

Arur Singh Vs. Partab Singh and ors.

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Court : Kolkata

Decided On : Mar-19-1919

Reported in : (1919)ILR46Cal795,53Ind.Cas.426

Judge : Martineau, J.

Appellant : Arur Singh

Respondent : Partab Singh and ors.

Judgement :

Martineau, J.

1. The plaintiffs sue for money due on two bonds, dated the 2nd November 1908 and the 23rd July 1914, and have been given a decree. The questions are only whether the suit on the first bond is within time by reason of an acknowledgment contained in the second one and whether consideration passed for the first bond.

2. The bond of 1914 makes mention of there being a separate bond for Rs. 430 15 0 (i. e., the bond of the 2nd November 1908). This clearly implies that money was due to the plaintiff separately on the other bond. The learned District Judge holds that an acknowledgment of liability need not be express, but may be implied, and this view is supported by the statement of the law given on page 104 of Rustomji's Law of Limitation, 2nd Edition, by Gopalrao v. Harilal 9 Bom L. R. 715 at p. 718, and by Maniram Seth v. Seth Rupchand 33 C. 1047 at p. 1057 (P. C.): 4 C. L. J.

94; 8 Bom. L. R. 501 10; C. W. N. 847; 1 M. L. T. 199; 3 A. L. J. 525; 16 M. L. J. 300; 2.N. L. R. 139; 33 L. A. 165, in which it was held by the Privy Council (on page 1057) that an acknowledgment of liability by one of the parties to pay his debt to a certain person might be deduced from his written admission of having had open and current accounts with that person. I agree, therefore, with the lower Appellate Court that the suit is within time.

3. As regards consideration it is argued for the appellants that the statement made by Sant Singh, the original plaintiff, on which reliance has been placed by the lower Appellate Court, cannot be treated as evidence as the deponent died before he could be cross-examined, and that the diary referred to in his statement must also be left out of account. Assuming that this is so, still it appears from the judgment of the learned District Judge that he regarded the remaining evidence alone as sufficient proof of the passing of considerable property of the sons but property acquired by the mother and the sons jointly, so that the mother got an absolute interest in the share received by her. Refers to Mayne's Hindu Law, 8th Edition page 868. Even the mother can by agreement of the parties get an absolute interest in her share. See *Debi Mangal Prasad Singh v. Mahadeo Prasad Singh* 14 Ind. Cas. 1099; 15 C. W. N. 409; 9 A. L. J. 263; 11 M. L. T. 217; (1912) M. W. N. 324; 14 Bom. L. R. 220; 65 C. L. J. 344; 22 M. L. J. 462; 34 A. 234; 39 I. A. 121;(P. C.). The lower Appellate Court has decided rightly that the mother in this case got an absolute interest in her share. The question before your Lordships is one of fact, viz., whether the mother had a mere life estate or an absolute interest, and it has been found that the mother got an absolute interest in her share, and that finding is conclusive.

4. The appellants before your Lordship are the plaintiffs Nos. 1 and 3 and not the other plaintiffs, and the appeal should be limited to the extent of their shares only.

5. Babu Annada Charan Karkuh briefly replied.

6. This appeal arises out of a suit for recovery of a two thirds share in a certain land on the declaration of the plaintiffs' joint right thereto. The plaintiff No. 1, defendant No. 2 and the father of the plaintiffs Nos. 2 to 5 are three brothers, sons of Rim Manikya and his widow Kishori. The plaintiffs claim the land on the

allegation that Kishori had only a Hindu woman's interest in that land, which would devolve on the three brothers on her death. The defendants Nos. 1 and 3 claim as purchasers of Kishori's interest, alleging that she had absolute interest in that land. It appears that the three brothers, who were formerly joint, divided their property and the property in suit was given to Kishori. The plaintiffs, who are appellants before me, rely on the principle of Hindu Law that the property obtained by a widow on partition of the family estate would devolve on her death on the next heirs of her husband. This proposition of Hindu Law is not disputed on behalf of the respondents. What is contended is, firstly, that it does not apply to the present case, where admittedly the property in suit is no part of the ancestral estate and never belonged to Kishori's husband. Secondly, it is contended that even if this proposition applies, a special agreement can be made with the heirs to give the widow an absolute right, and it is found by the lower Appellate Court that on partition the widow did get an absolute right. That by agreement a widow on partition with her sons can get an absolute right appears from the Privy Council case of *Debi Mangal Prasad Singh v. Mahadeo Prasad Singh* (2). Also the finding of the learned Subordinate Judge is 'I do not believe the plaintiffs evidence which says that she got a fourth share for her maintenance,' and then relating certain circumstances he goes on to say 'under the circumstances I believe that the said Kishori had absolute right to the land and that the plaintiffs' case that she had only a life estate has not been established.' These findings are equivalent to a finding that there was an arrangement by which the widow got an absolute right. Having regard to the pleadings of the parties under the circumstances referred to in the judgment, there were materials on which the lower Appellate Court could come to this finding. I can see no reason which would justify me in reversing this finding on second appeal.

6. The appeal, therefore, fails and is dismissed with costs.