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SooperKanoon Citation : sooperkanoon.com/463126

Court : Allahabad

Decided On : Apr-05-1917

Reported in : 40Ind.Cas.269

Judge : Tudball, J.

Appellant : Chattar

Respondent : Chote and ors.

Judgement :

Tudball, J.

1. This is a defendant's appeal and the facts out of which it has arisen are as follows:-On the 24th of February 1911 when the laintiff was about 14 years of age, he and his brother Murli constituted a joint Hindu family and Musammat Radha their mother was also alive and a member thereof. The property which is now in suit together with other properties was mortgaged usufrutuary to certain mortgagees. These mortgages were old and of the time of their ancestor. On the aforementioned date Murli, the elder brother and the mother Musammat Radha, executed a sale-deed of the property now in dispute for the sum of Rs. 1,000. The money was required to the' extent of Rs. 852-8 as found by the Court below for family necessity. It was partly utilised to pay off old mortgages and release other properties and partly to pay off other debts and the expenses of the present plaintiff's marriage. According to the findings of the Courts below, the defendants

have failed to prove that Rs. 147-8-0 out of the full Rs. 1,000 was for family necessity whatsoever. The defendant vendee who is the appellant before me, then started to build a well on which he claims to have spent the Sum of Rs. 600. The present suit was instituted in the year 1915 by the plaintiff to set aside the sale and to recover possession of the property on the ground that his brother and his mother had no necessity whatsoever to sell the property that it was not for family necessity or benefit that it was sold, and that the sale should be set aside. The plaintiff is but a youth still being between the ages of 18 and 19 and in his evidence he simply admitted that he and his brother Murli, one of the vendors were really fighting this case and wanted to get back the property. The Court of First Instance gave a decree to the plaintiff for possession of the property conditional on his paying Rs. 852-8-0 only to the defendant vendee. The defendant appealed and his contention was that he had established that Rs. 147-8-0 was also taken for family necessity. He further contended that before he was ejected he should be re-imbursed the expenditure which he had incurred in building the well. The Court below dismissed the appeal and upheld the decree of the Court of First Instance. The defendant comes here in second appeal and it is urged before me that as by for the greatest portion of consideration was found to be for family necessity, the Court in view of the circumstances of the case, ought not to have decreed possession of the property to the plaintiff but ought to have maintained the sale conditional on the defendant paying to the plaintiff the sum of Rs. 147-8-0 or his share thereof. In any case it is urged that the plaintiff is entitled, under Section 51 of the Transfer of Property Act to compensation for the well which he has built upon the property and which is an improvement. Reliance is placed upon a decision of the Madras High Court in the cases reported as Rukmani Sundarammal v. Muthammad 26 Ind. Cas. 489 : (1915) M.W.N. 8 and Narayana Aiyar v. Sankaranarayana Aiyar 24 Ind. Cas. 940 : 1 L.W. 369. The only difficulty in the case seems to me to be to decide what relief in the circumstances should be given to the plaintiff. Whether he should be handed over the property and if so whether the defendant is entitled to compensation for the improvement he has made or whether the sale should be allowed to stand and if so on what compensation to the plaintiff. On a consideration of all the facts of the case it seems to me that to do real justice between the parties, the sale should be

maintained in view of the fact that so much as Rs. 852-8-0 out of the Rs. 1,000 was for family necessity and to that extent the sale was binding upon the plaintiff. It is obvious from the plaintiff's own statement that the suit is merely a suit brought by him and his brother to rob the defendant although they have had the benefit of the latter's money, and I think that the justice of the case will be met by holding that the sale should stand and by decreeing to the plaintiff sum of Rs. 147-80. This will obviate the necessity of deciding the question as to whether the defendant is entitled to compensation for the well that he has built. I, therefore, allow the appeal and modify the decree of the Court below. I direct the defendant to pay into Court the sum of Rs. 147-8-0 to the credit of the plaintiff within a period of two months from to-day's date. If this be done then the plaintiff's claim for possession of the property and the avoidance of the sale-deed, shall be disallowed. If on the other hand the defendant does not pay this money into Court then the decree of the Court below for possession of the property shall stand conditional on the payment of Rs. 852-8-0 without any further compensation to the defendant on account of the well. If the plaintiff do fail to pay this sum of Rs. 852-8-0 within the period of two months after the expiry of the two months allowed to the defendant, then his suit shall stand dismissed with costs in all Courts. The parties will receive and pay costs in proportion to success and failure.