and Raghunath Singh might have had in contemplation at the time of the execution of the deed of exchange between them and Shiam Singh. In essence what happened on 25th May 1925 was this. Narain Singh, Umrao Singh and Raghunath Singh had to pay a sum of Rs. 20,000 to Shiam Singh on account of the difference in the value of the two villages, Kuchauli and Uchaiti. Not having got the money to pay to Shiam Singh in cash

they incurred debts for the purpose of making payment to Shiam Singh. The manner in which they incurred these debts was this that they took over certain liabilities of Shiam Singh. In lieu of the liabilities thus incurred, they subsequently gave the mortgage in question to Param Singh, the antecedent liabilities forming part of the mortgage money to the extent of Rs. 16,411-13-0. In our opinion this did constitute antecedent debt. Learned counsel has referred to the observations of their Lordships of the Privy Council in Brij Narain v. Mangal Prasad (1924) 11 AIR PC 50 and has relied on the proposition that

antecedent debt means antecedent in fact as well as in time, that is to say, that the debt must be truly independent and not part of the transaction impeached.

7. Now, the transaction impeached in this case is the mortgage of 1st February 1926 in favour of Param Singh. The antecedent debts relied upon by Param Singh consist of the liabilities incurred by Narain Singh and his son and grandson on 25th May 1925 in consequence of the transaction of exchange into which they entered with Shiam Singh. We fail to see how such a debt can be said to offend against the rule laid down by their Lordships of the Privy Council. Accordingly, we hold that the decision of the Court below that the consideration of the mortgage deed in question was valid to the extent of Rs. 16,411-13-0 is correct.

8. Learned counsel appearing for plaintiff appellant has next urged that he should be allowed in appeal to challenge the transaction of exchange itself and to pray for its cancellation. The reliefs prayed for in the plaint have been quoted above. No relief in respect of the exchange of 25th May 1925 was claimed. It is true that in the body of the plaint it was stated that Narain Singh, Umrao Singh and Raghunath Singh should not have exchanged village Kuchauli with village Uchaiti but no relief was asked for in respect of it. The position thus is that the plaintiffs treated village Uchaiti as their ancestral property as it had been acquired by giving in exchange the ancestral village of Kuchauli and claimed the reliefs mentioned above on the footing that village Uchaiti belonged to them. It is conceded that the plaintiffs cannot put forward the claim mentioned above without undertaking extensive amendments of the plaint which will entirely alter the nature of the case. The plaintiffs cannot in our judgment be allowed in these circumstances to change

the whole nature of their claim and to ask for any relief in respect of the transaction of exchange.

9. We come now to the cross objection filed by Param Singh defendant-respondent. It has been urged that legal necessity for the sum of Rs. 3588-3-0 is proved. No necessity for this borrowing in cash is mentioned in the mortgage deed itself. Learned counsel has laid before us the statements made by his client Param Singh in the witness box in the Court below. The case put forward by him in his deposition was that he asked Narain Singh why he was borrowing Rs. 3588 in cash and that the latter replied that

he wanted this money to get a new well constructed and to fit his old well with a Persian wheel and tube. He said the new well he would construct would also be fitted with a Persian wheel and tube.

10. Prompted by his counsel by means of the question 'what further necessity did he mention?', Param Singh came out with the further story that Narain Singh said that he would purchase bullocks for improving cultivation and camels for the Persian wheels and that he required some money for household expenses. In cross-examination he stated that Raghunath Singh had got a well constructed six years ago. He admitted, however, that he had not seen this well. He further stated:

I have not seen the old well either. I have not seen any of the Persian wheels I have stated about above. All that I heard about the wells and the Persian wheels was from Shib Lal. I have no personal knowledge about the wells or the Persian wheels or the tubes. No camel or bullock was purchased by Narain Singh in my presence. Shib Lal told me about the purchase of camels and bullocks by Narain Singh.

11. It is noteworthy, however, that this Shib Lal had been examined as a witness for Param Singh a day before and not a single question had been put to Shib Lal with regard to these matters. Lower down in cross-examination he made these statements:

I did not ask Narain Singh as to what were the household expenses for which he was taking cash. I had no idea what these expenses were likely to be. I did not ask him what amount he needed for household expenses or other expenses. The above talk took place 15 days before the execution of the mortgage deed for Rs. 20,000. I did not consider it necessary to ask anyone else respecting the necessity during the said interval of 15 days.

12. These statements of Param Singh make it perfectly clear that the story which he has related about the necessities for which this sum of Rs. 3588-3-0 was borrowed is untrue and has been invented for the purposes of this case. It is also falsified by the evidence of his witness, Jagat Singh, who is an attesting witness of the mortgage deed in question. He stated that 'Rs. 3000 or Rs. 3500 was given in cash towards the consideration of the said deed.' Counsel then put the question, 'Was any necessity for this amount mentioned?' and the reply given by the witness was:

By whom Param Singh, Narain Singh or anybody else did not give the necessity but I asked Umrao Singh about it. He said he wanted money for purposes connected with cultivation. I did not ask him what these purposes were.

13. We are unable therefore to place any reliance on the testimony of Param Singh. We hold, in agreement with the Court below, that no valid necessity for the advance of this sum of Rs. 3588-3-0 has been made out. Learned counsel for defendant-respondent has referred to Section 53, Civil P.C., and has urged that his client is entitled to a personal decree against the plaintiffs as the suit was filed within six years of the execution of the deed of mortgage and as Narain Singh has died during the pendency of this appeal. He asks us to give him a declaration that he is so entitled. In our judgment no such declaration can be given to defendant Param Singh. It is not necessary for us in this case to express any opinion as to whether Param Singh is entitled to any decree against the plaintiffs or any other member of their family or not. If, and when, Param Singh takes any proceedings for obtaining any decree the Court in which such proceedings are taken will consider the point. For the reasons given above we dismiss both the appeal and the cross-objection with costs.

