

Rao Bhimsingh - - - - - *Appellant*
v.
Shersingh and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT NAGPUR
JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 17TH JULY, 1947

Present at the Hearing :

LORD DU PARCQ
LORD MORTON OF HENRYTON
SIR JOHN BEAUMONT

[Delivered by SIR JOHN BEAUMONT]

This is an appeal from the judgment and decree of the High Court of Judicature at Nagpur dated the 3rd October, 1939, which affirmed the judgment and decree of the District Judge of Nimar dated the 7th September, 1936, which in turn affirmed the judgment and decree of the Subordinate Judge of Khandwa, dated the 19th February, 1936.

The appeal arises in execution proceedings in the following circumstances.

In the year 1908 Rao Kishore Singh had instituted a suit against two widows to recover possession of an estate known as Bhamgarh Zemindary. In that litigation Kishore Singh was claiming that the Estate was an impartible one and had descended upon him under the rule of primogeniture as the eldest male descendant of the last holder. His claim, if successful, would clearly operate for the benefit of an eldest son who might succeed him. Kishore Singh obtained a decree in his favour from the trial court, but the decree was reversed by the Court of the Judicial Commissioner of the Central Provinces. In order to raise money to enable him to prosecute an appeal to His Majesty in Council Kishore Singh on the 11th November, 1912, entered into an agreement with one, Ramji Patel, under which Ramji Patel was to advance Rs.5,000, and if Kishore Singh succeeded in his appeal he was to sell a part of the said Estate to Ramji Patel on the terms specified in satisfaction of the loan.

Kishore Singh succeeded in his appeal before the Judicial Committee of the Privy Council but refused to carry out his agreement with Ramji Patel. Accordingly Ramji Patel instituted a suit in the Court of the District Judge of Nimar asking for specific performance of the said agreement or in the alternative an order for repayment of the amount advanced with interest. That suit also ultimately went in appeal to His Majesty in Council and the Judicial Committee held that Kishore Singh was entitled to specific performance of the agreement of the 11th November, 1912, but that compensation in money would afford adequate relief. Accordingly by Order in Council dated 10th May, 1929, Their Lordships reported to His Majesty that a decree should be made in favour of the appellant for Rs.20,000 with interest thereon at the rate of 6 per cent. per annum until realisation and that there ought to be paid to the appellant certain costs of the appeal.

A decree was duly passed pursuant to the said Order in Council and prior to the death of Kishore Singh part of the Bhamgarh Estate was attached in execution of such decree. Kishore Singh died on the 11th August, 1930, and the present appellant as his eldest son succeeded to the Bhamgarh Estate and was thereupon brought on record in the execution proceedings as legal representative of Kishore Singh.

On the 8th December, 1930, the appellant made an application to the execution court asking for a stay of execution to enable him to raise the money due. He did not suggest that the decree could not in law be executed against him. However, on the 12th March, 1934, the appellant made a further application in the said execution proceedings alleging that the property under attachment formed a part of the Bhamgarh Estate which was impartible and governed by the law of primogeniture; that the property had been attached in a personal decree against Kishore Singh; and that the property in dispute was not an asset of the late Kishore Singh in the hands of the appellant who claimed to be the sole owner; and the appellant prayed that the property be released from attachment and the execution be stayed.

This application was dismissed by the judge in the execution proceedings on the 19th February, 1936. The appellant appealed to the District Judge and his appeal was dismissed on the 7th September, 1936. He then presented a second appeal to the High Court of Judicature at Nagpur which was dismissed on the 3rd October, 1939. From that judgment this appeal has been brought on the certificate of the said High Court. The respondents are the representatives of Ramji Patel and have not appeared before the Board.

In all the three courts in India the principal question argued was whether the Bhamgarh Estate was inalienable by custom. All three courts held that such a custom was not proved, and their Lordships are not prepared to disturb these concurrent findings.

If the Bhamgarh Estate was the separate property of Kishore Singh it is clear that it would be liable in execution for the discharge of the debt in the hands of the appellant as his heir. But the courts in India have proceeded on the basis that the Estate is ancestral property, though impartible and governed by the rule of primogeniture, and their Lordships deal with the appeal on the same basis. The question for decision is whether an estate of this nature which had been attached during the lifetime of the father in satisfaction of a decree against him for compensation in lieu of specific performance remains liable after his death to execution in the hands of his eldest son who has succeeded by survivorship. The answer to this question depends on three sections of the Civil Procedure Code which it will be convenient to state.

