Partab Singh and ors. Vs. Bohra Nathu Ram and anr.

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Court : Allahabad

Decided On : Jul-04-1922

Reported in : AIR1923All197; 79Ind.Cas.234

Judge : Grimwood Mears, C.J. and; Piggott, J.

Appellant : Partab Singh and ors.

Respondent : Bohra Nathu Ram and anr.

Judgement :

1. The suit out of which this appeal arises was brought to enforce a simple mortgage of the 19th of January 1909. The executants were four persons, Kanhaiya Lal, Gauri Shankar, Mangal Sen and Musammat Shiam Kunwar. In the suit, as brought, the defendants included Kanhaiya Lal and Gauri Shankar of the original executants. They included also two minor sons of Gauri Shankar and three sons of Mangal Sen. It was these sons of the original executants of the mortgage who really contested this suit, and the appeal before us is by the three sons of Mangal Sen and one of the sons of Gauri Shankar.

2. The main question litigated in the Court below was whether the consideration for the mortgage-deed in suit, amounting to Rs. 26,750, was or was not raised for such legal necessity as to make it binding upon the sons of the original executants. The learned Subordinate Judge has traced back the entire series of transactions through one hypothecation deed or simple bond after another, till he comes to loans raised in the year 1883 by Nand Ram, the great-grandfather of these contesting defendants. He has finally arrived at the conclusion that the great bulk of the consideration for the bond in suit was raised for lawful necessity, so as to make the hypothecation of the property binding upon the sons of the executants. As regards a Small portion of the debt he has given a personal decree against Kanhaiya Lal and Gauri Shankar only.

3. The appeal before us, as already noted, is by the sons of Mangal Sen and one son of Gauri Shankar. There is no cross-objection on the part of the plaintiffs in respect of that portion of the decree of the Trial Court which gives them only a simple money-decree in respect of part of the claim. We lay stress on this fact because, upon an examination of the record, it seems to us that the essential question raised by this appeal must be decided without going into the detailed history of previous transactions which the learned Subordinate Judge bas found it necessary to set forth. The entire consideration for the mortgage-deed in suit consisted of money due on a previous deed of the 28th of January, 1897. The executants of this deed were Kanhaiya Lai, Gauri Shankar and Mangal Sen, together with one Bhagwati Prasad, a brother of Gauri Shankar and Mangal Sen, which has since died without issue. It was his widow, Musamrnat Shiam Kunwar, who joined in executing the mortgage-deed

now in suit. On examining the record we find it to be established beyond question that none of the appellants was in existence in the year 1897. The oldest of them is the appellant Piari Lal, son of Mangal Sen, and he was born in or about the year 1902. In fact, so far as we can ascertain, the four executants of the deed of the 28th of January 1897, were on that date the sole owners of the property with which they dealt. Under these circumstances, the mortgages, who advanced the sum of Rs. 10,000 as consideration for that deed, were under no obligation to make inquiries as to the purposes for which the money was wanted. They were dealing with absolute owners of the property and it is quite beyond question that if that transaction of 1897 had been a sale instead of a mortgage, a valid title would have passed to the vendees which could never have been questioned by sons subsequently born to one or more of the vendors. These sons took, from the moment of their birth, an interest in the whole of the joint family property as it stood on the date of their birth. They could not question alienations made prior to the date of their birth, at a time when they had no interest in the property. This principle was laid down by a Bench of this Court in the case of Ghuttan Lai v. Kallu 8 Ind. Cas. 719 : 33 A. 283 : 8 A.L.J. 15 in a judgment in which the authorities are discussed and the principles of Hindu law applied to the circumstances of the case. There seems no reason for making a distinction between an alienation by way of sale and an alienation by way of mortgage. In fact this Court has already applied the same principle to alienation of both kinds, as is apparent from the reported case above referred to. If, therefore, the present suit were one upon the mortgage of the 28th of January 1897; those defendants, who are appellants now before us, could not challenge the validity of that mortgage or pub the plaintiffs to proof of the purposes for which Kanhaiya Lal, Bhagwati Prasad, Gauri Shankar and Mangal Sen raised the money. Now, the mortgage-deed in suit is in favour of the same mortgagees. The recital of the document shows clearly enough what happened. The prescribed poriod of limitation for a suit on the deed of the 28th of January 1897, was running out and the mortgages were threatening to bring a suit there and then. The deed in suit was obviously the result of negotiations between the parties, and the mortgages seem to have behaved with all reasonable leniency. They not only refrained from instituting a suit on the deed of 1897, but remitted a certain part of the accumulated arrears of interest. Some stress has been laid in argument before us on the manner in which the sum now claimed by the plaintiffs has swollen through accumulations of interest; but, after all, the covenant in regard to interest was not an exceptionally onerous one, and if mortgagors choose to permit compound interest to accumulate without making payments in order to keep it down, they must eventually come face to face with a result such as that involved in a claim now before us. There is this much to be said for the plaintiffs, that they have exercised much patience and have gone without any interest to speak of on this money for a very long period of years,

