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Court : Allahabad

Decided On : Feb-15-1922

Reported in : 66Ind.Cas.128

Judge : Rafique and ;Lindsay, JJ.

Appellant : Chaubey Baldeo Prasad

Respondent : Bindeshri Prasad

Judgement :

1. It appears that one Ganesh Prasad was under the Court of Wards for several years up to the time of his death in May 1914. On the 7th of January 1912 and 10th of April 1912 he executed two promissory notes in favour of Chaubey Baldeo Prasad for consideration carrying interest at the rate of Rs. 1-6-0 per sent, per mensem. Ganesh Prasad died leaving a Will by which he left his estate in charge of certain trustees. The Will of Ganesh Prasad was contested by his son Bindeshri Prasad who in the end was successful in having it set aside. The Court of Wards continued in possession of the estate till the 19th of December 1914, On the 5th of October 1914 there was a compromise between Bindeshri Prasad and the trustees appointed under the Will of his father. On the 6th of October 1914 Bindeshri Prasad executed a simple money bond in favour of Baldeo Prasad in lieu of the moneys due on the two promissory notes given by his father on the 7th of January 1912 and 10th of April 1912 to Baldeo Prasad. The amount due on the said two promissory-notes on the 6th of October 1914 was found to be Rs.

9,261.89. The bond carried interest at the rate of Re. 1 per cent, per mensem. On the 6th of September 1918 the suit, out of which this appeal has arisen, was brought by Baldeo Prasad to recover the sum of Rs. 9,261 8 9 plus interest on foot of the bond dated the 6th of October 1914, The claim was resisted by Bindeshri Prasad on various grounds. He said that the bond in suit was obtained from him under undue finance and pressure, that it was without consideration, and that he was not bound to pay it. The learned Subordinate Judge who tried the suit came to the conclusion that Bindeshri Prasad had failed to prove, the allegation as to pressure and undue influence, and that the bond was for consideration. But he further held that the defendant was not bound to pay it as the bond was given in lieu of debts which were contracted by his father at a time when the estate was under the Court of Wards, and under the court of Wards Act a ward could not enter into a valid contract. In appeal before us it is contended on behalf of the plaintiff-appellant that the view taken by the court below is incorrect. It is conceded that the bond in suit was given in lieu of the debts contrasted by Ganesh Prasad at a time when he was a ward of the court of Wards; but it is said that it is the pious duty of a Hindu son to pay off the debts of his father, and that the bond in suit was given for consideration and the defendant is liable to pay it. In support of this a case is cited which is to be found at page 974 of 46 Ind. cas [Rajmal Shah v. Court of Wards of Tika Baldeo Singh 46 Ind. Cas, 974 : 142 P. W. R : 1918.]. We find ourselves unable to accede to the contention of the plaintiff appellant. Under Section 34 of Act III of 1899, the Act which was applicable at the time the two promissory-notes of the 76th of January 1912, and the 10th of April 19(sic)2, were given, Ganesh Prasad was incompetent to enter into any contract which might involve him in pecuniary liability. in other words any contract by which he made himself peculiarly liable was void. The bond in suit was given by his son in consideration of the two promissory-notes mentioned above. We do not think that it was the pious duty of the son to pay off his father's loans as were contracted by his father during the time that the estate was under the court of Wards. The case relied on by the learned Counsel on behalf of the plaintiff-appellant is quite different to that before us. In that case both the father and the son gave a bond after the release of the estate from the management of the court of Wards not merely for the sum that was borrowed during the management of the court of

Wards but for a further sum that was advanced after the release of the estate. The facts of the two cases are quite different. We, therefore, agree with the lower court that the bond in suit is not enforceable against the defendant.

2. The appeal fails and is dismissed with costs.

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