

Gopal Das And Ors. vs Mst. Parbhawati Devi on 23 March, 1954

Equivalent citations: AIR1954ALL644, AIR 1954 ALLAHABAD 644

JUDGMENT

Malik, C.J.

1. Rajendra Lal and Pande Lal, Gopal Lal and others applied under Section 4, Encumbered Estates Act. In the list of debts it was mentioned that certain amounts were due and had been borrowed from the appellants on the security of certain ornaments. The list of ornaments was given in lists A, B, C and D of the application. An objection was filed by Parbhawati Devi that these ornaments were her 'stridhan' property and did not belong to the landlord-applicants. The objection was considered by the learned special Judge who held that certain ornaments, mentioned in the order of the learned Judge, were stridhan property of Parbhawati Devi. Her objection was allowed as regards those ornaments but her claim to the rest of the ornaments was dismissed. The creditors filed an appeal while on behalf of Parbhawati Devi a cross-objection was filed in this Court.

2. So far as the facts are concerned, learned counsel have not been able to satisfy us that the decision of the lower court on the facts was wrong and the finding, therefore, that only some of the ornaments were 'stridhan' properties of Parbhawati Devi must be affirmed. The argument advanced by learned counsel for the appellants, however, is that under Section 11, Encumbered Estates Act, the learned special Judge had to decide whether the property specified in the claim of Parbhawati Devi, or any part thereof, was liable to attachment, sale or mortgage in satisfaction of the debts of the landlord-applicants. Reliance is placed on the statement made by Parbhawati Devi in the witness-box that she had given those ornaments to her husband with the knowledge that he was going to pawn them and borrow money on their security. She stated that she was on good terms with her husband, that she knew that he was going to raise money and that she believed the husband's assurance that he would redeem the ornaments and return the same to her.

It is argued by learned counsel for the appellants that the ornaments were, therefore, liable to sale in satisfaction of the debts of the landlord-applicants and the learned Judge need not have gone into the question whether they were her 'stridhan' property of Parbhawati Devi.

3. The scheme of the Act, however, is that the Special Judge has to prepare a complete list of all debts, secured and unsecured, and a list of properties belonging to the landlord-applicants. Both these lists are sent to the Collector to satisfy the debts from the property contained in the list. The debts are classified into six classes under Section 16 in order of priority but the entire property of the landlord-applicants is available for payment of the debts in the order in which they have been placed under Section 16 of the Act if it is held that the ornaments which belonged to Parbhawati Devi and were her stridhan property were liable for the debts of the landlord-applicants, it would mean that the ornaments will be available for the satisfaction of all the debts of the landlord-applicants and not

necessarily the debt which was borrowed on the security of the ornaments.

To illustrate this a little in detail, we may mention that suppose a sum of Rs. 2,000/- was borrowed on the security of these ornaments but the total liability of the landlord-applicants amounts to Rs. 50,000/-. The ornaments will be available as a part of the general assets of the landlord-applicants and the objector Parbhawati Devi could not claim that she was entitled to get back the ornaments by paying the amount of loan borrowed on the basis thereof. It is not possible under the Encumbered Estates Act to earmark any property for the satisfaction of any particular debt. The words of Section 11(2) of the Act that "the Special Judge has to determine whether the property specified in the claim or any part thereof is liable to attachment, sale or mortgage in satisfaction, of the debts of the applicant" must be interpreted to mean debts generally and not any specified debt. In the case of a Hindu son the doctrine of pious obligation entitles the creditors of the father to recover their debts not only from the father's share, but also from the son's share in the joint family property. The section would apply to such a case. To hold in appellants' favour would mean that even though Parbhawati Devi gave her ornaments as security for a particular loan of a limited amount, by reason of her husband and other members of the family having now applied under the Encumbered Estates Act, her ornaments would be available for satisfaction of other debts with which she had no concern. In the circumstances we think that the proper interpretation of Sub-section (2) of Section 11 is that the property or any part thereof should be liable to attachment, sale or mortgage in satisfaction of the debts of the applicants and not of any particular specified debt.

4 The appeal and the cross-objection both fail and are dismissed but we do not think it is a fit case in which we need make any order as to costs.