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Court : Allahabad

Decided On : Apr-26-1933

Reported in : AIR1933All568; 147Ind.Cas.517

Appellant : Markandey Singh and ors.

Respondent : Badan Singh and ors.

Judgement :

Rachhpal Singh, J.

1. This is a plaintiffs' appeal arising out of a suit instituted by them against the defendants-respondents to recover possession over the property specified in the plaint and mesne profits. The plaintiffs and their father Sheoharan Singh, who constituted a joint family, owned fractional shares in villages Turwa, Pipraul and Atauli. On 10th December 1919, Sheoharan Singh executed a sale-deed in consideration of Rs. 10,500 in favour of Rachhu Singh under which he sold the shares owned by the joint family in the aforesaid three villages. On the same date, he purchased a two-anna share in village Basgaon from one Lochan Singh for a sum of Rs. 12,000. Sheoharan Singh died in 1927. Rachhu Singh died about seven years before the date of the suit. The plaintiffs alleged in their plaint that the sale-deed which their father executed in favour of Rachhu Singh on 10th December 1919, was not binding upon them for the following reasons:

Sheoharan Singh was a man of weak intellect and understanding and Rachhu Singh, who got him to execute was entirely under the influence of the sale-deed under which property worth Rs. 25,000 was sold for Rupees 10,500. (2) That nothing was paid to Sheoharan Singh as the price of the property sold, and so the deed, was without consideration. (3) Rachhu Singh falsely represented to Sheoharan Singh that the income of the two anna share in Basgaon was more than the income of the property in suit. (4) That the sale was not executed by Sheoharan Singh of his free will (5) That the sale was not for the benefit of the joint family and no benefit was, in fact, derived therefrom, by the family.

2. The defendants denied all the allegations detailed above. Their case was that the father of the plaintiffs sold the property in suit for Rs. 10,506 and the sale was for the benefit of the joint family and was binding upon the plaintiffs. The Court below found that the father of the plaintiffs received, full consideration for the sale-deed, that the allegations of fraud, undue influence, want of consideration and alleged incapacity of Sheoharan Singh were not true. It held that the sale was made for the benefit of the joint family. It therefore dismissed the suit. The plaintiffs have preferred this appeal against the decree passed by the Court below.

3. In this Court the learned Counsel appearing for the plaintiffs-appellants, did not press the pleas of fraud, undue influence, want of consideration and the alleged incapacity of the father of the plaintiffs. It is argued on behalf of the plaintiffs-appellants that according to Hindu law, the father of the plaintiffs was incompetent to sell the property in suit even though the sale was made for the benefit of the joint family, and that the sale was not, as a matter of fact, for the benefit of the family. The argument addressed to us on behalf of the appellants thus resolves itself into two questions. The first is whether under the Hindulaw... the father of the plaintiffs, who was the head of the joint family, was competent to sell the property in suit, assuming that the sale was beneficial. to the family. The second is whether the sale was for the benefit of the joint family. The power of a manager of a joint Hindu family has been held to be identical with that of the manager for an infant heir. In the well-known case of Hunooman Persaud Pandey v. Mt. Munraj Koonweree (1954-57) 6 M.I.A. 393 their Lordships of the Privy Council defined the powers of a manager of the Hindu joint family. They observed:

The power of the manager for an infant heir to charge an estate not his own is, under the Hindu law, a limited and qualified power. It can only be exercised in a case of need, or for the benefit of the estate. But whore in the particular instance, the charge is one that a prudent owner would make, in order to benefit the estate, the bona fide lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred on it, in the particular instance, is the thing to be regarded.

4. Discussing the meaning of the words 'for the benefit of the estate,' their Lordships of the Privy Council made the following observations in a case reported in Palaniappa Chetty v. Deivasikamony Pandarasannadhi A.I.R. 1917 P.C. 33

No indication is to be found in any one of them as to what is in this connexion the pra-cise nature of the things to be included under the description 'benefit to the estate.' It is impossible, their Lordships think, to give a precise definition of it applicable to all cases, and they do not attempt to do so. The preservation, however, of the estate from extinction, the defence against hostile litigation affecting it, the protection of it or portion from injury or deterioration by inundation, these and such like things, would obviously be benefits. The difficulty is to draw the line as to what are in this connexion, to be taken as benefits and what not.

