

PRIVY COUNCIL

Banga Chandra Dhur Biswas and another

Vs.

Jagat Kishore Acharjya Chowdhuri and others

P.C.A. No.16 of 1914

(Lords Buckmaster CJ and Atkinson and Sir John Edge. JJ)

17.7.1916

JUDGMENT

Lord Buckmaster CJ

1. These six consolidated appeals arise out of six suits commenced by one Nanda Lal Dhur Biswas and Jogesh Chandra Chakravarti, claiming against the various defendants' possession of certain lands.
2. The first named plaintiff has died since the institution of the suits, and his representatives, together with the other plaintiff, are the present appellants.
3. The property in question formed the whole estate of one Braja Narayan, deceased, and was the subject of certain conveyances executed at various dates by one or both of his two widows. The first-named plaintiff alleged that he was the adopted son of Braja Narayan, but this claim though supported by the Subordinate Judge, who decided in favor of the plaintiffs in all the suits was rejected by the High Court, from whose judgment these appeals are brought, but it is not necessary to consider this question unless the conveyances can be set aside. Now it is clear that in the circumstances these conveyances cannot be supported unless it is established that the sales they purported to effect were made under circumstances of legal necessity justifying the widows, who were only entitled to the usufruct of the property, in disposing of the entire estate.
4. The burden of proving that the dispositions were lawful rests on the respondents :
[see *Maheshar Baksh Singh v. Ratan Singh*¹,]
5. The facts of the case are these. Braja Narayan was a Hindu, who lived in the village of Ushti. He occupied a position of some importance in the village and died in 1845,

childless, leaving two widows, Golokemoni and Joydurga, who succeeded him as joint heiresses of his property. Golokemoni died on the 8th June 1890, and Joydurga on the 6th June 1902. During their lifetime they disposed of all the property inherited from their husband by the following deeds:-

12th August 1848 : Both widows to Radha Kanta Das, for rupees 175.

17th June 1853 : Both widows to Kali Narayan Roy Chowdhuri, for rupees 1,000.

26th December 1856 : Golokemoni to G. P. Wise, for rupees 350.

10th December 1859 : Golokemoni to Goloke Nath Das, for rupees 250.

23rd September 1860 : Joydurga to T. A. Wise, for rupees 700.

4th December 1860 : Golokemoni to Bejoya Gupta, for rupees 110.

18th September 1864 : Golokemoni to Goloke Chandra Das, usufructuary mortgage, for rupees 100 by an ijara patta.

1st July 1865 : Joydurga to Shaik Dhondi, for rupees 215.

6. It was originally asserted that these sales were at an undervalue, but the appellant failed to establish this contention, and it has been now definitely abandoned. It may, therefore, be accepted - and it is a material circumstance - that the whole property was disposed of at its full value by small conveyances realizing sums from rupees 175 up to 1,000, and each of the deeds contains recitals alleging various facts to show that there was legal necessity which would justify the transaction.

7. It is not necessary to examine each of these recitals in detail. Speaking generally the necessity which they put forward is the necessity of providing means for payment of debts of the deceased, of the expenses consequent on the *sradh* and the satisfaction of debts incurred by the widows for the purpose of obtaining the money necessary for the payment of the debts of the deceased and of the expenses of religious ceremonies. In general terms the facts recited would establish the necessity alleged, but it is well established that such recitals cannot by themselves be relied upon for the purpose of proving the assertions of fact which they contain. Indeed it is obvious that if such proof were permitted the rights of reversioner's could always be defeated by the insertion of carefully prepared recitals. Under ordinary circumstances and apart from statute, recitals in deeds can only be evidence as between the parties to the conveyance and those who claim under them.

8. But in such a case as the present their Lordships do not think that these recitals can be disregarded, nor on the other hand, can any fixed and inflexible rule be laid down as to the proper weight which they are entitled to receive. If the deeds were challenged

at the time or near the date of their execution, so that independent evidence would be available, the recitals would deserve but slight consideration, and certainly should not be accepted as proof of the facts. But, as time goes by, and all the original parties to the transaction and all those who could have given evidence on the relevant points have grown old or passed away, a recital consistent with the probability and circumstances of the case, assumes greater importance, and cannot lightly be set aside; for it should be remembered that the actual proof of the necessity which justified the deed is not essential to establish its validity. It is only necessary that a representation should have been made to the purchaser that such necessity existed, and that he should have acted honestly and made proper enquiry to satisfy himself of its truth. The recital is clear evidence of the representation, and, if the circumstances are such as to justify a reasonable belief that an enquiry would have confirmed its truth, then when proof of actual enquiry has become impossible, the recital, coupled with such circumstances, would be sufficient evidence to support the deed. To hold otherwise would result in deciding that a title becomes weaker as it grows older, so that a transaction - perfectly honest and legitimate when it took place - would ultimately be incapable of justification merely owing to the passage of time.

