

Privy Council Appeal No. 74 of 1912 ; Bengal Appeals Nos. 12 & 13 of 1909.

Hari Kishen Bhagat and others - - - Appellants,
v.
Kashi Pershad Singh (since deceased) and
others - - - Respondents.
Same - - - Appellants,
v.
Bajrung Sahai Singh and others - - - Respondents.

CONSOLIDATED APPEALS

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM
IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 2ND DECEMBER 1914.

Present at the Hearing :

LORD DUNEDIN.
LORD SHAW.

SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by Mr. AMEER ALI.*]

The question for determination in these Appeals relates to the validity, as against the reversioners, of certain sales held in execution of decrees obtained on mortgages effected by a Hindu widow, who had succeeded to her husband's estate on his death without leaving any issue. Shyamal Singh, the husband, died in 1842, and the widow, Dulhin Nawab Kumari, held the properties which form the subject of the present litigation until the transactions the validity of which is challenged in these suits.

The first mortgage was executed by Nawab Kumari in favour of the Defendant, Appellant,

on the 26th of November 1877 in respect of three of the properties in her possession. On the 11th of July 1882 she mortgaged the rest of the properties to Bhagat for a further loan, and in 1889 she gave him what is usually called in India a *Ticca Pottah* of the shares of Shyamal Singh in all the mouzahs save one. Under this usufructuary lease the Defendant obtained possession of the shares covered by it.

In 1893 Bhagat brought a suit against Nawab Kumari on the mortgage of 1877 and in execution of the decree on that bond purchased the three properties to which it related. In 1897 he obtained a decree on the bond of 1882, in execution of which he himself purchased again the remaining properties held by the widow. He thus obtained possession of all the shares in the different villages which Nawab Kumari had inherited from her husband for a widow's estate.

Nawab Kumari died in 1900, and the Plaintiffs, who are Shyamal Singh's brothers' sons, and whose reversionary right to his estate, though questioned in the first Court, is not disputed now, brought the present suits to recover possession of the properties held by Bhagat under the execution sales of 1893 and 1897, their main contention being that neither the mortgages executed by Nawab Kumari nor the sales thereunder affected more than her interest which ceased on her death.

Hari Kishen Bhagat is the principal Defendant, but his sons have been impleaded in both actions, as they are joint in estate and living in commensality with him, and are, therefore, necessary parties.

The main defence to the Plaintiffs' claims was that the mortgages were effected by the widow for valid and legal necessity under the

Hindu law, and, further, that they were concurred in by the reversioners, and that consequently the Defendants by virtue of the sales in question acquired the interests of the widow as well as theirs. It is to be remarked that in neither of the mortgage suits were the reversioners made parties.

At the time when the bond of 1877 was executed the nearest reversioner to Shyamal Singh was his sole surviving brother, Raghubir Singh. After him stood Raghubir's sons, of whom there were several, and the sons of two other brothers, Bhupal and Jagrup, who were dead at the time. Among these nephews of Shyamal Singh the names of Behary, the only son of Bhupal, and of Bajrung Sahai, a son of Jagrup and a Plaintiff in one of the present actions, should be particularly mentioned, as they figure in the transactions in question.

In the instrument of 1877 the name of the widow is written by Bajrung Sahai Singh. He also appears to have purchased the stamp paper on which the bond is inscribed. Among the witnesses to the document are Raghubir and Behary.

The name of the widow in the mortgage of 1882 appears to be written by Behari Singh, and one of the witnesses to this bond is Bajrung Sahai. On the lease of 1889 Nawab Kumari's name is written by Modenarain, a son of Raghabir, and the witnesses are Ram Parshad, another son of Raghubir, Bishan Parshad, one of the sons of Behary, and Bajrung Sahai, who also appears to have identified the lady to the registrar. Both the Courts in India have found that so far as the *Ticca Pottah* of 1889 is concerned, the debt contracted thereunder has been satisfied out of the usufruct of the properties covered by the lease.

The points for determination in these Appeals depend on the transactions of 1877 and 1882 respectively. The law relating to the dealings of a Hindu widow with her husband's estate which devolves on her in default of issue is now too well settled to need a prolonged consideration. To be valid as against the reversioners, or to affect their reversionary rights, a charge created by a Hindu widow or an alienation effected by her can be supported only by proof *aliunde* that such debt was contracted or such alienation was made for valid and legal necessity, and the onus of establishing such necessity rests heavily on the person who claims the benefit of transactions with a Hindu widow or other females taking similar estates. The requirement of the law may, however, be fulfilled by proving the consent or concurrence of the reversioners to or in the transactions.

In the present cases the Trial Judge in a careful and well-considered Judgment held that the Defendants had failed to prove any valid and legal necessity for the mortgages executed by the widow. This view has been affirmed on appeal by the High Court of Calcutta, and there being thus a concurrent finding of fact by the two Courts in India, that subject is now out of the region of discussion. Both the Courts have further held in effect that the part taken by the reversioners with respect to the transactions in question did not amount to a consent to bind their interests. In view of the facts and circumstances of the case, their Lordships have no hesitation in expressing their concurrence with the conclusion at which the Courts in India have arrived. The Trial Judge has carefully examined the phraseology of the two instruments, and he is of opinion

that their language is fully consistent with the fact that the interest of the widow alone was intended to be charged. Nor is there anything to show that the reversioners who helped her to raise the loans understood it otherwise. There is no evidence that they benefited from the transactions, or that so far as they were concerned there was any need for the mortgages. Their Lordships think that when a "stringent equity," to use Lord Hobhouse's expression in the course of the argument in *Jiwan Sing v. Misri Lall*, arising out of an alleged consent by the reversioners is sought to be enforced against them, such consent must be established by positive evidence that upon an intelligent understanding of the nature of the dealings they concurred in binding their interests; and that such consent should not be inferred from ambiguous acts or be supported by dubious oral testimony such as appears to have been relied upon in this case.

L.R., 23,
I.A., p. 1.

13 Moore's,
I.A., p. 228.

In *Rai Lukhee Debia v. Gokool Chunder Chowdhry*, this Board refused to affirm the proposition that mere attestation by a relative necessarily imports concurrence, and they added that when the consent of the husband's kindred is relied upon for the validity of alienations effected by the widow "the kindred in such case must generally mean all those who are likely to be interested in disputing the transaction. At all events there should be such a concurrence of the members of the family as suffices to raise a presumption that the transaction was a fair one and one justified by Hindu law." The observations of the Board in that case seem to their Lordships to apply with particular force to the facts of the present case.

On the whole, their Lordships are of opinion that the Judgments appealed from are right and ought to be affirmed, and that these Appeals ought to be dismissed with costs. And they will humbly advise His Majesty accordingly.

Confidential.

HARI RISHEN BHAGAT AND OTHERS

v.
KASHI PERSHAD SINGH (SINCE
DECEASED) AND OTHERS.

SAME

v.
BAJRUNG SAHAI SINGH AND
OTHERS.

DELIVERED BY MR. AMEER ALI.

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