

**Jogul Kishore Vs. Jotendro Mohun Tagore and ors.**

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**Court :** Kolkata

**Decided On :** Apr-29-1881

**Reported in :** (1881)ILR7Cal357

**Judge :** Richard Garth, C.J. and ;McDonell, JJ.

**Appellant :** Jogul Kishore

**Respondent :** Jotendro Mohun Tagore and ors.

**Judgement :**

Richard Garth, C.J.

1. The two suits (Nos. 63 and 64) out of which this appeal arises were brought to recover possession of a share in an ancestral estate which originally belonged to Neelcanth Roy.
2. Neelcanth Roy left six sons, who lived together in commensality and carried on a joint business, each having a sixth of the ancestral property.
3. The eldest of these sons was Bhoirub Rai, who died leaving a daughter, Woomamoyee, and two grandchildren.
4. Two days before Bhoirub's death, it was alleged by his brothers that he executed a hibanama, the effect of which was to disinherit his own daughter and grandchildren, and to convey his share of the property (subject to certain provisions for the maintenance of his own family) to his surviving brothers.
5. The existence of this alleged hibanama appears to have been kept secret for some time. Bhoirub died in the year 1822, and after his death the family continued to live together as before in commensality, the eldest male member acting as the kurta. In 1851, however, disputes arose in the family. The hibanama was then brought to light, and a private partition took place amongst the brothers, excluding, of course, the heirs of Bhoirub.
6. Upon this a suit was brought by Woomamoyee and others, claiming, under Bhoirub, to set aside the alleged hibanama, and the partition that had been made in pursuance of it; and the ultimate result of this suit before the Sadr Dewany Adawlut, was, that the hibanama and the partition were both set aside, and Bhoirub's share of the property was restored to Woomamoyee, his next heir, who obtained a decree against the defendants for mesne profits and costs.
7. Amongst others of the family who were made defendants in that suit was

Sharodamoyee, the widow of Norender Chunder Rai, who was one of Bhoirub's nephews, and after obtaining her decree, Woomamoyee took out execution against Sharodamoyee, and sold her share of the family property in execution to satisfy the amount of mesne profits and costs. Woomamoyee herself became the purchaser at that sale, and having bought Sharodamoyee's share, conveyed it by gift to her son Gourmohun, who again sold it to Maharajah Jotendro Mohun Tagore, who is the principal defendant in the present suit.

8. In the year 1869 Sharodamoyee died; and on her death, Behari Lall Rai, her nephew, became her reversionary heir. One Raghub Chunder Banerjee had a decree against Behari, and under that decree he sold the right, title, and interest which Behari had in Sharodamoyee's share of the family property. Ramdhone Chetlanghi purchased this interest at the sale, and conveyed it afterwards to the present plaintiff in the names of two of his servants.

9. These suits have now been brought by the plaintiff to recover the property from the Maharajah defendant, upon the ground that the Maharajah only purchased the right and interest of Sharodamoyee, which ceased at her death, and that the plaintiff is entitled to the reversion of the property as the purchaser of Behari's rights.

10. Another question was raised in the Court below, which in our view of the case is immaterial to this appeal,---namely, whether, assuming the plaintiff to be entitled to succeed at all, he is entitled to recover the whole property claimed, or only an eight-anna share of it.

11. The defendant No. 2 is patnidar of the Maharajah defendant, and therefore defends the suit in the same right and upon the same grounds as he does.

12. The main question in the case is, whether, under the sale of the right, title, and interest of Sharodamoyee in her share of the family property, the whole inheritance of Norender Chunder Rai in that share passed to the purchaser, or only his widow's interest, subject to the right of the reversionary heir to succeed to the property at her death.

13. It is contended on the part of the plaintiff, that whatever the original object of Woomamoyee's suit may have been, the decree which she eventually sought to enforce by execution as against Sharodamoyee's share of the property, was a mere money-decree of a personal nature for mesne profits and costs; and that, consequently, the sale under that decree could only pass Sharodamoyee's interest, and could not affect Behari's rights as the reversionary heir after Sharodamoyee's death.

14. On the other hand it is contended by the defendants, that the express object of Woomamoyee's suit was to recover from all the defendants in the suit, and amongst them from Sharodamoyee, the whole of Woomamoyee's share in the ancestral property. It was not brought to recover from Sharodamoyee merely her own life-interest, but the entire estate in share which had been held by her husband, Norender, under the bibanama: and that the decree which was made against Sharodamoyee for the recovery of that share included not only Sharodamoyee's life-interest, but the interest which Behari would have taken as reversioner, if Woomamoyee had failed in her suit.

15. A somewhat nice question is thus raised for our determination, and several authorities have been cited on either side.

16. One point which has been strongly urged upon us on behalf of the plaintiff is this, that, whatever might have been the nature of the decree obtained against Sharodamoyee and the other defendants, as in execution of that decree her right, title, and interest only was sold in the property in question, the sale would only pass her life-interest, and would not affect the interest of Behari after her death.

