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Court : Supreme Court of India

Decided On : Apr-10-1962

Reported in : AIR1967SC574; [1963]1SCR648

Judge : A.K. Sarkar,; J.R. Mudholkar and; K. Subba Rao, JJ.

Acts : C.P. Tenancy Act, 1920 - Sections 49(1)

Appellant : Radhakrishnadas

Respondent : Kaluram

Judgement :

Mudholkar, J.

1. This is an appeal by certificate from the decree of the High Court of Nagpur dismissing the appellants' suit for setting aside sale of two villages mauza Amaldihi and mauza Gondkhami situate in Mungali, tehsil, district Bilaspur.

2. It is common ground that the two villages, along with several others, were the joint family property of the appellants and their father the third defendant, Gorelal. On April 8, 1944, Gorelal, acting for himself and as guardian of his minor son Balramdas, appellant No. 2 and Radhakrishnadas, appellant No. 1 describing himself as a major executed a sale deed in favour of two persons, Pandit Ramlal, son of Motiram, defendant No. 2 and Kaluram the first defendant for a

consideration of Rs. 50,000/-. It was stated in the sale deed that the executants were transferring full 16 annas interest in the village Amaldihi and Gondkhami 'together with sir and khudkast lands, grass, kothar padia gochar rivers, brooks, wells, tanks, bandkies, orchards and gardens and houses and the like, as well as the cultivated and the uncultivated lands in the village with all the rights and privileges.' The entire sixteen annas share in mauza Gondkhami and twelve annas share in mauza Amaldihi was sold to Kaluram for Rs. 37,500/- and the remaining four annas share of Amaldihi to Pandit Ramlal for Rs. 12,500/-. Out of the consideration of Rs. 50,000/- a sum of Rs. 30,491/8/- was kept with Kaluram for satisfying a mortgage decree obtained against the family by one Gayaram in respect of these two villages as well as two other villages. Similarly a further amount of Rs. 2,000/- was allowed to be retained by Kaluram for paying the land revenue due in respect of these villages. The balance of the amount was received in cash. It was further stated in the sale deed that this amount was required for performing the marriages of the appellant No. 1 Radhakrishnadas and Gorelal's daughter Ramjibai, who were both stated to be majors. The possession of the property sold was handed over to the defendant 1 and 2 who are respondents 1 and 2 to the appeal.

3. On May 5, 1945, the two appellants instituted a suit out of which this appeal arises. It was contended in the suit that since the income of the family was Rs. 7000/- per year, considerable savings could be made out of it after defraying the expenses of the family. There was, therefore, no necessity for executing the sale deed. It was further stated that the consideration for the sale was extremely low, bearing in mind the value of the two villages. It was further stated that the appellant No. 1 who was one of the executants of the sale deed was in fact a minor on the date of its execution and, therefore, the document is void in so far as his interest in the property sold is concerned. It was then stated that the sale deed did not purport to transfer the cultivating rights in the sir lands in the two villages and, therefore, in any case only the proprietary interest in the sir land could pass to the respondents 1 and 2 under the sale.

4. The trial court negatived the appellants' contention about the want of legal necessity for the sale and found as a fact that Rs. 10,000 were required for the

marriages of the appellant No. 1 and his sister Ramjibai, Rs. 7,508-8-0 for paying various creditors, Rs. 1,655-2-0 for the payment of land revenue and the balance to satisfy the mortgage decree of Gayaram Sao. It, however, found that the appellant No. 1 was a minor at the date of the execution of the sale deed and that its execution by him was void and ineffective. But it held that he is bound by the sale deed as his father Gorelal, who is respondent No. 3 to the appeal, is to be deemed to have executed the sale deed as Manager of the family. It, however, upon a construction of the sale deed, came to the conclusion that cultivating rights in sir were not transferred thereunder and, therefore, passed a decree in favour of the appellants for possession of the sir lands in the suit as these lands had become their ex-proprietary occupancy lands by virtue of section 49(1) of the C. P. Tenancy Act, 1920 (C.P.I of 1920). The appellants preferred an appeal before the High Court against that part of the decree which dismissed their claim for the possession of their share in the villages. The respondents 1 and 2 preferred a cross-appeal. These appeals were heard together and while the appellants' appeal was dismissed, that of the respondents was allowed.

