

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Deputy Commissioner of Kheri, Manager, Court of Wards, Oel Estate, v. Khanjan Singh and others, from the Court of the Judicial Commissioner of Oudh; delivered the 7th February 1907.*

Present at the Hearing:

LORD MACNAGHTEN.

LORD ATKINSON.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

The case out of which this Appeal arises relates to an alienation by a Hindu widow of property which had belonged to her husband.

The properties in dispute formed a part of the estate of Kalka Bakhsh, who died in or before 1868, without male issue, leaving as his heir his widow Man Kunwar, who took as such heir the estate of a Hindu widow.

During the lifetime of Kalka Bakhsh, on the 12th July 1861, a decree based upon a mortgage was passed against Kalka Bakhsh and others, in favour of Raja Anrudh Singh, for a sum of Rs. 28,320. 12, principal and interest, payable in two instalments, interest subsequent to the decree being disallowed. Kalka Bakhsh's share of liability under this decree became ascertained at Rs. 7,080.

Proceedings were subsequently taken to execute the decree, and on the 22nd October 1866, the then Deputy Commissioner of Kheri, before whom the execution was in progress,

made a decree or order, allowing in favour of the judgment creditor, what the decree had not given him, interest subsequent to decree at the rate of 2 per cent. per mensem from the due dates of the several instalments. But after some intermediate proceedings, on the 15th September 1869, that decree or order was set aside by the Court of the Judicial Commissioner of Oudh, on the ground that the Court executing a decree has no power to alter or add to it.

In the interval between the making of the decree or order of the 22nd October 1866, and its reversal on the 15th September 1869, the sale deed now in question was executed. It was dated the 22nd December 1868. It was executed by the widow Man Kunwar and by her late husband's mother. It was in favour of the same Raja Anrudh Singh, who had obtained the decree of the 12th July 1861. The consideration alleged was made up of three parts: first, the Rs. 7,080 due under the decree of the 12th July 1861; secondly, interest on that sum subsequent to the date of the decree; thirdly, a fresh advance said to have been made in cash of Rs. 7,280.

Man Kunwar died on the 31st May 1894, whereupon the estate of her husband passed to his then next male heir, Ajudhia Singh. And on the 21st February 1899 Ajudhia Singh (with another who need not be further noticed) instituted the present suit in the Court of the Subordinate Judge of Sitapur. The Defendants were, first, the Deputy Commissioner of Kheri, as Manager for the Court of Wards in charge of the estate which had been that of Raja Anrudh Singh, and, secondly, Thakur Jawahir Singh, a purchaser from the Court of Wards of the greater part of the property in dispute. The claim was to recover the property as from the death of Man Kunwar with mesne profits.

Various defences to the suit were raised, but only two were urged on the argument of the Appeal before their Lordships: first, that the sale in question was justified by necessity, and on this ground was effectual to pass the whole interest of Man Kuuwar's husband in the property, not merely her widow's estate; secondly, that the suit was barred by Section 13, Explanation II., of the Civil Procedure Code.

The Subordinate Judge made a decree in favour of the Plaintiffs for possession and mesne profits. He allowed the Defendants credit in account for Rs. 7,080, the amount due under the decree of the 12th July 1861, but disallowed the other two portions of the alleged consideration for the sale. He decided against the Defendants with regard to the suggested bar by Section 13 of the Civil Procedure Code. The Judicial Commissioners of Oudh, on appeal, agreed with the Subordinate Judge and affirmed his decree. That is the decision now appealed against by the first Defendant, the Deputy Commissioner of Kheri.

With regard, in the first place, to the defence of necessity, it is not disputed that such necessity existed in respect of the first item of consideration, Rs. 7,080, the amount due under the decree of the 12th July 1861, and for this amount the Appellant has received credit. As to the third item of consideration, the alleged fresh advance of Rs. 7,280, both Courts in India have found that there was no evidence of necessity for such an advance, if it ever was made; and their Lordships agree.

The argument really turned upon the second item, the interest after decree upon the decree of the 12th July 1861. The contention was that inasmuch as the decree or order of the 22nd October 1866, granting interest on the amount decreed in 1861, was in force when the conveyance in question was executed, the doctrine of necessity extended to the interest.

It is not necessary to inquire what the result would have been, if some outsider had advanced money to the widow, in order to protect the estate against a claim by Raja Anrudh Singh to realize the interest awarded to him by the decree or order of the 22nd October 1866. The question that does arise is, whether those who claim under the Raja, and whose position is no higher than his, are entitled to base a claim to the property in question upon a decree or order, originally made in the Raja's favour, but subsequently set aside. Their Lordships agree with the Courts in India that the claim of the Appellant on this ground cannot be supported.

The contention based upon Section 13 of the Civil Procedure Code arises out of the following circumstances. After the sale by Man Kunwar to Raja Anrudh Singh, Ajudhia Singh, on the 23rd December 1869, brought a suit against the Raja and others, in which the Plaintiff claimed a right of pre-emption. The suit was dismissed on the ground that no right of pre-emption was proved. It is now contended that the ground of claim in the present suit is a matter which might and ought to have been made a ground of attack in that suit.

Their Lordships agree with the Courts in India in thinking that what was in question in that former suit was the right of pre-emption, in respect of what Man Kunwar had power to convey and did convey, that is her widow's interest, and that the introduction of any question as to the effect of the conveyance upon the reversion would have been incongruous to the matter of the suit.

Their Lordships will humbly advise His Majesty that the Appeal should be dismissed. The Appellant will pay the costs.

---