5. At one time there was a conflict of opinion in this Court as regards the meaning of the words 'for the benefit of the estate.' One view was that a transaction cannot be said to be for the benefit of the estate unless it is of a 'defensive nature' calculated to protect the estate from some threatened danger of destruction. The other was that for a transaction to be for the benefit of the estate it is sufficient if the transaction is such as a prudent owner, or trustee, would enter into. Bhagwan Dass v. Mahadeo A.I.R. 1923 All 298 Shankar v. Bechu : AIR1925 All333 and Inspector Singh v. Kharak Singh : AIR1928 All403 are cases in support of the first view mentioned above. A contrary view was however expressed in a Full Bench ruling of this Court reported in Jagat Narain v. Mathura Dass : AIR1928 All454 in which the above-mentioned three cases were considered and dissented from. The Full Bench held that a transaction to be for the benefit of the estate need not be of a defensive nature, and that the real test was whether the transaction was one

which a prudent owner would have carried out with the knowledge then available to him. In The Benares Bank, Ltd. v. Hari Narain ; their Lordships remarked:

The power of the manager of a joint family governed by the Mitakshara law to alienate immovable property belonging to the family is defined in verses 27 to 29 of Chapter 1 of the Mitakshara. The judgment of the Board in Hanooman Persacl Pendey v. Mt. Babooee Munraj Koomveree relied on by the Bank, was founded apparently on those verses. A new business, their Lordships think, is not within the purview of those verses.

6. It was considered that this pronouncement was in conflict with the Full Bench case already referred to. Accordingly the question was reconsidered. In Amraj Singh v. Shambhu Singh : AIR1932 All632 Mukerji, J., adhered to the view expressed by him in Inspector Singh v. Kharak Singh : AIR1928 All403 and held that a Hindu father could make a transfer of the joint property only in the following cases and in no other: (1) Where a calamity affecting the whole family requires it. (2) For support of the family and not the aggrandizement and not adding of wealth to the family. (3) For pious purposes.

7. Referring to the Full Bench ruling reported in Jagat Narain v. Mathura Das : AIR1928 All454 he said:

The authority of this Full Bench case had been entirely destroyed by reason of the decision of their Lordships of the Privy Council reported in Benares' Bank, Ltd. v. Sari Narain .

8. This view however was not accepted by the other two learned Judges of the Full Bench. Sulaiman, C. J., at p. 897 (of 1932 A.L.J.) expressed himself as follows:

I do not think that there is anything in the recent case of the Benares Bank Ltd, v. Hari Narain which would compel us to hold that the above mentioned Full Bench ruling of this Court has been by implication overruled.

9. King, J., said at p. 908 (of 1932 A.L.J.):

I would only add that I agree with Sulaiman C. J., that the authority of the Full Bench ruling in Jagat Narain v. Mathura Dass : AIR1928 All454 has not been shaken by the decision of their Lordships of the Privy Council in the case of Benares Bank, Ltd. v. Har Prasad In the latter case the loan was taken for starting a new business, and it was not even argued and presumably therefore it, was not even arguable upon the facts that it was a prudent transaction, or for the benefit of the estate. In the Full Bench case the loan was taken for a totally different purpose, and it was held that the transaction was prudent and beneficial.

10. I have referred to these cases in. detail as Mr. Banerji treated the question as res Integra for the purposes of this case which can be taken in appeal to the Privy Council. But it appears to me that the authority of the Full Bench ruling in Jagat Narain v. Mathura Das : AIR1928 All454 is binding on us so long as a different view is not taken by the Privy Council. This being the case, it must be held that the father in a joint Hindu family governed by the Mitakshara law, is competent to make an alienation of the joint family property if the transaction was for the benefit of the estate, and that in carrying out the transaction the father acted like a prudent man. The above view finds support from Ragho Totaram v. Zaga Ekoba A.I.R. 1929 Bom 251 in which Patkar, J., remarked that the explanation of the text of Brihaspati by Mitakshara (in Vol. 29) is by no means to be con-sidered as exhaustive and may be treated as illustrative and interpreted with due regard to the conditions of modern life. In Nagindass v. Mohammad A.I.R 1922 Bom 122 it was observed:

In considering the expression used by Vijnaneshvara in the Mitakshara to explain the verse which he has quoted with approval on this point, regard must be had to the word 'kutumbarthe' used in the verse. The expression used must be interepreted with due regard to the conditions o modern life.

11. It is a common feature of joint Hindu families carrying on business that properties are brought and sold in the ordinary course. If the Hindu father's power of alienation were to be limited to' transactions of a defensive nature, in many cases it would be impossible for joint-family firms to carry on their business. In Amraj Singh v. Shambhu Singh : AIR1932 All632 Sulaiman, C.J., made the

following remarks while considering the powers of a father in a joint Hindu family:

It is to be remembered that the manager of a joint Hindu family, particularly a father, is not merely like an agent of other members of the family, but is a coparcener and has full power to manage the family property in the most beneficial manner as a prudent owner would do. Ho represents the family to the outside world, and authority for his action is not always to be derived from the consent of the other members of the family, some of whom may be minors, and therefore incapable of giving a valid consent.

