

Muddusami Siddappa and Vs. Bhaskara Lakshmi Narasappa and anr.

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Court : Chennai

Decided On : Aug-17-1915

Reported in : AIR1916Mad418; 30Ind.Cas.853

Judge : Sadasiva Aiyar and; Phillips, JJ.

Appellant : Muddusami Siddappa And; Kramadhati Soorappa and ors.

Respondent : Bhaskara Lakshmi Narasappa and anr.

Judgement :

Sadasiva Aiyar, J.

1. The defendants are the appellants in these two connected second appeals. The suit was brought by the reversioners after the death of a Hindu widow for possession of properties improperly-alienated by her to the appellants. The alienations are evidenced by the documents Exhibits XII, XIII and XIV, dated 5th February 1876.

2. The lower Appellate Court came to the following findings of fact:

(a) Of the Rs. 1,600, the total purchase-money mentioned in these three documents, about Rs. 1,300 went towards the discharge of debts which had been incurred by the last male owner. (See Exhibits I, II series, IV series, VII, VIII and XVI.)

(b) Rupees 115 was due under a document, Exhibit XI, executed by the widow herself and Rs. 175 was paid in cash.

3. Out of the Rs. 1,300 which went towards the discharge of the husband's debts, Rs. 1,200 was due under two usufructuary mortgage-bonds and a conditional sale-deed (see Exhibits I, II and IV), which had been executed for a total principal sum of Rs. 2,100. This sum of Rs. 2,100 had become reduced to Rs. 1,200 owing to the very favourable terms contained in the two usufructuary mortgage-deeds, namely, that the usufruct of the land should go wholly in satisfaction of the principal amounts without any liability on the mortgagor's part to pay interest unless he obstructed the enjoyment of the lands by the mortgagees.

4. The lower Courts found that there was no necessity for selling the lauds (which had been mortgaged for a sum of Rs. 1,900) for the low price of Rs. 1,000 in order to discharge debts, which were being gradually wiped out from the usufruct, that the widow's real object was not to discharge her husband's debts but to get some ready cash into her own hands, as was shown by her conduct throughout during the space of about eight years after her husband's death (such conduct including the sale even of her husband's dwelling houses), that the defendants could not be treated as bona fide alienees, that is, alienees who were ignorant of the widow's real object and that, therefore, the alienations were invalid against the reversioners. The learned District Judge further disallowed the defendants' claim for compensation for the improvements made by them on the lands sold to them.

5. I do not think that the appellants are entitled to question in second appeal the finding of fact by both the Courts that there was no necessity for the sales made by the widow and that the defendants knew that there was no necessity.

6. Mr. S. Srinivasa Aiyangar, however, argued that there was, what he called, a technical necessity for the sales, in other words, that on the finding that there was a debt of Rs. 1,300 due by the husband's estate on the date of the sales, the widow was entitled to sell away a portion of her husband's estate to discharge that debt even though the transaction might have been imprudent. He relied on certain authorities of which I need notice only two namely Mayne's Hindu Law, paragraph 633, and the judgment in Muthukrishnan Chetty v. Annapurnathachi 9 Ind. Cas.

803 : 9 M.L.T. 313. The passage in Mayne's Hindu Law states that a Hindu widow can validly sell her husband's properties in order to discharge her husband's debts. But I do not think that the learned author intended to lay down that a widow could take advantage of the existence of a few debts to sell away her husband's properties for less than their value in order to get ready money into her own hands and while the debts were being discharged from the usufruct of the lands mortgaged for those debts. The observation in the case of Muthukrishnan Chetty v. Annapurnathachi 9 Ind. Cas. 803 that 'actual demand by a creditor need not be proved to justify a widow in selling her husband's property to discharge his debt,' must be read in the light of the facts found in that case, namely, that the debt was carrying interest and the principal amount of Rs. 400 had swollen to a sum of Rs. 700 by the addition of Rs. 300 on account of interest, and that the widow acted prudently in taking steps to discharge the debt'. I do not think that the authorities quoted can support the alienation made by the widow in this case, namely, a wholly imprudent alienation, made about 10 years after the husband's death, not with the religious motive of freeing her husband's soul in his after-death state from the burden of his debts, but with a view to get some ready cash into her own hands, the mortgage-creditors having no right to sue for their moneys. Mr. Mayne, in the same paragraph 633, relied on by the appellants' learned Vakil, says that the widow's right to pay debts by alienating the properties must be exercised bona fide in discharge of the duty to pay her husband's debts and that when she enters into transactions with the improper motive of even preferring one creditor over another, that creditor would not be entitled to profit by such fraud. On the findings of fact in this case, therefore, it seems to me that the lower Courts were justified in treating the alienations void as against the reversioners.

7. The last question to be considered relates to the appellants' right to claim improvements. The case, Naujappa Goundan v. Peruma Gounden 6 M.L.T. 284 clearly negatives the defendants' right to claim the value of improvements. Reliance was, however, placed on the Privy Council decision Kidar Nath v. Mathu Mal 18 Ind. Cas. 946 for the contention that if the market value of the alienated properties had been raised by the improvements made by the alienees, they were entitled to claim the cost of the improvements not exceeding such increase in the market value. Their Lordships of the Privy Council had not in that case to deal with

the question whether the alienees in that case were bona fide alienees who, within the meaning of Section 51 of the Transfer of Property Act, really believed in good faith that they were absolutely entitled to the property. The appeal to their Lordships was made by the alienee who claimed more compensation than the Indian Courts had given him and their Lordships, without calling upon the respondents, dismissed the appeal on the ground that the appellant had not been given less than he was entitled to claim. That case is, therefore, no authority for the proposition that a person who could not have believed in good faith that he was absolutely entitled to the property can claim the value of the improvements effected by him.

8. In the result I would dismiss the second appeals with costs.

Phillips, J.

9. I concur.

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