Section 2 (II) defines "legal representative" as meaning a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

Section 50 provides:—“(1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased. (2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of, and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.”

Section 53 provides:—“For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.”

Section 52 deals with a decree passed against a legal representative of a deceased person and has no direct application in the present case.

The High Court held that section 50 did not help the decree-holder because no property of the deceased Kishore Singh had come to the hands of his son, and that section 53 did not apply because in their view the section only applied in cases in which a decree for a debt had been passed and the decree against Kishore Singh was not for a debt, but for money payable in lieu of specific performance. But the court held that the present appellant was a legal representative of Kishore Singh under the latter part of section 2 (II) of the Civil Procedure Code, since Kishore Singh had been sued in a representative capacity, and apparently considered that on this finding the decree could be executed against the appellant. This view of the matter appears to their Lordships to overlook the fact that section 2 subsection (II) of the Civil Procedure Code is merely a definition section and imposes no liability at all. If the High Court was right in thinking that the case did not fall under section 53 of the Code the appellant, in their Lordships' opinion, must succeed.

Their Lordships think that the appellant is the legal representative of Kishore Singh, and the respondents were entitled therefore under section 50 to apply to the court to execute the decree against him. By itself, however, section 50 would not assist the decree-holder since there was no property of Kishore Singh which had come to the hands of his legal representative. But then comes section 53 which appears to be designed to enlarge the class of property liable to execution under sections 50 and 52. This is effected by deeming certain property to have come into the hands of the legal representative as property of the deceased which in fact has not done so. The class of property to which this fiction is applied is "property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor in respect of which a decree has been passed." Their Lordships read these words as descriptive of the class of property which can be reached in execution, and not as limiting the nature of the debt for which execution can be levied. In the present case there is property in the hands of a son of a character liable under Hindu law for the payment of a decretal debt of a deceased ancestor, and since the particular debt for which execution is being levied is not tainted with immorality, the property is liable in execution under section 50. This view of the construction of section 53 has been adopted by the Bombay High Court in *Ganesh v. Narayan* I.L.R. 55 Bomb. 709, and by the Madras High Court in *Meyappan v. Meyappan* 46 Madras L.J. 471. In the former case, in which the court was dealing with the execution of a decree for an injunction obtained against a Hindu father as manager of a joint Hindu family against a son who had succeeded by survivorship, Mr. Justice Patkar made the following pertinent observations in which Their Lordships concur:—"It is difficult to hold that section 53 is limitative and not descriptive, and is intended merely to enforce a recognised rule of Hindu law that a son is liable to pay the debt of his father which is not tainted by illegality or immorality. Section 50 is not limited to the execution of a decree for a debt but applies to all decrees. Section 53 appears to have been enacted to explain the meaning of the expression "property of the deceased" which occurs in sections 50 and 52. If section 53 is considered to be not descriptive but limitative and confined to a decree for debt, and if a joint son is not considered to be the legal representative of his father under section 50 of the Civil Procedure Code a decree for possession or a decree other than for a debt obtained against a father in a joint Hindu family would not be enforceable in execution against the son who is joint with his father and is brought on the record as his legal representative. Further, a son who is joint with his father is always brought on the record on the death of a deceased plaintiff or defendant or a deceased appellant or respondent

as his legal representative, and no distinction has ever been made between a son who is joint with his father and a son who inherits the property of his father." If the view of the Nagpur High Court is right, and section 53 is limited to cases in which execution is being levied for a debt in respect of which a decree has been passed, the section would have a very limited operation. At the most it could serve merely to render a son of a Hindu liable in execution for a debt of his father for which he could be made liable in a suit under the pious obligation, a result which can generally be obtained by the exercise of the power conferred on the Court by section 47 (2) of the Civil Procedure Code to treat a proceeding in execution as a suit.

Their Lordships however agree with the conclusion reached by the High Court, though not with all the reasoning on which it is based and will humbly advise His Majesty that this appeal be dismissed. The respondents have not appeared but will be entitled to any costs they may have incurred.

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In the Privy Council

RAO BHIMSINGH

v.

SHERSINGH AND OTHERS

DELIVERED BY SIR JOHN BEAUMONT

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