

## PRIVY COUNCIL

Shripat Singh Dugar and others

Vs.

Maharaja Prodyot Kumar Tagore and others

P.C.A No. 111 of 1915.

(Lords Buckmaster, CJ, Atkinson Wrenbury and Mr. Ameer Ali.JJ )

10.11.1916

### JUDGMENT

#### **Lord Buckmaster J.**

1. The point to be decided in this case is extremely simple, and it is this: What was the extent of the estate that passed on the sale, under a decree of the Court of the 13th August, 1904, of the right, title, and interest of a judgment-debtor in certain property?
2. There is no doubt whatever that all parties considered that the entire estate had been sold under the order. The price was based upon that hypothesis, and the present appellants were so much impressed with this view that they instituted proceedings for the purpose of obtaining a declaration, that in the special circumstances of the case only one-third was properly liable to attachment. The grounds for that action were these; the property in question was joint property, governed by the *Mitakshara* law. By that law a judgment against the father of the family cannot be executed against the whole of the *Mitakshara* property, if the debt in respect of which the judgment has been obtained was a debt incurred for illegal or immoral purposes. In every other event it is open to the execution creditor to sell the whole of the estate in satisfaction of the judgment obtained against the father alone. In the proceedings so instituted the plaintiffs accordingly alleged that the consideration for the debt was illegal and immoral, and on this allegation obtained an ex parte, injunction restraining the sale of the whole of the estate which was then admittedly subject of advertisement, and a formal application was subsequently made, asking that the injunction might be continued. Upon the hearing of that application it was urged by the appellants that their case as to the illegality and immorality of the consideration for the debt being still under consideration, the Judge ought to suspend proceedings under the execution

decree until that point had been determined, and upon this application the order was made which has given rise to the dispute. The appellants were quite willing that the order should be amended by adding the words "rights, title and interest," and to this request the learned Judge acceded. The words so used are undoubtedly ambiguous (*Simbhunath Pande v. Golap Singh*<sup>1</sup>) and lend colour to the contention that they only cover the actual third which the judgment-debtor possessed in his own right, and leave unaffected the two-thirds which, though capable of being bound by the order, were not in fact the property of the debtor at all. It, therefore, becomes necessary to examine the facts and circumstances which led to their introduction. (*Mahabir Pershad v. Maheswar Nath Sahai*<sup>2</sup>) The learned Judge stated this reason in plain language. He said that the addition of those words would not be calculated to affect the case of either parties, and upon that footing they were introduced.

3. Now there is only one hypothesis upon which the introduction of those words could have left the rights of either party unaffected, and that is, by so construing the order that if the plaintiffs succeeded in establishing that the debt had been incurred for immoral purposes, only one-third would be affected by the decree, while if they failed in that contention, as was ultimately the case the whole of the estate would remain subject to the order for sale.

4. That in their Lordships' opinion is what the order meant, and had it affected anything else the result would have been that without any reason at all, the Judge would have deprived the execution creditor of the undoubted right that he possessed, except upon the happening of one event, which in the result, has never arisen, to sell the entirety of the estate.

5. Their Lordships are in entire agreement with the view expressed in the case of *Mahabir Pershad v. Maheshwar Nath Sahai*<sup>3</sup> to which Sir Robert Finlay called their attention that in cases of this kind it is of the utmost importance that the substance, and not the mere technicalities, of the transaction should be regarded.

6. Their Lordships will humbly advise His Majesty that this appeal should be dismissed, with costs to the respondents who appeared.

Appeal dismissed.

Cases Referred.

1. [1887] 14 Cal. 572 : 14 I.A.77 : 5 Sar. 5 (P.C.)
2. [1889] 17 Cal. 584 : 17 I.A.11 : 5 Sar. 489 (P.C.)

3. [1889] 17 Cal. 584 : 17 I.A.11 : 5 Sar. 489 (P.C.)