

Sahu Jagdish Prasad vs Pandit Shreedharpant And Ors. on 7 March, 1955

Equivalent citations: AIR1955ALL625, AIR 1955 ALLAHABAD 625

JUDGMENT

Agarwala, J.

1. This is a defendant's appeal arising out of a suit for possession of certain property. The plaintiffs in the action which has given rise to this appeal claim to be the reversioners of one Ganga Prasad who died as long ago as the year 1875 as a minor without any issue. His successor was his mother, Shrimati Hardei. Hardei died in 1933. The reversioners brought the suit within twelve years of her death for the recovery of the estate of Ganga Prasad.

They impleaded the transferees of the estate also in the suit. In this appeal we are concerned with one of the transferees namely, Sahu Jagdish Prasad, arrayed as defendant 14.

2. Sahu Jagdish Prasad is in possession of the property of village Bhagwantpur. This property was not the property of Ganga Prasad. It had been acquired by Shrimati Hardei from certain debtors of Ganga Prasad, partly in lieu of Ganga Prasad's debts and partly in lieu of some money which was the 'Stridhan' property of Shrimati Hardei. According to the plaintiff-respondents the property was acquired by Smt. Hardei as an accretion to - the estate of Ganga Prasad and she could not transfer it without legal necessity, which according to them, did not exist.

The defence of the suit, so far as Sahu Jagdish Prasad is concerned, was, firstly, that the property in its entirety was the self-acquired property of Smt, Hardei and she could, therefore, transfer it as she liked; and, in the second place, that the transfer in favour of the appellant was justified on the ground of legal necessity. The Court below has held that part of the consideration belonged to the estate of Ganga Prasad and there was no necessity for transferring the property.

The sale deed with regard to that portion of the estate has been declared to be void, and a decree for possession with regard to that portion has been passed. With regard to the remaining portion it has been held that it was purchased by the 'Stridhan' money of Smt: Hardei and the suit of the plaintiff in respect of that portion has been dismissed. From this judgment the defendant has come up in appeal to this Court and the plaintiff has filed a cross-objection.

3. In this appeal we have, therefore, to see whether the transfer in favour of the appellant's predecessor-in-interest could be justified on the ground of legal necessity or, as it has been argued as being for the benefit of the estate with regard to the whole of it or any part thereof; and whether, if that was not so, the whole or any part of it could be said to be an accretion to the estate of Ganga

Prasad.

4. The relevant facts relating to the property in dispute are these :

5. Ganga Prasad's father Bhawani Datta had advanced certain amount to two persons, Devi Singh and Dal Singh, by way of 'zare peshgi' as consideration for a lease of certain property in village Bhagwantpur. Before the expiry of the term of the lease, however, the lessor entered on the property and dispossessed Bhawani Datta who, therefore, became entitled to a refund of the portion of the 'Theka' money outstanding at the time of his dispossession.

Another 'Zare Peshgi' lease was taken by Bhawani Datta in respect of certain property in village Manipur from the aforesaid lessors. He had been deprived of the possession of that property also by the lessors and so the lease money was also due from them. The money was not paid to Bhawani Datta or to Ganga Prasad, and after the death of Ganga Prasad Smt. Hardei filed a suit against Devi Singh and Dal Singh in respect of the Theka money due to the estate in respect of the lease of Bhagwantpur property, and obtained a decree for a sum of Rs. 2757/7/-, that is, for Rs. 1266/- as principal and Rs. 1064/- as interest from 2-1-1871 to 27-1-1879 and Rs. 426/14/6 for costs, and interest 'pendente lite' and future.

The decree is dated 27-3-1879. She did not file a suit in respect of the lease money due for the lease of village Manipur,

6. It appears that Devi Singh and Dal Singh could not pay in cash the decretal amount and the amount due on the Theka of Manipur. They entered into a transaction of sale of their property of village Bhagwantpur with Smt. Hardei. This sale was made on 19-3-1880 in lieu of Rs. 4,000/-, Rs. 2757/7/- were set off as due under the decree, Rs. 442/9/- were set off as due in respect of the-

Theka of Manipur and Rs. 800/- were paid in cash to the vendors. Some time later, namely, on 19-7-1881, Smt. Hardei sold the property thus acquired from Devi Singh and Dal Singh to two persons, Tara Singh and Bhikam Singh, at a profit of Rs. 200/- i.e. for a sum of Rs. 4200/-. The appellant, Sahu Jagdish Prasad, is the successor-in-interest of Tara Singh and Bhikam Singh. The court below found that but of the sum of Rs. 4000/- a sum of Rs. 1768/3/- must be considered to be the 'Stridhan' property of Smt. Hardei and the balance of Rs. 2231/13/- as belonging to the estate of Ganga Prasad. In arriving at the figure of Rs. 1768/3/- the learned Judge held that Rs. 426/14/6 due for costs and interest 'pendente lite' and future and the interest from the date or the death of Ganga Prasad upto the date of the suit i.e., 27-1-1879 must be treated as Stridhan of Smt. Hardei. The rest he treated as belonging to the estate of Ganga Prasad.

