

Mst. Thakur Dei vs Dharam Raj And Ors. on 28 March, 1952

Equivalent citations: AIR1953ALL134, AIR 1953 ALLAHABAD 134

JUDGMENT

Kidwai, J.

1. Aditya Prasad died possessed of some immoveable property. He left no issue but he left a widow Thakur Dei who succeeded to his property in May 1921, She obtained mutation of names in her favour. Thereafter on the 22nd of May, 1925, Thakur Dei in consideration of a sum of Rs. 2,000/- paid in cash and in lieu of a promise to pay a monthly maintenance of Rs. 5/- contained in the document, executed a deed of relinquishment in favour of Dharam Raj, defendant No. 1, Jitau, father of respondents Nos. 2 to 4, Khelan, father of respondents Nos. 5 to 9 and Ram Lal. It is agreed that these four persons were at the time nearest reversioners of Aditya Prasad. Ram Lal died and his rights were inherited by Dharam Raj and Jitau.

2. In 1933 Thakur Dei instituted a suit for possession of the property which she had relinquished on the allegation that she was then a minor and that therefore the deed of relinquishment was void. Khelan did not contest the suit. The other persons did contest. Eventually it was found that Thakur Dei was a minor at the date when she executed the deed of relinquishment which was, therefore, void. The Court however, ordered that Thakur Dei should refund a sum of Rs. 1,500/- to Dharam Raj and Jitau before she could be entitled to possession of three-quarters of the property covered by the deed of relinquishment. With regard to one-quarter, which fell to the share of Khelan a decree for immediate possession was passed in favour of Thakur Dei. Thakur Dei never paid the sum of Rs. 1,500 and consequently she did not obtain possession of three-quarters of the property.

3. On the 30th of May, 1945, Thakur Dei instituted the suit out of which this appeal arises claiming a sum of Rs. 135/- as maintenance allowance for three years from Dharam Raj and the sons of Jitau. She also impleaded the sons of Khelan but stated in the plaint that they were impleaded as 'pro forma' defendants and no claim was made against them. The maintenance was claimed at the rate of Rs. 3/12/- per month, Re. 1/4/- per month being the share of Khelan's branch, which was not claimed.

4. The Munsif Utraula, District Gonda, framed five issues, He found that the plaintiff was not entitled to any maintenance under Ex. 1 or under the Hindu Law. He further found that the agreement (Ex. 1) had been superseded by the decree in the case instituted by Thakur Dei for possession of the property. He gave findings on other issues also but as will appear presently, it is not necessary to enter into them. The suit was accordingly dismissed.

5. Thakur Dei appealed. The learned Additional Civil Judge of Gonda upheld the findings of the trial Court on the two points mentioned and dismissed the appeal. She has come up to this Court in

second appeal. Several points have been raised in it namely, " (1) that the provision of Ex. 1, the deed of relinquishment, which is for the benefit of the minor is enforceable at her instance;

(2) that at any rate since Thakur Dei never got back possession of the property she is in equity entitled to the maintenance made payable out of it in consideration for the deed of relinquishment; and (3) that the lower appellate Court has erred in not giving its decision on other points raised in the case."

6. For the first proposition, reliance is placed upon -- 'The Firm Bhola Ram v. Bhagat Ram', 99 Ind Cas 318 (Lah); -- 'Abdul Ghaffar v. Piare Lal Salig Ram', 16 Lah 1; -- 'Meghan Dube v. Pran Singh', 30 All 63; -- 'Raghava Chariar v. Srinivasa Raghava Chariar', 40 Mad 308 FB and -- 'Walidad Khan v. Janak Singh', 19 Ind Cas 610. In all these cases it has been laid down that a promise may be made to a minor who may, therefore, enforce that promise even though the contract which he entered into and in which the promise is contained is void.

7. Whatever may be said of these decisions, in view of the decision of their Lordships of the Judicial Committee in -- 'Mohori Bibee v. Dharmodas Ghose', 30 Ind App 114 (PC), which is differentiated in these cases, it must be held that none of these cases applies to the present appeal. In all these cases, the contract itself was sought to be enforced by the minor for his benefit and it appears that the Courts were occupied more by equitable considerations than by the principle laid down in the Contract Act and the Transfer of Property Act. But the principal thing to notice is that the whole contract was upheld and enforced and in none of these cases was the contract avoided in so far as the adult contracting party was concerned and enforced in so far as the minor was concerned. In the present case, in a previous suit at the instance of the minor the contract has been adjudged to be void. That being so, no claim could be made under it either by the minor or by the adult contracting party. It is to be noticed in this connection that what would happen in such an eventuality was left undecided in the Full Bench case of -- 'Raghava Charier v. Srinivasa Raghava Chariar', 40 Mad 308, in which Ayyangar, J. says at page 327:

"I am therefore inclined to hold that a payment of money for the purchase of goods or an advance of money as a loan, by a minor, passes the property in the money; whether it passes absolutely or whether the minor can avoid the transaction at his option is a question which it is unnecessary to consider."

In the present case, that question has been considered in the previous litigation and the contract has been avoided at the option of the minor. It cannot, therefore, be enforced at the instance of that very person who had avoided it.

8. Coming now to the plea based on equity, that can only have effect given to it if it is shown that there is no default by the person claiming equity. If the person claiming equity has not fulfilled the obligation imposed upon him, he cannot claim that he is being inequitably dealt with, if the law is enforced and no equitable consideration is shown. In the present case the decree passed in the previous suit set aside the contract but directed that Thakur Dei should pay the consideration which she had already received before she could get back the property. She failed to make the payment as

directed by the decree and it is for this reason that the property has not been returned to her. The property is held by the respondents Nos. 1 to 4 not under the contract (Ex. 1) which is void but because of the default of Thakur Dei in making payment. Thus she is the owner but not entitled to actual possession because she has not refunded the consideration which she received for the void transfer and though Court judged the transfer to be void it directed her to repay. She cannot claim to be entitled to any allowance because the property still continues in the possession of respondents 1 to 4 and this state of affairs exists by reason of her own default.

9. With regard to the issues that were not disposed of by the lower appellate Court, no grievance can be made by Thakur Dei. What the Court has found is that Thakur Dei is not entitled to pay maintenance under, the Hindu Law because she succeeded to the property left by her deceased husband. A widow who inherits her husband's property is not entitled to maintenance. If she makes a transfer of that property or if she relinquishes that property, then it depends upon the contract whether she gets maintenance or not from the transferee or the reversioner in whose favour the relinquish ment has been made. There can be no doubt that the view of the lower Court on this aspect of the matter is perfectly in accordance with law. Thakur Dei was thus entitled in the present case to maintenance not as a Hindu widow but because she had a claim under Ex. 1. It was, therefore, wholly unnecessary to decide whether she has remarried or she had become unchaste and the Court below was quite right in saying that if she was entitled to maintenance under Ex. 1 it was immaterial that she had remarried or had become unchaste. She would still be entitled to continue to receive that maintenance. It is only because the lower appellate Court has agreed with the trial Court that Thakur Dei is not entitled to maintenance under Ex. 1 that the suit has been dismissed. As I have already stated she can base no claim under it on equitable considerations.

10. This appeal, therefore, fails and is dismissed with costs.