5. Now, the question of law which we have to detewnine involves a certain extension of the principle laid down by this Court in the case of Ghuitan Lai v. Kalho 8 Ind. cas. 719 : 33 A. 283 : 8 A.L.J. 15 Admittedly, the suit before us is not on the bond of 1897 but on the bond of the 19th of January 1909 ; and by this bond an alienation of joint family property was effected in which the contesting defendants, who are the appellants before this Court, (excepting Niranjan Prasad and perhaps Partab Singh), had by that time acquired an interest. Now, if it be a sound principle of law that those of the appellants who were born between the month of January, 1897, and the month of Jauuary,1909, acquired from the date of their birth an interest in property already saddled with a mortgage-charge which it was not open to them to dispute, it seems to follow as a reasonable and even necessary extention of this doctrine that these

appellants cannot dispute the consideration for the mortgage-deed now in suit which was, when all is said and done, a mere renewal of the previous mortgage of the 28th of January 1897. This view has already been taken by a Bench of this Court, in a case not quite so clearly in. favour of the plaintiffs as is the present one. We refer to the decision in Krishnanand Nath Khare v. Raja Bam Singh 66 Ind. Cas. 150 : 44 A. 393 : 20 A.L.J. 233 : (1922) A.I.R. (A) 116, to which one of us was a party. On the question of law, therefore, we have come to the conclusion which is decisive of this appeal. As a matter of fact, in the view which we take there ought to have been a decree for sale on the mortgage in respect of its entire consideration; but that question need not arise in view of the fact that the plaintiffs have submitted to the decree passed by the Trial Court.

6. In the course of argument, however, one question of fact was raised with which it is advisable that we should deal. It was suggested that Mangal Sen, the father of three of the appellants, was not of age when he concurred in executing the deed of the 28th of January 1897. The evidence on this point is scanty enough. A single witness, by name Kedar Nath, was examined regarding the ages of various members of the family, and with regard to Mangal Sen he stated that this man was born in the Sambat year 1937. If this were so, then in the month of January 1897, Mangal Sen could not have completed even his 17th year. However, when further pressed, Kedar Nath admitted that he had given the dates of birth of the various parties, as he put it, ' by guess. ' As against this we have the registration certificate on the document itself. From this we know that Mangal Sen represented himself as being about 19 years of age, that the other executants concurred in this representation, and the Sub-Registrar saw nothing in Mangal Sen's appearance to lead him to suspect that the young man had not completed the 18 years necessary for the attainment of his majority under his personal law.

7. The only other piece of evidence to which we have been referred is in the deposition of a witness named Madan Lal, one of the attesting witnesses to the document in suit. He is an oldish man and might have been expected to know the age of Mangal Sen. Ho, was asked what Mangal Sen's age was not in the year 1897, but the year 1892, and if he could have answered that question his answer might have thrown considerable light on the issue we are called on to determine. Unfortunately, his answer was that Mangal Sen was no doubt a minor in the year 1892, but he could not remember his age. In the state of the evidence we are bound to hold that Mangal Sen had attained majority on the 28th of January 1897, and that his execution of that document is valid and not open to objection on the score of alleged minority.

7. The result is that this appeal must, in our opinion, fail and we dismiss it accordingly with costs.