12. Once it is conceded that the father in a Hindu family has full power to manage the family property in the most beneficial manners as a prudent owner. It is difficult to understand, on general principles, why an alienation made by him and found to be beneficial to the family should not be upheld. Of course, he has no power to enter into transactions of a speculative nature, but where a transaction is warranted by the circumstances of the family it ought to be upheld though it may not be of a 'defensive nature.' For the reasons given above, and following the Full Bench ruling reported in Jagat Narain v. Mathura Das : AIR1928 All454 I hold that it is within the competence of a Hindu father to alienate the joint family estate where the transaction is for the benefit of the estate and is such as a prudent owner would have made with the knowledge that was available to him at the time.

13. The only other question which requires consideration is whether the alienation made by the father of the plaintiffs in the case before us was for the benefit of the estate. It is not denied that the shares which the family owned in the three villages were sold at an adequate and reasonable price. On the date of the sale, the father of the plaintiffs purchased a 2 anna share in Basgaon village for Rupees 12,000. The major portion of the money realised by the sale of the shares in the three villages was invested by the father of the plaintiffs in the purchase of the Basgaon share. The learned Subordinate Judge, who heard the evidence, came to the conclusion that the sale was for the benefit of the joint family. After hearing the learned Counsel for the parties, I do not see any reason for taking a different view. The evidence of Sheodas Patwari is important. According to his evidence the net profits of the shares sold in the three villages were Rs. 450 yearly. The net profits

of the 2 annas share purchased by the plaintiffs' father were Rupees 545 per annum. He goes on to say:

Sheoharan Singh had sold the zamindari of Mauza Turwa, Pipraul and Atauli to purchase the zamindari in Mauza Basgaon. Sheoharan purchased the Basgaon property of his own accord and as it belonged to his family. Babu Sheoharan Singh had also asked me to secure some purchaser of Turwa, Pipraul zamindari, as he wanted to go in for Basgaon zamindari. The zamindari of Pipraul and Atauli is bad as there are nalas, kharohs and pattis. The zamindari of Turwa is just the same as that of Basgaon. There are 20 or 21 pattisiin Pipraul and Turwa. The very cosharers of one patti are tenants in the other patti. Rents are not easily realized from tenants. Sheopal Singh and Sheoharan Singh were not on good terms, Sheopal Singh used to appropriate the rents and produce belonging to Sheoharan.... There were numerous pattis, small tenants and a good deal of difficulties in the collection of rent and hence Sheoharan sold away the zamindari in the Turwa, Pipraul and Atauli and purchased that of Basgaon.

14. We also have the evidence of Biswa Nath who is the patwari of Pipraul. He deposes that the land in Pipraul is mostly 'kharab' (bad) and parti. There is no land of 1st quality. Most of the land is of 4th quality. Jeonath Lal is the patwari of Basgaon from whose evidence it appears that there is an area of about 67 bighas parti land in Basgaon which could be brought under cultivation. The cosharers make collections separately. From a perusal of the statements of these witnesses it is evident that the sale by the plaintiffs' father was for the benefit of the joint family. The three shares sold were scattered in three different villages in which there were several pattis and most of the land was cultivated by co-sharers themselves one cosharer being a tenant of the other. The land in Pipraul was of fourth quality. It is of great advantage to possess share in one village instead of owning small shares in small villages. The lands in Pipraul and Atauli are of inferior quality and were not irrigated. The area of irrigated land of Basgaon is much larger according to the evidence in the case. The land in the shares sold which was shown as sir was, as a matter of fact, under the cultivation of other co-sharers who had obtained declarations that they were occupancy tenants. All these facts go to show that Sheoharan Singh made a profitable bargain in

purchasing Basgaon share which the owner was compelled to sell owing to incumbrances. In deciding the question whether or not the transaction was for the benefit of the estate, what the Court has to see is whether a prudent owner would make it with the knowledge available to him at the time. Judging the sale made by the plaintiffs' father by this test, it appears to me that the sale was made by him for the benefit of the joint family which was enabled chiefly to acquire a compact share in one village instead of owing small shares in three different villages in two of which the land was of inferior quality.

15. For the reasons given above, I am of opinion that the transaction was for the benefit of the estate. I would therefore dismiss the appeal, with costs. of the respondents.

Niamatullah, J.

16. I concur and have; nothing to add.

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