

Kunwar Sri Niwas - - - - - *Appellant*

v.

Chaudhri Jai Narain Singh and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 19TH MARCH, 1947

Present at the Hearing :

LORD THANKERTON

LORD UTHWATT

LORD DU PARCQ

SIR MADHAVAN NAIR

SIR JOHN BEAUMONT

[*Delivered by* LORD UTHWATT]

This is an appeal from a judgment and decree of the High Court of Judicature at Allahabad dated the 8th January, 1942, reversing the judgment and decree dated the 14th May, 1934, of the Subordinate Judge of Aligarh. The point at issue is whether certain alienations by two Hindu widows of inherited immovable property bound the estate. The respondents—the plaintiffs in the suit—contend that they did not. Their contention was accepted by the High Court and possession of the property in dispute was ordered to be given to them.

For the purpose of the determination of the case in the Courts below, it was necessary to consider many transactions upon which the widows from time to time embarked and to arrive at a conclusion as to their legal effect. In the course of the hearing before their Lordships it became apparent, and indeed it was properly conceded by the respondents, that the judgment of the High Court could not be upheld if upon their true construction, two mortgage deeds of 19th June, 1879, executed by the widows severally, charged the corpus of the immovable property therein described and did not merely charge the income arising therefrom during the respective lifetimes of the widows. Their Lordships, having come to this conclusion that the corpus was charged by these deeds, find it unnecessary to state any facts other than such as are requisite for a proper understanding of the deeds, and the way in which the point arises.

Chaudhri Tej Singh died childless in 1873 leaving him surviving two widows, Musammat Lachhman Kunwar who died in 1911, and Musammat Chhattar Kunwar who died in 1922, and a brother Chaudhri Jawahir Singh. Chaudhri Jawahir Singh who was alive in 1879 had two sons, Jai Ram Singh and Sital Singh both of whom died, the latter without issue, before the death of the surviving widow. On the death of Musammat Chhattar Kunwar, Chaudhri Jai Narain Singh the only child of Jai Ram Singh succeeded to the estates of Chaudhri Tej Singh. He and his assignees were the plaintiffs in the suit and the respondents to the appeal. The suit it may be observed was begun in 1933.

The defendant, the appellant, claims that the property in dispute does not now form part of the estate of Chaudhri Tej Singh. He claims under a title which can be traced back, as to part of the property, to a deed of sale dated the 30th January, 1889, executed by Musammat Lachhman Kunwar and as to the remainder to a mortgage dated the 7th July, 1892, executed by Musammat Chhattar Kunwar. If these deeds were executed for legal necessity the appellant's title is good. They were so executed, it was ultimately conceded, if the mortgages of 1879 charged the corpus of the property therein described. The substantial matter at issue is the true construction of the deeds. Upon that question the subordinate judge held that corpus was charged, but the High Court, which did not give detailed reasons for their view, came to the contrary conclusion. In their view the widows affected to charge only a life interest in income.

The narrative as to the relevant dealings with the estate of Chaudhri Tej Singh may now be given.

On the death of Chaudhri Tej Singh, Chaudhri Jawahir Singh claimed the estate on the footing that he and his brother were members of a joint Hindu family. The widows maintained that there had been a partition and judgment was given in their favour in July, 1875, with costs. While this suit was in progress the widows borrowed on bond Rs.800 from Bhup Singh (1st February, 1874) and Rs.1,000 from Bhikka Lal (16th February, 1875) for the express purpose of carrying on the litigation. The costs awarded to the widows were ultimately paid but it would not be right to assume that the widows were thereby indemnified against all the costs which they had properly incurred in the proceedings.

On the 16th April, 1877, the two widows executed a usufructuary mortgage in favour of Jai Ram Singh and Sital Singh. It comprised the greater part of the estate of Chaudhri Tej Singh. By this mortgage a sum of Rs.14,000 was raised in order to avoid a sale of the entire property pursuant to a decree made in respect of a judgment debt of Chaudhri Tej Singh. By that mortgage corpus was charged. On the 19th June, 1879, each of the widows executed a usufructuary mortgage relating to her half share in a portion of the remaining immovable estate. It is the proper construction of these two mortgages that is in issue. Before considering the terms of the deeds it is necessary to consider the circumstances in which they were made and the general nature of the transaction embodied in them.

It appears that shortly before 1879 the widows had come to an informal arrangement for the division of the estate between them and the evidence makes it clear that each widow possessed a mandate from the other to deal for her own needs with the share allotted to her under that arrangement. That fact is of importance not only in establishing the effectiveness of a mortgage affecting corpus executed only by one widow—assuming the mortgage to be otherwise justifiable—but in considering the question of construction of the mortgages. The mortgages were in favour of Jai Ram Singh and Sital Singh, the two sons of Chaudhri Jaikwar Lal. It was found as a fact by the Subordinate Judge that Chaudhri Jaikwar Lal consented to the mortgages but this is immaterial in construing them. The two mortgages are in all material respects identical. Each was made to secure the sum of Rs. 2,000 and was made mainly with a view to the payment of certain debts specified in the deed.

It was provided by each of the deeds that the sum of Rs.2,000 raisable under each deed was to be applied in payment of one half of—

Rs.2,169.3.0 due to Bhikka Lal under the bond of 16th February, 1875.

Rs.2,000 due to Bhup Singh under the bond of 1st February, 1874.

Rs. 127.5.6 due to Phul Chand and Makkhan Lal, and

Rs.782 due to Jai Ram Singh and Sital Singh.

