CALCUTTA HIGH COURT

Sailabala Deb

Vs

Baikuntha Nath Ghose

(E Greaves, C.J. B.B. Ghose, J.)

11.06.1925

JUDGMENT

B.B. Ghose, J.

1. This is an appeal against the judgment and decree of the Sub ordinate Judge, Record Court of Sylhet, reversing those of the Munsif, second Court of Maulvi Bazar.

2. The suit was for recover of certain plots of land on the allegation that the plaintiffs were the reversionary heirs of one Baidranath, Baidyanath was the son of one of three brothers Jithram, Mouhuram and Kalicharn. Baidyanath was the son of Kali Charan. The plaintiffs are the descendants of Jithram and Mohouram. Baidyanath died leaving a widow Chandramoni and an unmarried daughter Sukhomoni. Chandramoni died on the 1st July, 1908. She had during her lifetime executed a deed of gift in favour of her daughter Sukhomoni and her husband. Brindaban of 12-annas share of her husband's estate on the occasion of the marriage of Sukhomoni. Afterwards, Chandramoni and Sukhomoni jointly sold certain properties to the defendant No. 1, plaintiffs' sued for the recovery of all those properties on the allegation that there was no legal necessity for the gift by Chandramoni or for the sale by Chandramoni and Sukhomoni. The Munsif made a partial decree in favour of the plaintiffs', dismissing, only that part of the suit which related to lands which were not in the possession of the defendant and to one plot of land which did not belong to the estate of Baidyanath. He found that there was no legal necessity either for the, gift by Chandramoni or for the sale, effected by Chandramoni and Sukhomoni. On appeal by the defendants, the Subordinate Judge found that there was a legal necessity for the gift on account of the marriage of the daughter, Sukhomoni, and the gift was a reasonable one having regard to all the circumstances disclosed in the evidence. He also found that the sale was also for legal necessity and on those findings he has dismissed the plaintiffs' suit. On appeal by the plaintiffs before us, it is not disputed that the expenses for the marriage of an unmarried daughter would be a legal necessity but it is contended that the gift was of an

excessive share and with regard to that excessive share the gift would be void; the widow might, according to certain texts of the Hindu Law, make a gift of 4-annas share of the husband's estate and the gift in excess of that share is invalid and the plaintiffs are entitled to recover possession of 8 annas- share. It is also contended that according to the terms of the gift only the life-estate of the widow Chandramoni was given away and the daughter or her son-in-law had no interest in the estate after the death of the widow.

3. The next contention with regard to the gift is that Sukhomoni and her husband Brindaban were only given a life-estate in the property and as they took as tenants-in-common Sukhomoni could not claim the share which had been given to Brindaban on his death, and as Brindaban is dead the plaintiffs are entitled to the half share of the 12-annas which was given to Brindaban. With regard to the sale by the kobala Ex. F, it is contended that the debt for maintenance which caused the necessity for sale was incurred not only for the maintenance of the widow and her mother-in law, that is, the mother of the last male owner, but also for the widowed sisters of Baidyanath and as the maintenance of the widowed sisters was not a charge on the estate of Baidyanath there was no legal necessity for the debts incurred at any rate, to the extent of the maintenance of the sisters and, therefore, the sal3 is bad. It was further contended that there were untrue allegations made in the kobala as regards the desire of the ladies to perform sradh at Gaya of their husbands and that also vitiates the sale as one for legal necessity. The most important question seems to be the question which is urged with reference to the texts of the Hindu Law as regards the portion of the estate which might be spent for the purpose of a daughter's marriage. In support of the contention on behalf of the appellants, reference was made to Ch. XI, Section (1), Verse (66) of the Dayabhaga which runs as follows: "The widow should give to an unmarried daughter a fourth part out of her husband's estate to defray the expanses of the damsel's marriage. Since sons are, required to give that allotment, much more should the wife, or any other successor, give a like portion." The reference to the sons will be found in Ch. III, Section (2) Verse (36) of the Daya Bhaga which runsras follows: "If the funds be small, sons must give a fourth part to daughters, deducting it out of their own respective shares". Thus Manu says, "To the maiden sisters let their brothers give portion out of their own allotments respectively; let each give a fourth part of his own distinct share; and those who refuse to give it shall be degraded". Reference was also made to the case of *Churaman Sahu v. Gopi Sahu*[1]. where the question as to the validity of a gift to a daughter of a family governed by the Mitakshara Law on the occasion of, the daughter's gowna ceremony was considered. It was argued that under the Mitakshara also the portion that a maiden daughter should be given is a fourth share of what she would have been entitled to receive, if instead of being a daughter she had been a son. This fourth share, how ever, cannot be considered to be the limit of what a maiden daughter should obtain as her marriage portion because with reference to the text of Manu, which has already been stated above, it will be seen that if a girl