5. Before us Mr. S. P. Sinha accepts the position that Rs. 45,000/- out of the consideration of Rs. 50,000/- was in fact for debts binding on the family, but contends that even so it cannot be said that there was legal necessity for the sale. His arguments is that a sum of Rs. 5,000 or so for which, according to him, legal necessity had not been established was not a negligible part of the consideration of Rs. 50,000/-. This argument is based upon a misapprehension of the true legal position. It is well established by the decisions of the Courts in India and the Privy Council that what the alliance is required to establish is legal necessity for the transaction and that it is not necessary for him to show that every bit of the consideration which he advanced was actually applied for meeting family necessity. In this connection we may refer to two decisions of the Privy Council. One is Sri Krishan Das v. Nathu Ram I.L.R. 49 All. 149. In that case the consideration for the alienation was Rs. 35,000/-. The alience was able to prove that there was legal necessity only to the extent of Rs. 3,000/- and not for the balance. The High Court held that the alienation could be set aside upon the plaintiff's paying Rs. 3,000/- to the alience. But the Privy Council reversed the decision of the High Court observing that the High Court had completely

misapprehended the principle of law applicable to a case of this kind. What the alience has to establish is the necessity for the transaction. If he establishes that then he cannot be expected to establish how the consideration furnished by him was applied by the alience. The reason for this, as has been stated by the Privy Council in some other cases, is that the alience can rarely have the means of controlling and directing the actual application of the money paid or advanced by him unless he enters into the management himself. This decision was followed by the Privy Council in Niamat Rai v. Din Dayal I.L.R. 8 Lah 597 where at p. 602 and 603 it has observed :

'It appears from the judgment of the learned Judges of the High Court that if they had been satisfied that the whole of the Rs. 38,400/- paid out of the sale proceeds was paid in discharge of debts incurred before the negotiation of sale, they would have been of opinion that the sale ought to have been upheld. With this conclusion their Lordships agree, but they are of opinion that undue importance was attached by the learned Judges to the question whether some of the payments where made in discharge of debts incurred in the interval between the negotiation of the sale and the execution of the sale deed. Even if there had been no joint family business, proof that the property had been sold for Rs. 43,500/- to satisfy pre-existing debts to the amount of Rs. 38,000 would have been enough to support the sale without, showing how the balance had been applied, as held by their Lordships in the recent case of Krishan Das v. Nathu Ram. I.L.R. 49. All. 149'

6. Both these decisions state the correct legal position, Mr. Sinha's argument must, therefore, be rejected.

7. His next argument is that the appellant No. 1 Radhakrishnadas having been found to be a minor on the date of the transaction, that transaction cannot bind his interests. If the appellants' father, Gorelal, who was admittedly the manager of the family, had not joined in the sale deed, the appellant No. 1 could have contended with profit that the transaction does not bind him. As it is, his joining as an executant in the sale deed does not make any difference. The fact that that sale deed had been executed also by his father who was the manager of the family makes the transaction binding upon him just as it is admittedly binding upon his