He calculated the proportion between these two shares and held that 14/25ths of the share of the property in village Bhagwantpur must be held to be the estate of Ganga Prasad and 11/25ths share must be treated as the property of Hardei herself.

7. It appears to us that the learned Judge failed to look at the matter from the correct perspective. The two transactions; that of the sale by Devi Singh and Dal Singh in favour of Smt. Hardei and of

the sale by Smt. Hardei to Tara Singh and Bhikam Singh of the property which had been obtained by Smt. Hardei in lieu of the debts due partly from her husband's estate and partly to herself, appear to us to be part of a single scheme which Smt. Hardei laid out in order to realise the debt due from Devi Singh and Dal Singh who apparently could not pay in cash the amount payable by them. Smt. Hardei seems to have considered it to be the best manner of realising the - dues, to take a sale of their property and to re-sell it, and thus to recoup the debt due to the estate or to her in cash. In a transaction of this nature it is not proper to take the later transaction' of sale by Smt. Hardei by itself apart from the previous transaction.

8. A Hindu widow is not a mere agent or trustee of the estate which she is bound to preserve for the benefit of the reversioners. She has wide powers because her status is that of an owner of the property inherited by her subject to certain restrictions on alienation and subject to its devolving upon the next heir upon her death. As the Privy Council observed in *Janki Ammal v. Narayanasami Aiyer*, A1R (1916 PC 117 (A):

"Her right is of the. nature of a right of property; her position is that of owner; her powers in that character are, however, limited; so long as she is alive no one has any vested interest in the succession".

The. extent of the power of alienation which she possesses is also well defined. This power is analogous to that of a manager of an estate as defined by the Judicial Committee in *Hunooman Pershad Pandey v. Musammat Babooee Mundraj Koonwarce*, 6 Moo Ind App 393 (PC) (B). This power can He exercised in case of need or for the benefit of the estate. She is the best person to decide as to how she will manage the property as a prudent owner.

If she decides that the debts due to the estate may be realised in a particular fashion which is. not detrimental to the estate she is at perfect liberty to do so. If she finds that a debtor to the estate cannot pay the debt in cash she is at liberty to recover it in kind or in property with liberty to convert the goods or property thus acquired into cash. This acquisition of property in lieu of debts and its conversion into cash in a manner that no loss is incurred by the estate must be deemed to be within the powers of the widow and the re-sale of the property in this manner must, in these circumstances, be held to be a transaction for the benefit of the estate. In the present case, she has re-sold the property acquired by her at a profit so that the estate of Ganga Prasad has benefited to tho extent of Rs, 200/- The reversioners have no occasion to complain of the sale made by her of property which she had herself acquired in lieu of debts due to the estate or to her. We have, therefore come to the conclusion that the sale made by Smt. Hardei must be held in its entirety to be for the benefit of the estate, even assuming that the entire money which went to form the consideration of the sale deed was a part of the estate of Ganga Prasad and even if the whole property be treated in the first instance, to be an accretion to the estate of Ganga Piasad.

9. Mr. N. D. Pant, learned counsel for the respondent, strenuously urged that there was no pressure on the estate which would justify the transfer made by Smt. Hardei in favour of Tara Singh and Bhikam Singh and that it could not be said that this transaction was for the benefit of the estate. He has further contended that the whole of the property must be treated as an accretion to the estate of Ganga Prasad because Smt. Hardei did not make a distinction between her own money and the money belonging to the estate of Ganga Prasad which together formed the consideration for the sale deed executed by Devi Singh and Dal Singh.

We do not think that the transaction in the present case can be looked at from this narrow angle and we find that upon the facts of the present case the transfer in favour of Tara Singh and Bhikam Singh must be held to be an act of prudent management which was for the benefit of the estate.

10. The appeal, therefore, succeeds and. we allow it. The cross-objection fails.

11. We modify the order of the court below so far as it affects the appellant Sabu Jagdish Prasad and set aside that portion of the decree by which the suit of the reversioners plaintiff-respondents was decreed in respect of 14/25 ths share of the property of village Bhagwantpur and direct that the suit be dismissed in toto with regard to the property.

12. The cross-objection is dismissed.

13. The appellant will have his costs of both the appeal and the cross-objection from the respondents.