has got more than four brothers and if each were to give one-fourth out of his share to the daughter, the daughter would get more than what each son would get. The reference to what the widow should give under the Daya Bhaga also seems to me to fix the minimum of what should be given as a marriage portion, since the reason stated in the last sentence is that the wife or any other Successor should give as much as the sons, and this shows that the widow must spend at least the fourth part of her husband's estate to defray the expenses of an unmarried daughter's marriage. That seems to be the reasonable view to take. Because the daughter's marriage is a primary duty of a Hindu and to limit the amount to be spent for her marriage to a fourth part of the estate left by the father would, in many cases, make it impossible for the widow to give her daughter in marriage. To take a concrete Case: if a man in a good position in society dies leaving a small estate, to say, that the widow cannot spend more than the fourth part of the estate would practically make it impossible for the daughter to be given in marriage under the present conditions of society. It seems to me, therefore, that these provisions were made simply for the purpose of ascertaining by a ready method of what should be considered as a reasonable sum to be spent for the marriage of a daughter having regard to the conditions of society at that time. The verses are not imperative but only directory and only indicate what should be considered as reasonable. This view was taken by Mr. Justice Subramania Ayyar in the case of *Ramasami Ayyar v. Vengidusami Ayyar*[2] Having referred to the opinion of the different commentators as regards what should be given as a daughter's share for her marriage expenses, he observed that the better and sounder view was that the authorities should be understood to empower a qualified owner like a widow to do all acts proper and incidental to the marriage of a female according to the general practice of the community to which she belongs. The principle was also laid down by Lord Gifford in the case of Kassinath Bysack v. Hura Sundari 2 Morley's Digest 198 which also was cited in the case of *Churaman Sahu v. Gopi Sahu*[3] mentioned above. His Lordship said that a Hindu widow had "for certain purposes a clear authority to dispose of her husband's property, and might do it for religious purposes, including dowry to a daughter." He added that it was absolutely impossible to define "the extent and limit of her power of disposing if because it must depend upon the circumstances of the disposition whenever such disposition shall be made and must be consistent with the law regulating such disposition". This principle was followed in the case of Churaman Sahu v. Gopai Sahu 1 Ind. Cas. 945 : 37 C. 1 : 13 C.W.N. 991 : 10 C.L.J(Supra) by the learned Judges of this Court where although the gift which was made on the occasion of the gowna ceremony exceeded the fourth part of the estate it was upheld, although no doubt the rule as regards a fourth part was referred to as being a reasonable proportion that might have been spent. In the present case the Subordinate Judge has found that the daughter was married in accordance with the wishes of the father and the ancestors of the plaintiffs took active part in the ceremony and also in the execution of the deed of gift. The Subordinate Judge rightly points out that the fact that they were attesting witnesses to the deed of gift does not estop the

plaintiffs from claiming the property, but that the persons who were interested as possible reversionary heirs joined in the transaction, shows that it was not considered unreasonable. The value of the property included in the gift was only Rs. 1,000. Having regard to these findings of fact, the first contention of the appellant must fail.

4. The argument that the widow only conveyed her life-interest by the deed of gift, and the next argument that the donees were given only a life-estate is also not supported by the document. The gift was in these terms: "I divest myself of all my interests in the property and cause the same to vest in you and your successors. From today you continue to enjoy the said lands by being entitled thereto" and so on. That shows unmistakeably that the gift was an absolute gift to the daughter and the son-in-law although in the succeeding portions of the document restrictions have been imposed upon their power of sale so long as sons or daughters are not born to them. That does not mean that their interest was limited to a mere life-estate. Whether those restrictions, are binding or not it is not necessary for us to decide in the present case. It is enough for the present case to state that they got an estate of inheritance. If this is so, after the death of Brindaban his share devolved upon his widow Sukhomoni and plaintiffs cannot claim any interest in the property. The argument with regard to the sale by the ladies in favour of defendant No. 1 must next be considered.

5. The finding of the learned Judge is "the plaintiffs and Chandramoni were hard-pressed for maintenance, re-payment of debts, etc., is sufficiently proved by the defendant. The documents filed establish that Ex. F (the deed of sale in question) was executed under legal necessity for maintenance and payment of debts incurred for the purpose". That amounts to a finding of fact which cannot be questioned in second appeal. But it has been contended, as I have stated above, that the maintenance of the widowed sisters of Baidyanath would be no legal necessity. Reliance has been placed on the case of *Bai Mangal v. Bai Rukhmini*[4] but in that case the widowed sisters claimed a maintenance out of the brother's estate and that right was negatived. Here it appears, that the widowed sisters used to be maintained by Baidyanath during his lifetime, and the finding amounts to this, that these three sisters had nothing to depend upon their husband's family and, therefore, the brother used to maintain them as a moral obligation and they were living as dependent members of his family. After his death the widow did not turn them out but used to maintain them as her husband used to do previously. To say, that debts incurred for their maintenance along with the maintenance of the widow herself and her mother-in-law, would not be sufficient to justify a sale seem to be a question which is not maintainable. But assuming that the widow was guilty of mis-management in maintaining her husband's widowed sisters, that does not vitiate a purchase made of the property for the purpose of re-payment of the debts incurred by the widow. The purchaser is not bound by any previous act of mis-management by

the widow so long as he is satisfied that there was a pressing necessity for the sale and such necessity has been found by the Court below.

6. On these grounds the appeal must fail and is dismissed with costs.

Greaves, J.

7. I agree.

Cases Referred.

11 Ind. Cas. 945 : 37 C. 1 : 13 C.W.N. 991 : 10 C.L
222 M. 113 : 8 M.L.J. 170 : 8 Ind. Dec. (N.S.) 79
31 Ind. Cas. 945 : 37 C. 1 : 13 C.W.N. 991 : 10 C.L.J
423 B. 291 : 12 Ind. Dec. (N.S.) 193