The payments left a balance of Rs.260.11.9 which was paid to each widow. It is not open to dispute that the first two debts were debts which were binding on the estate. The debt due to Phul Chand and Makkhan Lal

was due under a decree passed in a suit for money alleged to have been advanced for buying seed and a justifiable inference at this distance of time is that the money was properly advanced for the purpose of the estate. Nothing is known of the remaining debt nor why cash was paid to the widows. But these sums are comparatively small and do not affect the substance of the matter. With the High Court, their Lordships take the view that each widow would have been justified in alienating her husband's estate by means of a mortgage executed by her to secure the full sum of Rs.2,000.

These are the surrounding circumstances. It was open to each widow, if so minded, to charge either her share of corpus or her share of income. Separate mortgages might be expected whichever of the two courses was adopted. The agreement for division between the widows necessitated that each mortgage should in some fashion refer to the fact that her dealing, whether it affected corpus or income, related only to her share and did not touch the share of the other widow. That division it should be observed was only effective during the joint life-times of the widows. On the death of one of them the survivor would be entitled to the whole.

Their Lordships turn now to the terms of the mortgages. Each mortgage narrates that the names of the two widows are entered against one *suls* in 10 biswa ancestral share and against 6 biswa share out of a specified 10 biswa *thok*; that out of this 6 biswa share 25 bighas of rent-free land is mortgaged to Jai Ram Singh and Sital Singh; that the two widows are "in possession and occupation of the property mentioned above in equal shares with life-interest" and that they "divide the profit half and half." It then proceeds as follows: "I . . . have mortgaged all my rights and interests as specified below in respect of one-half of the one *suls* of the ancestral 10 biswa share granted by the Government (with the exception of the 25 Bighas previously mortgaged) to Kunwar Jai Ram Singh and Sital Singh for Rs.2,800 in order to pay debts, etc., under the following conditions." It is then stated that this mortgage money was left with the mortgagees for payment to Bhikka Lal decree-holder, Bhup Singh on account of a document and Jai Ram Singh and Nihal Singh decree-holders.

The mortgage then contains common form provisions relating to the rights of the mortgagee and concludes with the following statement: "I have therefore executed these few presents by way of mortgage-deed in respect of my life interest in the property mentioned above so that it may serve as evidence".

In their Lordships' view the mortgage read as a whole is ambiguous. It may either mean that all the rights and interests which the widows can charge, are charged or that only the income to which each widow is entitled during her life in her moiety is charged. The operative words taken alone are not clear in their intendment. But the phrase "all my rights and interests" is followed by the words "as specified below" and these words can only relate to the concluding statement. In form the concluding statement—introduced by the word "therefore"—is directed to giving a reason for the execution of the deed, not to particularising the nature of the interest mortgaged. The important words are the reference to the life interest. Those words appear in the preamble as describing the estate of the widows—not the interest proposed to be mortgaged. The language is clear. A widow's estate there receives the name life interest. In the concluding statement the words in question appear in a sentence—introduced by the word therefore—which is directed to giving a reason for the execution of the mortgage and is not directed to particularising the interest comprised in the mortgage, but the reason may nevertheless include in it a statement as to the interest mortgaged. But bearing in mind the terms of the preamble, the fact that the widow was exercising a mandate and that the term "in respect of"—not the word "of"—is used, it is clear that the statement is ambiguous. It may either mean "a mortgage of an interest I hold beneficially for my life" or "a mortgage made in right of my widow's estate". The latter construction

fits in with the fact that a reason for executing the deed is being stated more aptly than the former.

The Subordinate Judge, it should be added, pointed out that the word life interest apart from the context does not necessarily mean the beneficial interest in income incident to a widow's estate but may refer to her estate in the property, which is not a life interest. In that, the Subordinate Judge may or may not be correct. The relevant point of time, it should be observed, is 1879. Their Lordships do not propose to rely upon this view of the Subordinate Judge. The whole sentence has to be construed.

In aid of a construction that only the beneficial interest in income during a widow's life was charged, the respondents pointed out that the mortgagees, subject to them out-living both widows and their father would become the persons succeeding to the estate and that they might therefore for financial reasons prefer a security which was confined to income accruing during the life of a widow. That may be so, but if it be relevant to consider this matter as one of the surrounding circumstances, it is equally relevant to consider that the widows' interest lay in the other direction. The scales are evenly balanced. There is however this observation to be made upon the construction suggested by the respondents that only a life interest was charged. If a charge upon income during life was in mind it is somewhat odd—and indeed informing—that the mortgagees did not take any charge from either widow upon that half of the income from the property described in the mortgage which would accrue to the survivor for life on the death of the other. What good reason could there be for excluding this interest in income from a mortgage of life interest?

The circumstance that the widows were acting separately in respect of a half share which was under her control by virtue of a mandate from the other lead inevitably to some obscurity of expression. Their Lordships take the view that in light of (1) the mandate possessed by each widow as respects her half share and the propriety of emphasising in the deed (if a mortgage on corpus was intended) the nature of the right that was being exercised; (2) the circumstance that the debts were all chargeable on the estate; (3) the clearness of the relevant recital as contrasted with the obscurity of the concluding sentence and (4) the capricious omission—involving in the respondent's construction—of the expectant interest of a surviving widow in the income of the half share presently enjoyed by the other, the ambiguity in the deeds should be resolved by construing them as charging the corpus of the estate and not merely a beneficial interest in income. They construe each deed as stating that the mortgage is made in right of the widow's estate and not that it is a mortgage of income arising during a widow's lifetime.

Having so construed the deeds, their Lordships do not propose to advert to the subsequent title.

Their Lordships will therefore humbly advise His Majesty that this appeal be allowed. The decree of the Subordinate Judge will be restored and the respondents will pay the costs of this appeal and the costs of the proceedings in the High Court.

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DELIVERED BY LORD UTHWATT

Printed by His Majesty's Stationery Office Press,
DRURY LANE, W.C.2.

1947