Ram Kumar Lal and ors. Vs. Chartered Bank of India, Australia and China and ors.

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Court : Kolkata

Decided On : Jul-03-1924

Reported in : AIR1925Cal664,87Ind.Cas.375

Appellant : Ram Kumar Lal and ors.

Respondent : Chartered Bank of India, Australia and China and ors.

Judgement :

Sanderson, C.J.

1. This is an appeal by Ram Coomar Lal and others against the judgment of my learned brother Mr. Justice C.C. Ghose which was delivered on the 10th of April, 1924. By that judgment the learned Judge appointed a receiver to take charge of certain immovable properties which were referred to in the petition presented by the Chartered Bank of India, Australia and China.

2. It is not necessary, in my opinion, to deal in great detail with the facts of this case but the following are the facts which it is necessary to mention.

3. A joint Mitakshara family owned certain mica properties which I understand, are in the neighbourhood of Hazarribagh and the business was carried on in the name of Johormull Sundermull and also in the name of J.S. Mull & Co. There was a firm of Y. Artin & Co. the members of which were Sunder Mull, Sree Nath Pal, &

Simpson. They were acting as selling agents in respect of the joint family business.

4. In May 1919 a Limited Company was formed, the Memorandum of Association being signed by Sundermull, Sreenath Pal & Simpson in order to take over the business of Y. Artin & Co. and that Limited Company was called J.S. Mull & Co. Ltd., and, as I understand, their course of business was that the mica was raised by those carrying on the family business and was delivered to J.S. Mull & Co. Ltd.-sometimes bought by that company and sometimes sold by that company on commission.

5. Both J.S. Mull & Co. and Y. Attin & Co., had accounts with the Chartered Bank. They were kept alive by leaving a small sum of money to the credit of each account; and, a current account was opened in the name of J.S. Mull & Co. Ltd. with the Chartered Bank and that was the account which was operated upon. Advances were made from time to time by means of an overdraft on that account.

6. Apparently, about July 1920 the Bank required further security for the advances which they were making: and, on the 23rd of July 1920 the deeds relating to Certain properties were deposited together with a letter, signed by Sundermull and directed to the Chartered Bank, and it ran as follows: 'We send herewith conveyance for properties as per list, attached with present valuations; which please hold as collateral security against your loan to Messrs. J.S. Mull & Co., Limited.

We are arranging to deliver the other titles as promised and hope to do so shortly.

I am agreeable to execute a security bond or mortgage on any or all of the properties in your favour whenever called upon to do so.

Yours faithfully, Sundermull. Properties belonging to Rai Sahib Sundermull, Rs. 1. No. 64-3, Cross Street ... 10,00,000 3. Nos. 2 & 3, Gobind Chun-der Dhur's Lane ... 2,50,000--------------12,50,000

7. In addition to this there was a hypothecation letter of certain stocks of mica given on the 30th of November 1920.

8. It appears that the operations upon the current account of the Limited Company were brought to an end in November 1921. It is in evidence that the overdraft on the limited company's accounts with the Bank was largely in respect of cheques drawn by the limited company in favour of Johurmull Sundermull which sums, it is stated, were used for the purpose of the family business. The said amounts were alleged to aggregate the. sum of Rs. 76,25,200, out of a total debit of Rs. 87,21,630 inclusive of interest. It was agreed on both sides that the properties, of which the title deeds were deposited, are the property of the joint family and that Sundermull was acting in his capacity as kurta of the joint family, when he deposited the title deeds.

9. It was stated in the Bank's petition that all the defendants had agreed to execute a legal mortgage and a draft was accordingly prepared, but the negotiations with regard to this mortgage fell through as the parties could not agree as to the exact amount due and on certain other points.

10. The suit was brought to enforce the equitable mortgage, which was created by the deposit of the title deeds, against J.S. Mull & Co., Ltd., Sundermull in his personal capacity, as well as a partner in the firm of Johormull Sundermull, and also as kurta of the joint family carrying on the joint family business, Ram Coomar, who is the brother of Sundermull, and the sons of Sundermull and of Ram Coomar.

11. The argument of the learned Counsel for the appellant, stated shortly, was, that in this case there is a dispute as to whether Sundermull as kurta of the family had authority to pledge the title deeds of the properties in question, and there being a dispute as to that point, it was not right for the learned Judge to appoint a receiver. In my opinion there are facts from which an inference may prima facie be drawn that the adult members of the joint family were aware of the deposit of the title deeds by Sundermull and that although the overdraft was upon the banking account of the Limited Company, it may be inferred that the money, or at all events a large portion thereof, was used for the purpose of the joint family business.

12. That being so, there is some evidence that the deposit of the title deeds by the kurta of the family for the object of raising money for the above-mentioned

purposes was caused by legal necessity.

13. The result is that in my judgment it cannot be said that the learned Judge's discretion in appointing a receiver was exercised wrongly or in a manner which was not judicial.

14. I desire to make it clear that I am giving no decision upon the points, which Mr. Pugh argued on behalf of the appellants in this appeal. If the suit comes to trial it may be that these questions will have to be investigated and decided.

15. We are now merely dealing with an interlocutory application in respect of the appointment of a receiver and upon evidence, which is contained solely in affidavits.

16. For these reasons, I am of opinion that the appeal should be dismissed with costs.

Walmsley, J.

17. I agree.