

ALLAHABAD HIGH COURT

Ram Saran Das

Vs

Bhagwan Singh

(S.M Sulaiman CJ.Pullan, J.)

02.07.1929

JUDGMENT

S.M Sulaiman CJ

1. This is a plaintiff's appeal arising out of a suit for recovery of money based on a deed which was originally a mortgage-deed and not for the enforcement of any security. Bhagwan Singh defendant 1 and his two brothers who were minors at the time executed a mortgage-deed on 17th January 1918 for Rs. 5,000 in favour of the plaintiff. A suit was instituted by the minor brothers of Bhagwan Singh for a declaration that the deed was not binding on them because they were minors and also that it was not binding on the family because it had been executed without any legal necessity and that the deed was tainted with the immorality of Bhagwan Singh. That suit doubtless was a representative suit brought in the interest of the whole family. The Court held that the debt did not create any charge on the family property because there was no legal or family necessity. As a matter of fact it found that Bhagwan Singh was a licentious man and was leading an immoral life and wasting the family property. It was further found that the creditor had not made any enquiry to satisfy himself whether there was any legal or family necessity. On these findings the suit was decreed and the bond was set aside. The creditor has now sued Bhagwan Singh and his two minor sons and left out Bhagwan Singh's brother. It is an admitted fact that before the present suit was instituted the sons of Bhagwan Singh had got their shares partitioned off and are no longer members of a joint family with Bhagwan Singh. The suit was brought more than six years after the date of the registered document but within six years of the date of the judgment under which the legal necessity was not found to be proved. The Court below has dismissed the suit on the ground that it was barred by limitation. Some issues, however, have been found in favour of the plaintiff.

2. It appears to us that the suit decided on 8th September 1919 was a representative suit and the findings arrived at in that suit against the present plaintiff Ram Saran Das were for the benefit of the entire family and could be taken advantage of by all the members of the family including Bhagwan Singh. The learned Judge in the present case therefore should not have gone into the

question of legal necessity afresh as the matter was res judicata between Bhagwan Singh and Ram Saran Das. The question of legal necessity cannot be now re-agitated.

3. As regards the sons of Bhagwan Singh) the matter is quite clear. Before their share could have been attached in execution of any decree in favour of Ram Saran Das they ceased to be members of the joint family and their shares were separated. The debt due from Bhagwan Singh did not create any charge on the family property so as to make the separate shares of Bhagwan Singh's sons liable after the partition. No doubt there has been some Conflict of opinion on the point as is evidenced by the case of *Jagannatha Rao v. Viswesam*¹ There has, however, been a recent pronouncement by has a Bench of this Court in *Gaya Prasad v. Murlidhar*² where it has been clearly laid down that the effect of a partition between the sons and their father is to exempt their individual property acquired at partition from liability to attachment in execution of a money decree against the father. The reasons given by the learned Judges of the Madras High Court do not appeal to us and we agree with the view expressed by cur own High Court. It follows that the plaintiff cannot pursue his remedy against the sons of Bhagwan Singh now.

4. As regards Bhagwan Singh the claim is undoubtedly barred by time. The plaintiff knew from the very beginning that Ram Singh and Raghubir Singh were minors, indeed they were described as such in the document itself. It cannot therefore be said that their minority was discovered when the suit was fought out, Furthermore the contract by the minors was a void contract and was not only voidable. Nor can it be contended that the finding that there was no legal necessity for the debt gave a fresh start of six years to the creditor. The Court distinctly found that he had made no enquiry to satisfy himself that there had been such legal necessity. Time began to run from the date of the breach of contract under the registered document: Article 116, Lim. Act. As there was no time fixed for payment it began to run from the date of the deed itself. The suit having been brought more than six years after that date it was barred by time. The appeal is dismissed with costs.

Cases Referred.

¹ A.I.R. 1924 Mad. 682

² A.I.R. 1927 All. 714