PATNA HIGH COURT

Lala Ram Asre Singh

Vs

Ambica Lal

(Das and F Ali, J.)

24.01.1929

JUDGMENT

Das, J.

1. In this suit the plaintiffs claimed to recover possession of 40 bighas 15 cuttahs and 13 1/2 dhoors of kasht land. It is not disputed that one Manrup Lai was at one time the owner of this land. He died in 1886 leaving two widows Musammat Basmati Kuer and Musammat Rajbansi Kuer. Basmati Kuer who survived her co-widow died sometime in 1919. The plaintiffs claim that they are the reversionary heirs of Manrup Lal and are, in the events which have happened, entitled to immediate possession of the disputed land. The suit was resisted by the defendants who based their title on conveyances executed in their favour by Basmati Kuer; and the only question which arises before us in this appeal is whether there is legal necessity to support the conveyances upon which the defendants rely. I may mention that there were various other questions raised in the Courts below, but in this Court we are only concerned with the question of legal necessity. There are four documents which we have to consider in this appeal Ex. L-1 executed by Basmati Kuer on 30th March, 1903, to raise a sum of Rs. 541, Ex. L-2 executed on 17th May, 1906, to raise Rs. 89-6-0, Ex. L-7 executed on 12th August, 1911, to raise a sum of Rs. 399 and Ex. L-5 executed on 6th February, 1913, to raise a sum of Rs. 376-8-0. The learned Subordinate Judge found that so far as the transaction evidenced by Ex. L-1 is concerned there was legal necessity to support that transaction to the extent of Rs. 175-8-0 and he set aside the conveyance on terms that the plaintiffs paid Rs. 175 8 0 to the vendees. The learned District Judge in the lower Appellate Court has found that the entire transaction should stand: and he has refused to set aside the transaction of the 30th May, 1903. So far as the transaction of 17th May, 1906, is concerned, the learned Subordinate Judge thought that there was no legal necessity to justify that transaction and in the result he set aside that sale. The learned District Judge has taken a different view and has upheld the transaction. So far as the transaction of 12th August, 1911, is concerned, the learned Subordinate Judge set aside the transaction holding as he did, that there was no legal necessity to support it. The learned District Judge has agreed with the Court of first

instance that the sale should beset aside; but he has directed the plaintiffs to pay Rs. 324 to the defendants as a condition for setting aside the sale. So far as the transaction of 6th February, 1913, is concerned, the Court of first instance set aside the sale. The lower Appellate Court has modified to order and has directed the plaintiffs to pay Rs. 265-8-0 to the vendees as a condition for setting aside the sale. Both sides appeal to this Court.

2. I will first consider the transaction of 30th March, 1903. As I have mentioned, the property was sold by Basmati Kuer for a sum of Rs. 541. The learned Subordinate Judge held that Rs. 175-8-0 out of the consideration money was properly payable by the widow to discharge a debt of her hushand; and in this view he directed that the plaintiffs should pay the vendees Rs. 175-8-0 as a condition for setting aside the sale. The fact appears to be this. In 1872 Manrup Lal, the husband of Basmati Kuer executed a zerpeshgi deed as a security for an advance of Rs. 351. He also borrowed a sum of Rs. 32. On 18th July, 872, Manrup executed a zerpeshgi deed in other to discharge his prior liability under the zerpeshgi of 1872. On 8th November, 1892, that is to say, after the death of Manrup Lal, Basmati Kuer and Rajbansi Kuer jointly executed a zarpeshgi to pay off the debts due by their husband. The debt amounted to Rs. 388 and it appears that Basmati Kuer made herself responsible for Rs. 194. This is the first item mentioned in the transaction of 30th March, 1903. The learned Subordinate Judge took the view that as Manrup Lal executed a zarpeshgi deed as a security for the loan and as the creditor could not under the terms of the zarpeshgi deed bring a suit for the realization of the money, there was consequently no pressure on the estate of Basmati Kuer. She was, therefore, in the view of the learned Sub Judge, not entitled to sell a portion of her husband's estate to pay off the debt. With all respect, I am unable to agree with this mode of reasoning. The question of pressure does not arise where the debt to discharge which a part of the estate is sold was a debt of the full proprietor. Mr. Khurshed Hussain before us contends that there was in fact no debt because the zarpeshgidar was in possession and he had precluded himself from bringing a suit in respect of the loan. This, in my view, is an impossible argument. The debt was there; it was a subsisting debt, only the creditor was in possession of a part of the estate and was unable to recover it by instituting a suit in the Civil Courts. But the result was that a considerable portion of the income was withdrawn from Basmati Kuer who had succeeded her husband. It is well-established that where a case of necessity exists, an heiress is not bound to borrow money, with the hope of paying it off before her death. Nor is she bound to mortgage the estate, and thereby reduce her income for life. She is at liberty, if she thinks fit, absolutely to sell off a part of the estate As it has been put in Venkaji Sridhar v. Vishnu Babaji Beri 18 B. 534 Widow, like a manager of a family, must be allowed a reasonable latitude in the exercise of her powers, provided she acts fairly to her expectant heirs.

