**Baldeo and ors. Vs. Bhagwan Misir**

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**SooperKanoon Citation** : sooperkanoon.com/448721

**Court** : Allahabad

**Decided On :** Jul-12-1923

**Reported in** : AIR1925All241; 78Ind.Cas.595

**Judge** : Daniels, J.

**Appellant** : Baldeo and ors.

**Respondent** : Bhagwan Misir

**Judgement** :

**Daniels, J.**

1. This appeal arises out of a suit in which the plaintiff sought to set aside a sale-deed executed by his father in 1917 and to recover possession of the property on the ground that the sale was not for legal necessity. The case as put in the plaint was that the consideration never passed at all and that if paid it was paid for illegal purposes. However, the substantial issue in the Courts below was that of legal necessity. The sale consideration was Rs. 119. Rs. 41-4-0 has been found to be binding on the plaintiff and the plaintiff has submitted to this part of the decree. The remaining amount of Rs. 77-12-0 was paid in cash at the time of registration and as to this the Court below finds that there was no legal necessity. Against this portion of the decree the defendants appeal.

2. Only two pleas have bean urged before me. The first is that the amount of Rs. 77-12-0 was taken for legal necessity. The arguments advanced in support of this plea are purely questions of fact. The items in question were stated in the sale-deed to have been borrowed for household expanses and for payment of petty debts. The defendants adduced evidence to show that they were borrowed for the purchase of bullocks and funeral expenses of the plaintiff's grand-father. The Court below has given good reasons for disbelieving this evidence and the finding is one of fact. It is not open to attack in this appeal.

3. The second plea is that the plaintiff can only recover property which has once been sold by showing that the sale consideration was for illegal or immoral purposes This plea is equally untenable. The circumstances in which it is necessary for the sons to show that the debt was illegal or immoral in order to recover the property were laid-down by their Lordships of the Privy Council in Girdharee Lall v. Kantoo Lall (1873-74) 1 I.A. 321. There are two such circumstances and two only. The first is, where property has passed out of the family under a conveyance executed by a father in consideration of an antecedent debt in order to raise money to pay off such debt. The second is, where property has been sold in execution of a decree for the father's debt. Neither branch of the rule has any application to this case. This was not an execution-sale but a private conveyance, and, so far as this item of Rs. 77-12-0 is concerned, it was a private conveyance executed not in lieu of an antecedent debt but for an amount paid in cash at the time of the registration of the deed. The appeal, therefore, fails and it is accordingly dismissed with costs.