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Court : Allahabad

Decided On : Feb-16-1921

Reported in : 62Ind.Cas.111

Judge : Walsh and ;Ryves, JJ.

Appellant : Gokul Singh

Respondent : Gokul Singh and anr.

Judgement :

1. This is a suit for partition by two sons of a joint Hindu family against their father and also against the present appellant, in which they claimed partition of their two third share and a declaration that a mortgage granted by the father to the appellant was not binding upon their two-third share. The appellant, the mortgagee defendant in the suit, attempted in the first Court to prove legal necessity and it would appear that he took the onus upon himself. He failed miserably. Amongst other things he sailed the Patwari in support of his case, who had a conviction of two years' rigorous imprisonment to his credit for fabricating records. It was further found by the first Court that the father was keeping a lady and although the antecedent debt, which went back as far as 1903, the mortgage being dated in 1914, may have been and probably was older than this liason, the first Court said that in consequence of the father's attentions to the lady he had contrasted 'any amount of debt,' and on these facts it may well have been found that the necessity for the mortgage entered into in 1914, although nominally in consideration of the

antecedent debt, had been brought about by the pecuniary straits of the father as a result of this connection. All these findings were accepted by the appellant's Counsel in the lower Appellate Court and he confined himself to arguing one point of law, which undoubtedly is surrounded with considerable difficulty, namely, whether the dicta of the Privy Council in the well-known case of *Sahu Ram Chandra v, Bhup Singh* 39 Ind. Cas. 280 : 39 A. 487 : 21 C.W.N. 698 : 1 P.L.W. 557 : 15 A.L.J. 437 : 19 Bom. L.R. 498 : 26 C.L.J. 1 : 83 M.L.J. 14 : (1917) M.W.N. 439 : 22 M.L.T. 22 : 6 L.W. 213 : 40 I.A. 126 (P.C.), to the effect that the pious obligation of the son to pay off his father's debts can only arise after the father's death, is to be taken as having overruled a great many decisions of the High Courts in India to the contrary effect, and whether the considered view of the Madras High Court reported in the case of *Vinjanampati Peda Venkanna v. Vadlamannati Sreenivasa Deekshatulu* 43 Ind. Cas. 225 : 41 M. 136 : 22 M.L.T. 334 : 33 M.L.J. 519 : 6 L.W. 649 : (1918) M.W.N. 55 is correct in holding that the Privy Council cannot be said to have intended to lay down any such wide principle. The lower Appellate Court in a very careful judgment founded itself upon the dicta of the Privy Council in the ruling to which we have referred, and holding itself bound as an inferior Court to accept the pronouncement in their Lordships' considered opinion as the guiding principle to be followed, found as a fact that the debts relied upon in this case were not such as to support a mortgage binding upon the son's interest in the family property. No doubt one of these days the true meaning and authority of the dicta in the Privy Council case will have to be considered, and probably the point will not be set at rest until it has been explained by their Lordships of the Privy Council themselves. We are unable to say that the lower Appellate Court was wrong in view of the dicta, and we do not think that this is a case in which we ought to refer the matter to a larger Bench of this Court. The appeal must be dismissed with costs, including in this Court fees on the higher scale.