3. Now, I can see no unfairness on her part in selling a portion of the estate to discharge the liability of her husband. I held, therefore, that the learned District Judge was right in taking the

view that Basmati Kuer was entitled to sell a portion of the estate to discharge the liability of her husband.

4. The next item is one of Rs. 50. It appears that on 15th Sawan, 1292, Manrup Lal executed a bond as a security for an advance of Rs. 49. On 9th Pous, 12 3, he borrowed Rs. 36 and executed a chita as a security for the loan It appears that Basmati Kuer and Rajbansi Kuer executed a zarpeshgi deed as a security for the debt due by their husband to the creditor and that Basmati Kuer was liable for half the amount for which the zerpeshgi was executed. This is the second item mentioned in Ex. L-1 and in my opinion she was entitled to sell her husband's estate to pay off the debt due by her husband....

5. The third item is also one of Rs. 50. There is the evidence of two witnesses who are believed by the learned District Judge that Manrup Lal took a loan of Rs. 100 from Atam Brahmdeo and Basist and that Atam and Brahmdeo assigned two thirds share to Basist and that Basmati Kuer paid Rs. 50 to Basist by entering into the transaction of 3Uth March, 1903.

5. The last item is one of Rs. 247. It appears that a rent decree had been obtained against Basmati Kuer and a sum of Rs. 247 was necessary to pay off the rent decree. Mr. Khurshed Hussain contends before us that there is nothing to show that there was a rent decree against the lady and he contends further that the lady was not entitled to sell a portion of the estate to pay off the rent decree. Now, I confess that the judgment of the learned District Judge is not, as clear as it might be; but he does undoubtedly say that there was a rent decree against the lady. Now this is supported by a recital in the conveyance of 30th March, 1903, and from the judgment of the Court of first instance. It appears that there were three witnesses to prove that a decree for rent had as a matter of fact been obtained against the lady It is quite true that the learned Subordinate Judge disbelieved their evidence; but I must assume that the learned District Judge accepted their evidence as correct. Now if there was in fact a rent decree against the lady then in my opinion she was entitled to sell her husband's estate to satisfy that decree. The reason is obvious. It is quite true that the liability to pay rent is a personal liability; but once a decree is obtained, there is imminent danger to the property being sold up in execution of the rent decree; and it is for this reason that the Courts of Law have held that the necessity to pay off decrees for rent constitutes a legal necessity within the meaning of that term as used in Hindu Law. Mr. Khursaid Husnain has referred us to various authorities in support of his contention that a limited owner is not entitled to alienate any portion of her husband's estate until the decree is actually put into execution. I have considered these decisions; and, in my opinion, they do not support the contention put forward before us. On the other hand, there is clear authority for the opposite view in the decision of Mukerji, J., in *Rameswar Mandal v. Provabati Debi*[1] I hold, therefore, that so far as the transaction of 30th March, 1903 is concerned, it must be upheld and the plaintiffs' suit must fail with regard to that transaction.

6. I now come to the transaction of 17th May, 1906, which is evidenced by Ex. L-2. By this document Basmati Kuer sold some of the properties in dispute to some of the defendants for Rs. 87 8-0. It appears that the landlord had obtained a rent decree against her and that she had executed a simple mortgage bond on 1st June, 1903, to raise a sum of Rs. 64 which was necessary to pay off the rent decree. The transaction of 17th May, 1906, was entered into in order to pay off the mortgage bond of 1st June 1903. For the reasons which I have already stated in dealing with Ex. L-1 the transaction must be upheld and the plaintiffs must fail so far as the conveyance of the 17th May, 1906, is concerned.