9. The present case well illustrates the necessity of this view. Nearly sixty years passed between the date of the first deed and the institution of these proceedings, and the attempt to support it by contemporary evidence - statements as to the private affairs of the deceased man or of his widows - has only resulted, as might have been expected, in a number of witnesses attempting to give first-hand evidence upon matters which occurred when they were of tender years, and now can only be dimly and imperfectly remembered. Their Lordships are not surprised that the learned Judge who tried the case rejected this evidence as untrustworthy and they place no reliance upon it.

10. There are, however, facts which are not in dispute, and they appear to their Lordships sufficient to support the validity of the transactions which it is sought to challenge. The total value of the estate which the two widows inherited was 2,900 rupees. That some expense must have been incurred, and properly incurred, in connection with the *sradh* might be safely assumed. That the deceased should have left no debts at all is extremely improbable, and, indeed, one of the recitals referred in specific terms to a particular decree in favor of a named creditor. If no explanation whatever could be offered as to the absence of any record of this decree, the circumstances would place a difficulty in the respondents' way. But it appears that the

records of the Court, by which the decree might reasonably be assumed to have been made, extending over a period from 1843 up to the death of the deceased, have been destroyed by an earthquake, and their Lordships are, therefore, not prepared to allow the lack of proof of the decree to weigh against the respondents' position.

11. Now the legal necessity, that would support these conveyances is the necessity for maintenance of the widows, and that maintenance need not be measured merely by a sufficient sum to support bare existence. The periods at which the properties were sold, the small sums for which the sales were made, and the disposition of the property piece by piece with fair regularity for a period of sixteen years, all go to support the view that the widows found themselves unable to provide sufficient maintenance out of the income of the estate. It is impossible at this lapse of time to consider minutely the exact amount of money out of which these women might have maintained themselves. If the total amount of the estate had been such that it could safely have been assumed that its usufruct would have provided a sufficient sum, different considerations would have arisen. But that is not the case. In 1865 all the property was exhausted and the widows' means were at an end. From that time until their death they lived with relations.

12. The circumstances, therefore, are sufficient to justify the assumption that proper enquiry would have disclosed that real necessity existed.

13. It is, however, urged on behalf of the appellant that even if this be so, the reasons urged in these recitals differ from the suggestion that the sale was necessary for the maintenance of the widows. Their Lordships do not accept this view. If money were needed for payment of debts, the amount available for maintenance would to that extent be reduced, and if the debts had been paid by the widows out of borrowed money, it would make no difference whether they urged as the reason for the sale the necessity to pay debts or the necessity of maintaining themselves.

14. It is admitted that there was only one fund available for all purposes. Whatever debts of the deceased may have been, it was out of this fund that they had to be defrayed, and all proper and necessary expenses could only be provided from the same source. Their Lordships have entirely disregarded the verbal evidence upon the question of what debts were owing from the deceased. The learned trial Judge who tried the case rejected such evidence as untrustworthy and the insistence of practical proof of the financial condition of the estate of a dead man after the lapse of sixty years can only result in the production of evidence which must, except in special circumstances,

be untrustworthy. Their Lordships think it right to add, in conclusion, that they do not agree with the decision of the High Court as to the effect of the attestation of two of the deeds by the appellant. They think it may be safely accepted that he did, in fact, attest them. But attestation proves no more than that the signature of an executing party has been attached to a document in the presence of a witness. It does not involve the witness in any knowledge of the contents of the deed nor affect him with notice of its provisions. It could, at the best, be used for the purpose of cross-examination, in order to extract from the witness evidence to show that he was, in fact, aware of the character of the transaction effected by the document to which his attestation was affixed. If it had been quite impossible for either of the widows lawfully to dispose of any interest in the property, and it was shown that the witness knew the nature of the deed, more value might be given to his attestation, but by itself it would neither create *estoppel* nor imply consent : [see *Hari Kishen Bhagat v. Kashi Pershad Singh*²],

15. In the opinion of their Lordships, therefore, these appeals should fail, and they will humbly advise His Majesty that they should be dismissed with costs.

16. Their Lordships cannot, however, part with this case without expressing their concern at the delay that has taken place.

17. The proceedings were instituted on the 20th May, 1905, the decrees of the Subordinate Judge were made on the 17th September, 1906, and the decrees of the High Court on the 16th August 1909. Yet these appeals were not set down for hearing until April of this year. Their Lordships have been unable to extract any sufficient reason for this delay. The representatives of the parties over here may well be unable to furnish explanation; but unexplained, it constitutes a grave reproach to the administration of Justice. All the respondents have been unjustly attacked in the lawful possession of their property, and for nearly seven years they have been subject to the anxiety and distress of knowing that the judgment of the High Court in their favour was subject to the inevitable uncertainties of the law. Had this appeal succeeded, their Lordships would have refused to allow the appellants any costs of the appeal unless they could have cleared themselves of the imputation of having needlessly protracted the proceedings, and the same course will be taken in similar cases in the future should the occasion arise.

Appeal dismissed.

Cases Referred.

1. [1896] 23 Cal. 766 : 23 I.A. 57 : 6 M.L.J. 127 : 7 Sar. 19 (P.C.).
2. [1914] 42 Cal. 876 : 27 I.C. 674 : 42 I.A. 64 (P.C.).