Privy Council Appeal No. 92 *of* 1920.
Bengal Appeal No. 10 *of* 1919.

Nabakishore Mandal and others - - - - - *Appellants*

v.

Upendrakishore Mandal and another - - - - *Respondents*

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 18TH NOVEMBER, 1921.

Present at the Hearing:

LORD BUCKMASTER.
LORD CARSON.
SIR JOHN EDGE.
MR. AMEER ALI.
SIR LAWRENCE JENKINS.

[*Delivered by* LORD BUCKMASTER.]

A person who deals with a Hindu widow having a limited estate must be aware that he may be called upon to establish the facts which justify the transactions under which he claims. The appellants in this case, who are the successors in title of one Rajkishore Mandal, find themselves in that position.

Rajkishore Mandal entered into two transactions, in the one case with two Hindu widows, and, in the other case, with one. These transactions are now impeached, and the burden of proving them valid lies on the appellants. The first was a lease of the 17th September, 1869, which was executed by two Hindu widows, Prasana Kumari Dasi and Bamakali Dasi. Their estate in the property arose in the following way. Prasana was the widow of Madhusudan and Bamakali was the widow of Harinarayan his brother. Harinarayan, when he died, was entitled to an undivided third share in properties held jointly, and Madhusudan, who died in 1867, was entitled to the remaining two-thirds. The case that is suggested is that this lease was required for the purpose of raising the money necessary for the payment of debts and the performance of the shradh in connection with Madhusudan. Now Madhusudan had died on the 13th August, 1867, and certainly a period had not elapsed so long as to render it probable that the debts must have been paid; but, fortunately, the circumstances connected with his estate are not unknown, and there is information that

enables their Lordships to recast what that position was. There is no doubt that before his death he had been borrowing money, sometimes in small sums and sometimes in large, but at the date of his death the debts are nowhere put as exceeding Rs. 15,000 or Rs. 16,000, which is probably a very liberal estimate. On the other hand, there is evidence, part of which was called on behalf of the appellants themselves, to show that he had moveable property to the extent of Rs. 20,000. The petition of the widow showed that he had debts owing to him to the extent of Rs. 9,000, which, it may be, were included in the Rs. 20,000 of moveable property. In addition to that, there can be no doubt that part of the property of the testator had been disposed of shortly after his death, because, although the actual deed of sale is not produced, a deed of sale from the person who purported to have bought is, and that shows that property belonging to Madhusudan had in fact been disposed of. There therefore was not, upon the evidence as it stands, any reason whatever why the property included in the lease should have been used for the purpose of paying debts, and, indeed, if such necessities were the real justification for the transaction it is not probable that it would take the form of a permanent lease, but would have been an out-and-out sale. Their Lordships have no hesitation in saying that the proof of the necessity required to justify the lease of the 17th September, 1869, is not forthcoming.

It is then said that this lease must have been a lease for the benefit of the estate, and that it can be supported upon that ground. It is not easy, and in this case it is not necessary, to define what is exactly the character of the transaction entered into by a Hindu widow, which can be supported on the ground that it enured for the benefit of the estate. It is sufficient to say that the mere fact that the rent reserved was a fair market rent, or the price obtained was a fair market price, cannot alone and in themselves be regarded as sufficient, and in the present case there is nothing more suggested.

In their Lordships' opinion the lease was not executed because it was for the benefit of the estate, nor because circumstances arose which rendered it necessary ; the true explanation is that it was granted to a man, Khetramohan Samanta, who was the nephew of one of the widows, Prasana, by whom he had been brought up and with whom he had lived for many years.

Their Lordships think there is no need to add anything further to the very careful and reasoned judgment of the High Court upon this point, with the criticisms contained in which they are in agreement.

There remains only the transaction which was entered into later on the 5th May, 1895. That was entered into by the survivor of the two widows, Prasana Kumari. The alleged justification for this depends on different considerations. It is said that the property sold had been acquired by the widow out of her stridhan, and that consequently she was quite free to deal with it as she thought best. Now there can, their Lordships

think, be no doubt that whatever stridhan she possessed was due to the accumulated savings from the income of the property which she received from her husband's estate, and though it is true that when that property had been received it would be possible for her so to deal with it that it would remain her own, yet it must be traced and shown to have been so dealt with, and in this case there is no sufficient evidence of this having been done. Further, in this particular case it appears that part, at least, of the property had been purchased from the tenants of the estate itself. This does not mean that the inheritance had been so acquired, but that, owing it may be to difficulties which had arisen in connection with the occupiers, their tenant rights had been bought in part by the release of the arrears of rent and in part by a payment of cash ; and having so acquired their interest, it was the property which they had formerly occupied which was sold under the kobala of the 5th May, 1895. If that be the true transaction no question could arise about the right of the widow in connection with her stridhan, because the tenant rights so acquired would be an obvious accretion to the husband's property, which, if it were possible for her to segregate, would require some more unequivocal act for the purpose than anything to be found in this evidence. The evidence of the deed itself leads once more to the conclusion that not only was this property the husband's property, but that the widow knew it and that she was attempting to support the deed by a further effort to urge the necessities of debts and the costs of litigation as a justification. No other explanation can be offered of the fact that the deed contains recitals which, upon the hypothesis that the property was the widow's own, would have been quite unnecessary.

Their Lordships hold with regard to this also that the appellants have failed to establish, what once more the burden lay on them to prove, that the widow was in a position to deal with this estate. This opinion differs from that formed by the learned Subordinate Judge, but is in agreement with that of the High Court at Fort William, from whose decree this appeal has been brought.

The only further observation that their Lordships desire to make is to call attention once more to the fact that in appeals the burden of showing that the judgment appealed from is wrong lies upon the appellant. If all he can show is nicely balanced calculations which lead to the equal possibility of the judgment on either the one side or the other being right, he has not succeeded. It is not necessary to invoke that doctrine against the appellants in the present instance because, for reasons that have already been stated, their Lordships think they have failed, but it is a matter which would be well for appellants to bear in mind.

Their Lordships think that this appeal should be dismissed, and that the first respondent who alone appeared should have his costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

NABAKISHORE MANDAL AND OTHERS

v.

UPENDRAKISHORE MANDAL AND ANOTHER.

DELIVERED BY LORD BUCKMASTER.

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