brother, the second appellant, who was then a minor. Mr. Sinha, however, contended that the fact that the appellant No. 1 was required by the alience, respondents 1 and 2 to join in the transaction clearly shows that Gorelal in executing the sale deed did not and could not act for him. We cannot accept the arguments. For ascertaining whether in a particular transaction the manager purports to act on behalf of the family or in his individual capacity one has to see the nature of the transaction and the purpose for which the transaction has been entered into. A manager does not cease to be a manager merely because in the transaction entered into by him a junior member of the family, who was a major, or believed to be a major, also joined. It is not unusual for alienees to require major members of the family to join in transactions entered into by managers for ensuring that later on no objections to the transaction are raised by such persons. Further, such circumstance is relevant for being considered by the court while determining the existence of legal necessity for such a transaction. But that is all. Here we find that Gorelal acted not merely for himself but also expressly for his minor son appellant No. 2. The money was required partly for paying antecedent debts, partly for paying public demands, partly for paying other creditors and partly for performing the marriages of appellant No. 1 and the latter's sister Ramjibai. It is thus clear that Rs. 45,000/- out of the consideration of Rs. 50,000/- were required for the purposes of the family. Even where such a transaction has been entered into solely by a manager it would be deemed to be on behalf of the family and binding on it. The position is not worsened by the fact that a junior member joins in the transaction and certainly not so when the joining in by such junior member proves abortive by reason of the fact that member has no capacity to enter into the transaction because of his minority. In this connection we may make a mention of three decisions Gharib-Ullah v. Khalak Singh I.L.R. 25 All. 407; Kanti Chunder Goswami v. Bisheswar Goswami 25 Cal. 585; Bijrai Nopani v. Pura Sundary Dasee 42 Cal. 56 each of which preceeds upon the principle that if one of the executants to a sale deed or mortgage deed has the capacity to bind the whole estate, the transaction will bind the interest of all persons who have interest in that estate.

8. We have, therefore, no doubt that the second contention of Mr. Sinha is equally devoid of substance.

9. Lastly, Mr. Sinha contended that the High Court was in error in reversing the decree of the trial court in so far as the sir land is concerned. He has laid particular stress on the fact that the sale deed at no place says in express terms that cultivating rights in sir lands have also been transferred and said that the absence of such a recital in the sale deed clearly entitles the alienors to retain possession of the sir land, under the exception set out in clause (a) of section 49(1) of the C.P. Tenancy Act. The relevant portion of section 49(1) of the Act runs thus :

'A proprietor who... loses... under.... a transfer... his right to occupy his sir land.... as a proprietor, shall, at the date of such loss, become an occupancy tenant of such sir land except in the following cases,

(a) when a transfer of sir land is made by him expressly agreeing to transfer his right to cultivate such sir land,....'

10. What this provision no doubt requires is an express agreement between the transferor and the transferee concerning the transfer of the cultivating rights in sir land. We have already quoted the precise language used in the document describing the interest which has been transferred under the sale deed. The recital shows that the executant of the sale deed not only transferred sir and Khudkast lands, cultivated and uncultivated lands, but transferred these properties along with 'all rights and privileges'. If the intention was not to transfer the cultivating rights in sir lands the concluding words were not necessary. Each interest which has been specified in the recital is governed by the concluding words 'all the rights and privileges' contained in that recital. In the absence of these words what would have passed under the sale deed, in so far as the sir land is concerned, would have been only the proprietary interest in that land. The question is, what is the effect of the addition of those words According to Mr. Sinha they only emphasise the fact that the entire proprietary in the sir land is transferred. If we accept the interpretation then those words would be rendered otiose. That would not be the right way of interpreting a formal document. To look at it in another way, where a person transfers sir lands together with 'all rights and privileges' therein he transfers everything that he has in that land which must necessarily include the cultivating right. It would follow from this that where there is a transfer of this kind

no kind of interest in sir land is left in that person thereafter. Mr. Sinha further said that when the statute requires that cultivating rights in sir land must be expressly transferred it makes it obligatory on the parties to say clearly in the documents that cultivating rights in the sir land have also been transferred. We see no reason for placing such an interpretation on the provisions of clause (a) of section 49(1) of the C.P. Tenancy Act. When it says that the transfer of cultivating rights in sir land has to be made expressly all that it means is that a transfer by implication will not be enough. Finally Mr. Sinha's point is that the words 'all the rights and privileges' in the recital do not govern the interests specified in the clause just preceding these words but they govern following words 'sixteen anna in mauza Gondkhami and twelve anna in mauza Amaldihi to Seth Kaluram etc....' Apart from such a construction rendering the expression meaningless it would be ungrammatical to read the expression as applying to 'sixteen anna in mauza Gondkhami and twelve anna in mauza Amaldihi etc.'

11. Therefore, there is no substance in the appeal and accordingly we dismiss it with costs.

12. Appeal dismissed.

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