7. The next transaction is one of 12th August, 1911; and it is evidenced by Ex. L-7. By this transaction Basmati sold some of the properties in suit to some of the defendants for a sum of Rs. 399. The learned District Judge has practically upheld the transaction; but I am unable to agree with the view which has been taken by him. Now, we are concerned with six items and in my view not one of these items can be established as against the reversioners. The first item is one of Rs. 72. It appears that there was a suit between Ramdeo Lal and Basmati Kuer and there was a decree for Rs. 72 for costs as against Basmati Kuer; and it is impossible to take the view that the widow was entitled to incur costs in a frivolous litigation and charge her husband's estate with it. If indeed there was a finding to the effect that she was defending her husband's estate in that litigation, then something might be said in favour of the decision of the learned District Judge; but there is nothing to show in the judgment of the learned District Judge what that, suit was, and in what capacity Basmati Kuer was defending that suit. The next item is one of Rs. 126 which was the amount decreed against Basmati Kuer in a suit between her and Sughar Ahir. In my opinion, it is impossible to hold that the widow was entitled to charge the estate with the costs of that suit. The next item is one of Rs. 45 which was required by Basmati Kuer for payment of rent to the malik. It is well-established that the limited owner cannot make the estate liable for the payment of rent. The next item is one of Rs. 56 required for costs of cultivation; but the fruit of cultivation belonged to the limited owner and it is obvious that she had to incur all the costs necessary for cultivation. The next item is one of Rs. 25 necessary for domestic expenses. There is no evidence to show that there was any necessity for the widow to raise this sum of money and the item must be disallowed. The last item is one of Rs. 75 which has been properly disallowed by the learned District Judge. The result is that so far as the transaction 12th August, 1911, is concerned, the plaintiffs must succeed and they are entitled to a decree for possession in respect of the properties covered by Ex. L-7.

8. The last transaction which I have to consider is one of 6th February, 1913, covered by Ex. L-5. By this transaction Basmati Kuer sold certain properties which is the subject-matter of the suit of 6th February, 1913, for the sum of Rs. 376-8-0. It is established that out of the money which she received she paid off a debt due by her husband on a mortgage transaction of 16th July, 1873.

That debt amounted to Rs. 200. It is obvious, therefore, that the transaction of 6th February, 1913, is good for the sum of Rs. 200. As regards the balance the position is a hopeless one. It is stated that Rs. 65-8 0 was necessary for payment of rent; but as I have pointed out, a limited owner is not entitled to sell any portion of the estate for the purpose of paying rent to the landlord and in regard to the other item of Rs. 111 the learned Judge has properly disallowed that item. The question then is, are we to affirm the transaction of 6th February, 1913, or to set it aside. The learned District; Judge set aside the transaction on condition that the plaintiffs pay the sum of Rs. 200 plus Rs. 65-8-0 to the defendants; but it is obvious that this position can no longer be maintained in view of the decision of the Judicial Committee in *Sri Krishn Das v. Nathu Ram* [2]That was a case in which the plaintiffs sued to set aside a sale of joint family properties. The sale was for Rs. 3,500; and it was established that Rs. 3,000 out of Rs. 3,500 had been applied to purposes of necessity and that the price was adequate. The Allahabad High Court thereupon psssed a decree setting aside the sale conditionally upon Rs. 3,000 being repaid to the purchaser. The Judicial Committee pointed out that the decision could not be sustained. They said in course of their judgment that if the view taken by the Allahabad High Court were sound, the question would in each case be a matter of arithmetical calculation, end opinions would necessarily vary as to what constituted the bulk of the proceeds or a small part of the same in each particular case."

9. They pointed out that the true question which falls to be answered in such case is whether the sale itself was one which was justified by legal necessity. It is impossible for us in this Court to decide this point as it is largely a question of fact. I am of opinion that the case should go back to the lower Appellate Court for consideration, of the question whether the transaction of 6th February, 1913, should stand; and that, the learned District Judge should decide the case by applying the principle laid down by the Judicial Committee in the case to which I have just referred. The result is that the appeal succeeds in regard to the transaction of 12th August, 1911. There must, therefore, be a decree in favour of the plaintiffs entitling them to recover immediate possession of the properties covered by Ex. L-7. They are also entitled to mesne profits, which will be ascertained in due course of law. The case must go back so far for decision in regard to the transaction of 6th February, 1913 is concerned. So far as the transactions of 30th March, 1903 and 17th May, 19015 are concerned, the plaintiffs' suit must fail. The decree must accordingly be drawn up in accordance with this judgment. There will be no order for costs in this Court. The cross-appeal is dismissed.

Fazl Ali, J.

10. I agree.

Cases Referred.

125 Ind. Cas. 84 : 20 C.L.J. 23 : 19 C.W.N. 313

2100 Ind. Cas. 130 : 49 A. 149 : 54 I.A. 79 : 25 A.L.J. 80 : A.I.R. 1927 P.C 37 : (1927) M.W.N. 89 : 38 M.L.T. 48 : 4 C.W.N. 184 : 8 P.L.T. 210 : 31 C.W.N. 462 : 29 Bom. L.R. 825 : 45 C.L.J. 386 : 52 M.L.J. 720 : 26 L.W. 856 (P.C.)