

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sri Gajapati Radhamani Garu v. Maharani Sri Pusapati Alakarajeswari (and by revivor, made after the hearing of the appeal but before the delivery of the judgment, Vasudeva Santa Singaro v. Maharani Sri Pusapati Alakarajeswari), from the High Court of Judicature at Madras; delivered 23rd July 1892.

Present on the hearing of the Appeal:

LORD WATSON.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

Present on the delivery of the Judgment:

LORD WATSON.

LORD HOBHOUSE.

LORD MORRIS.

SIR RICHARD COUCH.

LORD SHAND.

[*Delivered by Sir Richard Couch.*]

This is an appeal from a judgment and decree of the High Court of Judicature at Madras, in a suit in which the deceased predecessor in estate of the Respondent was the Plaintiff, and Radhamani, who is now dead, was the Defendant.

The suit was brought in the District Court of Ganjam to recover Rs. 77,706. 4, interest and principal, due upon two mortgage bonds, one dated the 30th March 1874, for Rs. 35,000, repayable on the 23rd April 1880, the other dated the 3rd July 1874, repayable on the 6th July 1881.

Both these mortgage deeds were executed by Neelamani Patta Maha Devi, and both contain a possessory mortgage of the Talagam Khandam, in the Tekkali estate.

Neelamani died on the 1st October 1882, and the Plaintiff sought to recover the debts from the mortgaged property in the hands of her surviving co-widow, Radhamani, and from her other property.

Radhamani answered that the alienation, having been made without her consent, was invalid, and further that there was no necessity for the loans so as to bind the estate beyond the lifetime of Neelamani.

The following issues were laid down:—

- I. Could Neelamani (deceased), under any circumstances, create a valid charge on the property binding on the estate in the hands of the survivor, a co-widow?
- II. If so, was there any necessity in the present case to contract the loan so as to bind the estate?

The first mortgage was as follows:—

“Deed of mortgage with possession, dated Monday, the 18th day of Chaitra Suddha, of the year Bhava, corresponding to the 30th March 1874, executed and given by Sri Sri Sri Gajapati Neelamani Patta Maha Devi Garu, widow of Sri Gajapati Krishna Chandra Devu Raja Garu, of Kshatriya caste, Zamindari, residing in Raghunathapuram, in Tekkali talug, in Ganjam district, to Sri Kakarlapudi Neelayamma Garu, widow of Sri Kakarlapudi, Bangaru Razu Garu, mokhasadar, of Kshatriya caste, residing in Pandranki, within the jurisdiction of the Registrar of Bimlipatam, in Vizagapatam district.

“The amount received from you this day as a loan for the purpose of paying up the arrears of peshkush due by me to Government for the khandams of Talagam, Nandigam, and Nowgam comprised in my Zamindary, and for the purpose of discharging the debts contracted by me from Abburu Surya Narayana Pantulu Garu, on the mortgage of Talagam khandam for the aforesaid purpose, is Rs. 35,000.

“It is agreed as follows:—

“As I have received thirty-five thousand rupees, I will pay interest hereon at 10 annas *per cent. per mensem*. I have mortgaged to you and put in your possession Talagam and

other villages specified in the schedule hereunto annexed, situated in the khandam of Talagam in the taluq of Tekkali, within the jurisdiction of the Sub-Registrar of Tekkali, in the Registration District of Ganjam, included in my half share of Tekkali taluq, yielding an income of Rs. 16,154 *per annum* by Zeraiti, Shrotriam, &c., assessed with peshkush of Rs. 9,817, being my husband's share of the taluq which came into my possession according to the judgment of the Privy Council, and which has been in my possession and enjoyment. You shall grant leases from Fasli 1284 till this bond is discharged, to renters arranged by me either for the amount mentioned in the schedule or for a higher amount, and you shall receive muchalikas (counterparts of lease deeds) from them. The money collected by your officer from them (renters) at the several instalments of each year shall be placed in a box in my cutcherry (office) room, under lock and key of your officer and my officer; and I myself will provide for the safety of the same. I myself will be answerable for any harm that may befall by act of State or act of God. Out of the money realized, I will receive Rs. 150 a month for my expenses and grant receipts therefor to your officer. You yourself shall pay, on my behalf, at the several instalments, the peshkush due to Government each year on the said khandam of Talagam, take receipts in my name, and hand them over to me. Out of the balance you shall take Rs. 2,625, the annual interest due to you from this date to the 13th Chaitra Suddha (April) of each year, and Rs. (360) three hundred and sixty a year for expenses of your establishment, in all Rs. 2,985, and pay over the surplus to me, and take receipts. The public expenses incurred for civil and summary suits which you may conduct for the recovery of money not paid by renters according to the several instalments shall be met from the balance on hand. The money again collected shall be added to the balance on hand. If the property mortgaged is not sufficient to meet the aforesaid peshkush and other expenses, the same shall be made good out of my other property. As you do not grant leases to those whom you like, but only to those who are appointed by me, I myself will be answerable for any profit or loss that may result.

