

Hayes Vs. Harendra Narain

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Court : Kolkata

Decided On : Jan-11-1904

Reported in : (1904)ILR31Cal698

Judge : Hill and ;Stevens, JJ.

Appellant : Hayes

Respondent : Harendra Narain

Judgement :

Hill and Stevens, JJ.

1. This is an appeal by the defendants, who are the executors of one Dharam Chand Lal against the decree of the District Judge of Purneah, by which the decree of the Subordinate Judge was reversed and the suit of the plaintiff decreed.

2. The suit was instituted on the 11th of July 1899 by the heirs of one Prohlad Singh, for the purpose of setting aside a putni lease granted to Dharam Chand Lal by a lady named Mussumut Sibbati, who held a proprietary interest in the lands in suit for a widow's estate and upon whose estate Prohlad Singh was the reversioner at law. The suit proceeded apparently as far as the filing of the written statement, on the 14th of August 1899, but from that time until the 26th of February 1900, nothing appears to have been done. On that date, however, the executor of Prohlad Singh, Prohlad Singh having died on the 11th of November

1898, leaving a will bearing date the 9th of November in the same year, was substituted for the original plaintiffs as the legal representative of Prohlad Singh. The case then proceeded in the ordinary course, and was disposed of in the manner I have mentioned. The decree of the Subordinate Judge is dated the 17th of July 1900 and that of the learned Judge the 29th of May 1901.

3. It has been found that the lessor of Dharam Chand Lal, Mussummut Sibbati, granted the putni in question without legal necessity, and the question, upon which the case turns, is whether her reversioner Prohlad Singh did or did not give his assent to the lease. The finding upon this point of the learned Judge is that he did not give his assent, and, in that view of the case it was that he declined to uphold the lease and set it aside.

4. It has been contended here upon the footings of the second paragraph of Prohlad Singh's will, that that view is unsustainable, and that, what really happened was, that Prohlad Singh gave his assent to the transaction conditionally on the putnidar paying to him a certain premium the amount of which, as the learned Judge has observed, is in dispute, but which may be taken perhaps to have been double the amount of the annual rent reserved, or a sum of something over two thousand rupees.

5. It was, however, at the same time admitted by the appellants, and indeed, on the face of the finding of the learned Judge on the point, it would be hardly possible to contend otherwise, that Prohlad Singh died without having given his actual and unconditional consent to the transaction. The passage in his will upon which reliance is placed is the following. If the said Babu (i.e. the putnidar) should pay the said consideration (premium) to the said Mutwali the said Mutwali shall be entitled to approve of and accept the putni pottah executed by Mussummut Sibbati' the more accurate translation of the term translated 'shall be entitled' would apparently be 'shall be empowered,' and the argument was that the testator had left it to his executor on the payment of premium by the putnidar to give his assent to the putni lease, that argument being founded upon the terms of the will we have just read.

6. It was also pointed out that simultaneously with the filing of the written statement by the defendant on the 14th of August 1899, he paid into Court the sum of Rs. 1,153 in part payment of the premium on the lease and, on the 23rd of July 1900, under the decree of the Court of first instance, the balance of the sum of Rupees two thousand and odd was paid into Court in full discharge of the amount due in respect of the premium. No payment, however, was made in respect of the premium either to the testator in his lifetime or after his death, until those payments into Court were made.

7. Now, the primary difficulty with which as it appears to us the appellant is met is that the provision of the will, upon which he relies, involves a delegation of the power which, no doubt, was reposed in the testator himself during his lifetime to assent to and thus to give validity to the putni lease. As we have already had occasion to observe, the learned Judge has found specifically that the testator died without having himself assented to the lease. We have not been referred to any authority, however, which would go to sustain the view that the power of validating a transaction of this description, which is reposed in the reversioner, is one which he is competent in law to delegate to his executor: and in point of fact the executor has not, any more than did his testator, given his assent to the lease. It may perhaps be upon the proper construction of the clause in the will to which we have referred that there was an option left by the testator to his executor as to whether he should or should not give his assent to the lease, in the event of the payment of the premium being made. It is not, however, very easy to say whether the intention was to give him a specific direction to give his assent in the event of payment or whether this was a matter which was left to the discretion of the executor. But the point is hardly one upon which it is necessary to express a decided opinion, if, in point of fact, the testator, not having himself given the necessary assent during his lifetime, was not competent in law to delegate his authority to his executor. It is we think, unnecessary to go further into the ease. But it seems to us that we ought to put out to the learned Judge that the view which he took of the nature of a lease granted in the absence of legal necessity by a Hindu widow, of property subject to her widow's estate, is hardly correct. He has 'dealt with the transaction throughout in his judgment as one which was void ab initio and could not afterwards be validated. That is not BO appears very clearly

from the decision of the Privy Council in the case of Modhu Sudan Singh v. Rooke (1897) I.L.R. 25 Calc. 1 : L.R. 24 I.A. 164, and we desire to direct the attention of the learned Judge to this decision. It was there pointed out that a lease granted by a widow of property subject to her estate as a Hindu widow under circumstances such as the present is not void, but voidable and that it may be validated by the assent of the reversioner. The learned Judge has not taken a correct view of the law in this respect, but in the result his error has not affected the merits of the case, and, we, consequently, think that his judgment ought to be maintained. The appeal is, therefore, dismissed with costs.

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