17. We think, however, that this proposition is opposed both to principle and authority. It has been held over and over again, not only in this Court, but by the Privy Council, that the words 'right, title, and interest' of the execution-debtor must not be construed strictly, but with reference to the circumstances under which the suit is brought, and the true meaning of the decree under which the sale takes place. And this was the more necessary in the case of sales which took place under the old Civil Procedure Code, because by Section 249 of the Code, the proclamation in every case was for the sale only of the interest of the execution-debtor. And as a matter of form and practice, all sales under that Act were of the right, title, and interest of the execution-debtor. It is, therefore, the duty of the Court in each case to ascertain carefully what was intended to be sold.

18. Perhaps the most remarkable instance of the application of this rule occurs in the case of *Ishan Chunder Mitter v. Buksh Ali Soudagar* (Marsh Rep., 614) which has been more than once cited with approbation by the Privy Council. In that case a widow had been sued upon a bond given by her husband, and it appeared upon the proceedings, that the suit was really brought against her, not in her own right, but as the guardian of her infant son, who was his father's heir. A decree was obtained against her in the suit, and under that decree her right, title, and interest in the property in question was sold to a purchaser. Now here the widow had in fact no right, title, or interest in the property in question. That property belonged wholly to her son; and yet it was held that, under the sale of her right, title, and interest, the property which belonged to her son passed to the purchaser.

19. Again, as an authority to the same effect, we may refer to the case of *The General Manager of the Raj Durbhunga v. Maharajah Ramaput Singh* (14 Moore's I. A., 605). There a suit had been brought by A against B for arrears of rent, and B having died pending the suit, a decree was obtained by A against B's widow. In execution under this decree, the right, title, and interest of B's widow in certain property which had belonged to her husband was sold. In point of fact, the widow had no interest in that property, because it belonged to her husband's son and heir: but the Privy Council held, reversing the decree of High Court, that, under that sale, the property which was then vested in the son passed to the purchaser.

20. Again, as an illustration of how the words 'right, title, and interest' may have a different meaning according to the nature of the suit, and of the decree under which the sale takes place, we may refer to the case of *Bisto Beharee Sahoy v. Lalla Byjnath Persad* (16 W. R., 49). There, a suit had been brought and a decree obtained against a widow for a debt; and in execution of that decree her right, title, and interest in certain property which she had inherited from her husband had been sold. The reversioner then brought a suit to dispute the validity of the sale as effecting his interest; and it was held that the right of the reversioner to the property after the widow's death, depended upon whether the debt had, or had not, been incurred by

the widow for any necessity contemplated by Hindu law.

21. The learned Judges say:---'If such necessity had been established, her right and interest would have included the entire estate which would have passed under the decree to the purchaser in execution; whilst if she had sold without such necessity, then all that would have passed under the sale would have been her life-interest.' Thereby clearly indicating, that, under the sale of her right, title, and interest, a different estate would have passed to the purchaser according to whether her debt had been incurred with or without legal necessity.

22. We think, therefore, that we must look to the nature of the suit, and of the decree against Sharodamoyee, to see whether under the sale of her right, title, and interest in the property in question her own life-interest only, or the whole inheritance, passed to the purchaser.

23. And this, we think, must depend upon whether the suit was brought against her upon a cause of action personal to herself, or one which affected the whole inheritance of the property in suit. This is the principle, as we understand, upon which the case of *Bajinn Doobey v. Brij Bhookun Lall Awusti* (L. R., 2 I. A., 275; S. C., I. L. R., 1 Cal, 133) was decided. The test applied in that case was, whether the decree for maintenance was a personal one against the widow, or whether it affected the estate of the reversioner; and as the Privy Council considered that the decree was a personal one against the widow, it was held, that, under the sale of her right, title, and interest in the property sold, her own life-interest only passed to the purchaser.

24. Now applying the same test in this case, we think it clear that Woomamoyee's suit was not against Sharodamoyee personally. Her object was to recover back from Sharodamoyee and the other defendants in the suit her father's inheritance in the ancestral property, of which she had been dispossessed by the other members of the family under colour of the alleged hibanama.

25. The suit was defended in the interest of Behari, the reversioner, as well as of Sharodamoyee herself. It was defended successfully in the Court of First Instance; and there is no reason to suppose that the defendants did not all honestly believe that the hibanama was a genuine instrument.

26. The reversioner Behari was just as much interested as Sharodamoyee in the result of the suit. It was defended for his benefit as well as hers; and the costs which were decreed against her were costs incurred by the plaintiff, not in prosecuting the claim against her personally, but also against the reversioner, whose rights she was bound to defend, and did defend, in resisting Woomamoyee's claim to the inheritance.

27. We have had rather more doubt with regard to the decree for mesne profits; but we think that this portion of the decree necessarily followed the other; and that Woomamoyee must be considered as having recovered the mesne profits in the same right and upon the same principle as she recovered the rest of her claim.

28. The appeal will, therefore, be decreed, and the plaintiff's suit will be dismissed with costs in both Courts.