



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Case Comment: Hunoomanpersaud Pandey vs Mussamat

Babooee Munraj

Rudrika Sharma^a

^aGuru Gobind Singh Indraprastha University, Delhi, India

Received 25 July 2022; *Accepted* 24 August 2022; *Published* 26 August 2022

INTRODUCTION

Under Hindu Law, alienation simply means the transfer of property by way of gifts, sales, and mortgages. Usually, none of the coparceners has the right to alienate a joint family property, without the consent of all the coparceners. But Karta i.e., manager of a joint Hindu family, is an exception in this case. He can alienate a joint family property, without the consent of all the coparceners, but only in certain exceptional circumstances, like a legal necessity, the benefit of an estate, and acts of indispensable duties. The case of Hunooman Prasad Pandey explores the concept of the benefit of the estate.

BACKGROUND OF THE CASE

Ranee Degumber Koonweree, was the guardian of her son, Underdown Singh, during his minority. During British rule, an order of Malgoozaree was released, stating the possibility of confiscation of property. Therefore, she mortgaged some ancestral estate to the Hunooman Prasad Pandey. When Underdown Singh attained a majority, he challenged the mortgage to

the defendant on the ground that the mortgage made by his mother was void. Later when Underdown Singh died, his minor son Lal Seetla Buksh Bahadur Singh, succeeded him. The suit was later represented by his mother Mussamat Babooee Munraj Koonweree as his guardian. The defendant, HP Pandey denied Inderdown's allegation. The lower court dismissed the suit of the plaintiff, but the lower appellate court decreed it, prompting the defendant to appeal to the Privy Council.

ISSUES

1. Whether the mortgage bond made by Ranee was valid?
2. Whether Ranee as a mother/guardian was competent to create a mortgage for the benefit of the estate under Hindu law?
3. Should the possession of certain ancestral estates (Mortgaged properties) situated in the Pergunnah, in the District of Goruckpore, with mesne profits and interest be recovered in favour of Underdown?
4. Should the mortgage Bond, dated July 1839, be set aside and cancel the name of Hunooman Prasad as mortgagee in the Collector's records?

CONTENTIONS

The plaintiff in the original suit, Lal Inderdowun Singh, was described in the plaint as the proprietor of the Raj of Pergunnah Mansoor Nuggur Bustee. The suit was against the present Appellant, Hunooman Prasad Pandey, the chief Defendant, and Ranee Degumber Koonweree, the second Defendant, the mother of the complainant. In his plaint, the complainant attempted to obtain possession of certain immovable properties described in his claim, the particulars of which he did not specify. Furthermore, he filed suit to set aside a mortgage bond made by the Appellant dated July 1246; to evict the Appellant, to block the Appellant's name as mortgagee in the Collector's records, and to recover mesne profits. Underdown stated the grounds in his suit that:

- Ranee was the guardian of the plaintiff during the period he was a minor.

- Ranee was a pardanashee, uneducated woman and hence the transaction made by her was vitiated.
- The transaction was of ancestral property, and Ranee, being the guardian was not having any right to alienate the property of the plaintiff (minor)
- The loan was taken by servants and agents, which was not in knowledge of Ranee
- The appellant fraudulently mortgaged the property

To the answer to the suit, the defendant did not dispute the title of the complainant to the lands as heir but asserted his claim as mortgagee (except for some British-owned lands for which the suit was abandoned and to which there is no need to refer further). The appellant laid down his contentions that on attaining a majority, the plaintiff acknowledged the loan given by the appellant. Also, due to the death of Underdown during the suit, the loan was acknowledged by the mother Mussamat, as a guardian of his minor successor Lal Seetla Buksh Bahadur Singh. The key issue between the parties was whether the defendant could resist, to the extent of his mortgage interest, the title of the complainant as the heir and owner of the lands.

OBSERVATION

After hearing both parties, the trial court dismissed the plaint of the plaintiff on the following grounds -

- That the aforesaid loan was taken without the knowledge of Ranee has not been proved.
- That the bonds and mortgage deed executed at that time were in acknowledge of Ranee.
- The defendant (HP Pandey) has been in possession of the land, since the settlement, and that Ranee Degumber Koonweree and Lal Inderdowun Singh (since deceased), remained silent for such a long period, it is clearly inferred that the statement of the Defendant (HP Pandey) and his witnesses are true

- That at the time of the transaction, the family of Rani was in need of money, if the loan was not taken at that time then the property of Ranees was liable to be seized in the recovery of government dues.
- That no objection was made by the Ranees at the time of mortgaging lands.

The appellate court reversed the decision of the lower civil court and decreed the suit in favour of the Plaintiff. When an appeal reached the Privy Council, it held that the mortgage was, in fact, executed but the mortgagee took the mortgage from a limited owner, so the burden of proof of necessity lay upon him. In their Lordships' opinion, the case of mortgage for something had been made out prima facie.

But they remitted the case for further enquiry with the following general principles to be applied in the decision of the cases:

1. According to Hindu Law, a manager (Karta) of an infant heir may charge the estate only in cases of need or for the benefit of the estate. In each case, it is important to take into consideration the pressure on the estate, the danger to be avoided, or the benefit that will be conferred upon it.
2. When a prudent owner (Karta) makes a charge for the benefit of the estate in a particular instance, the bona fide lender (alienee) is not affected by prior mismanagement of the estate even if it can be displayed that better management would have prevented debts from accumulating.
3. But if the estate is in danger due to any conduct by the lender (alienee), that lender cannot use the injustice he himself committed to support a claim in his own favour, based on a necessity that is unjust and has helped the cause.
4. Upon receiving a loan, the lender (alienee) is required to investigate the needs for the loan and to make certain, with reference to the parties with whom he is dealing, that the manager is acting in the best interests of the estate.
5. If the lender (alienee) makes a proper enquiry as to the necessity for the loan and acts honestly, the real existence of the alleged necessity is not a condition precedent to the validity of his charge.

6. The lender (alienee) is not bound to see to the actual application of the money advanced.
7. According to Hindu Law, the son's freedom from the obligation to pay his father's debts is determined by the nature of the debt, not by the nature of the estate. In most cases, it is still a pious duty to pay off the debt even if it affects the ancestral estate unless the nature of the debt makes it unfit for the son to pay it off.

DECISION OF THE COURT

The Privy Council set aside the decision of the appellate court and upheld the decision of the lower civil court.

CONCLUSION

The present judgement was delivered by the Privy Council more than 150 years back when the law including Hindu Law or Law relating to Transfer of Property was not in existence. Even law was not codified and judgements were being pronounced according to the facts of each case separately. Each judgement was based upon the principle of natural justice, the law of common rule, and the law of equity. The present judgement became the landmark judgement and milestone in the history of law. It was the first case to define the “benefit of estate” and recognise a woman as “Karta” of a joint Hindu family.