“If the principal of Rs. 35,000, and the interest accrued up to date, is paid in a lump on the 13th Chaitra Suddha of the year Pramadi (April 1879), the date fixed for the repayment hereof, or in default of payment on that date, at some time between that date and the 13th Chaitra Suddha of the year Vikrama (23rd April 1880), the said mortgaged villages shall at once be put in my possession and this document returned to me. In default of payment in the said manner, I will pay the principal with interest at a higher rate, to wit, at 12 annas *per cent. per mensem* from the date of the bond. If any disputes arise with regard to any lands in the villages, &c., under mortgage, in connection with boundaries or other rights, I myself will look after them, but you shall have nothing to do with the same. This is the deed of mortgage with possession executed and given with my consent.”

The second mortgage was similar to the first in all points essential to the decision of the case. The District Judge dismissed the suit with costs.

As to the first issue, he held that Neelamani had no power to bind the interest of Radhamani without her consent, and that the mortgage did not in law bind the estate beyond the life of Neelamani, and further he thought that the parties to the mortgage did not believe that Neelamani was charging or intended to charge any interest of Radhamani.

He stated that his finding on the first issue was sufficient to dispose of the case, and that he based his judgment upon it. He however proceeded to try the second issue, and with reference to his finding upon that issue it may be as well to call attention to the fact that the Rs. 35,000 secured by the first mortgage was not merely for the payment of revenue, but also for the payment of debts contracted by Neelamani.

The District Judge held that Radhamani was not liable for those debts, and that there was no necessity therefore, so far as she was concerned, to charge her interest in the estate for the amount borrowed to pay the debts. He said "there was a real necessity, and the estate benefited to the extent of the money paid in discharge of the peshkush, but the transaction viewed as a whole was not, in my opinion, *bonâ fide*. Better terms might have been made for extinguishing the debt, and the sum advanced was excessive. The most that could be charged to the estate would be the principal sums paid for peshkush, and even then some deduction should be made on account of the profits which ought properly to have gone towards the extinction of the principal, and this I should have some difficulty in determining without taking an account of the

“ actual profits of the khandam for the six
“ years.”

The High Court upon appeal reversed the judgment and decree of the District Judge, and gave a decree against the Defendant for the amount found due upon the mortgages. As to Radhamani's consent not having been obtained, they said it would have been impossible for Neelamani to have obtained Radhamani's assent to any arrangement which she might have proposed at a time when they were in litigation, and that the moneys borrowed were for Radhamani's benefit, and that she was bound by the mortgages.

It by no means follows that if it had been necessary to borrow money to save the estate of the two widows from sale for arrears of revenue, Radhamani would have refused to consent to mortgage the joint interest of the widows for a sum sufficient to discharge those arrears, notwithstanding the widows were at enmity, and actually engaged in litigation with each other respecting the estate.

At any rate an application was not made to Radhamani for her consent, and without such an application it is impossible to hold, even if that would be sufficient, that Neelamani was under such a necessity of borrowing money without Radhamani's consent for the preservation of the estate that a mortgage by Neelamani alone would be binding upon Radhamani's interest in the event of her survival.

But there was a very good reason why Neelamani did not apply to Radhamani for her consent. The mortgages were in 1874, whereas it appears that down to the year 1877 Neelamani was contending that Radhamani as junior widow took no interest in the estate, but was merely entitled to maintenance. (*Gajapati Nilamani v. Gajapati Radhamani*, 4 L. R., I. A., p. 212.) It

was not determined until 1877 that Radhamani had a joint interest in the estate. If Neelamani had applied to Radhamani to join in the mortgages she would have impliedly admitted that Radhamani had a joint interest.

It may be assumed for the present judgment, without deciding the point, that there was a sufficient necessity for borrowing money to pay the Government revenue, or even for the payment of Neelamani's debt, but that necessity did not render a mortgage by one widow binding upon the joint estate which had descended from their deceased husband, so as to affect the interest of the surviving widow. (*Bhugwandeem Doobey v. Myna Baee*, 11 Moore I. A., pp. 515, 516). But, irrespectively of these considerations, it appears clear to their Lordships that the mortgages were not so framed as to bind the estate in the hands of Radhamani, as the surviving widow after the death of Neelamani. Many of the stipulations in the mortgages were personal to Neelamani, and they cannot be held to have been binding or intended to be binding upon Radhamani or her interest in the event of her surviving.

Their Lordships are therefore of opinion that the mortgages were not binding upon Radhamani, and that the decree of the High Court ought to be reversed, with costs in that Court, and the decree of the District Judge affirmed.

They will humbly advise Her Majesty accordingly.

The Respondent must pay the costs of this appeal.
