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**Murli Vs. Ghamar and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/447308

**Court** : Allahabad

**Decided On :** Jun-22-1928

**Reported in** : AIR1930All22

**Appellant** : Murli

**Respondent** : Ghamar and ors.

**Judgement** :

1. This second appeal arises from a suit brought by some members of a joint Hindu family for a declaration that the deed of sale in respect of their house, dated 27th. July 1927, executed by Bhagwan Das on their behalf as next friend when they were minors and by Mt. Munni in favour of the present defendant-appellant was invalid, and claiming restoration of possession to the plaintiffs. The sale consideration was Rs. 1,400, and the plaintiffs claimed that there had been no necessity for the execution of the sale deed. The defence was that the sale had been concluded in order to pay off the plaintiffs' debts, and there was also a plea that Rs. 1,000 had been spent by the defendant-appellant on the house.

2. Both the Courts below have found that legal necessity has been proved to the extent of Rs. 967 out of the sale consideration of Rs. 1,400 and they have decreed the plaintiffs' claim on condition that they repay Rs. 967 the sum which is found to have been advanced for legal necessity.

3. In the light of the recent decisions of their Lordships of the Privy Council it is clear that this finding is not in accordance with the law as at present in force. The sale is either wholly valid or invalid, according as it is found to have been made for necessity or the reverse. It is clear from the case of Sri Krishan Das v. Nathu Ram and the case of Gauri Shankar v. Jiwan Singh which had been published when the present suit was before the lower Courts that suits of this nature must be considered from a rather different point of view from the one that used to be favoured in this province. Considerations that would be of importance in order to decide whether it was necessary to sell the house in suit in order to raise a sum of Rs. 967 would be whether the parties concerned had any other property out of which they could meet the necessary expenditure, whether it would not have been possible to raise the sum by mortgage instead of selling the house outright and matters of a like nature. There is not at present material on the file to enable us to decide this question, and we there fore remit the following issue to the lower appellate Court:

Was there no way in which the sum of Rs. 967 could have been raised by the joint family except by the sale of the house in suit.

3. It may be necessary in order to reply to this question, to find out what the value of the house was in 1917, and if so, or if it is desirable for any other reason, the parties will be allowed to adduce fresh evidence.

4. The finding on this issue should be returned by 20th October and ten days thereafter will be allowed to the respondents for filing objections.

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