

Nanak Ram Vs. Lalitkumar and ors.

Nanak Ram Vs. Lalitkumar and ors.

SooperKanoon Citation : sooperkanoon.com/757376

Court : Rajasthan

Decided On : Jan-25-1972

Reported in : 1972WLN133

Judge : Kan Singh, J.

Appeal No. : S.B. Civil Second Appeal No. 322 of 1965

Appellant : Nanak Ram

Respondent : Lalitkumar and ors.

Disposition : Appeal allowed

Judgement :

Kan Singh, J.

1. This is a defendant's second appeal and raises a question about the validity of a mortgage of undivided share in a joint Hindu family property situated at Abu Road which had at one time formed part of the former State of Sirohi.

2. On 5-5-1948, Ghisalal and Rameshwarlal who were brothers, mortgaged their joint family house in favour of one Nathulal for an amount of Rs. 4000/- undertaking to pay interest at 9% per annum. Nanakram, defendant-appellant was the son of Matadin, a brother of Ghisalal and Rameshwarlal He was minor at the time the house in question was mortgaged. His name did not appear in the mortgage deed. On 10-1-50 Nathulal, the mortgagee and his son Lalit Kumar filed a suit for realisation of Rs. 4000/- principal and Rs. 604/- interest plus some notice expenditure, total Rs. 4604/14/- by sale of the mortgaged house. The suit was filed against Ghisalal, Rameshwarlal & Nanakram. Rameshwarlal died during the pendency of the suit and was subsequently represented by his widow and daughter as his legal representatives. Plaintiff Nathulal also died during the pendency of the suit and was thereafter represented by Lalit Kumar. The proceedings remained ex parte against Nanakram as he remained absent inspite of service of summons.

3. The suit was resisted by the defendant Ghisalal. He pleaded that as the mortgage deed provided for three months notice before a suit could be filed and no such notice had been given, the suit was not maintainable. Apart from this, a plea was raised that there was no legal necessity or purpose of the family and, therefore, the joint family property could not have been mortgaged by the defendants Ghisalal and Rameshwarlal.

4. The trial court, however, decreed the suit against all the defendants.

5. Ghisalal and Rameshwarlal did not file appeal, but Nanakram went up in appeal to the court of District Judge, Pali. It was contended by Nanak Ram before him that there was no evidence for showing that there was any legal necessity for the mortgage of the joint family property or that there was any family purpose for the alienation or that any antecedent debt was to be paid It was urged that as the whole house had been

transferred only by two of the coparceners, the alienation was void altogether. The learned District Judge came to the conclusion that the plaintiffs had not been able to prove any legal necessity or existence of any family purpose or any antecedent debt for that matter and consequently the position felt to be examined on the footing that it was an alienation of a joint family property by only two of the coparceners without the consent of the third coparcener. The learned District Judge in the light of the several cases placed before him, realised that according to Mitaksara the alienation of the family property in such circumstances would be void. Nevertheless he held that as on the date of the mortgage, that is, on 5-5-1948, Abu Road where the property is situate formed part of the Bombay presidency, as it then was, the position would be governed by the Bombay School of Hindu Law and not by the Mitaksara with the result that the mortgage would be valid qua the shares of Ghisalal and Rameshwarlal in the house. I may read of this point the relevant portions of the judgment of the learned District Judge;

The result of the above discussion is that there was joint family of Ghisalal, Rameshwarlal and Nanakram on the date of the deed of mortgage was written and the learned trial court was correct in coming to this conclusion.

Then further the learned District Judge observed:

The learned Munsiff Magistrate also appears to have come to the conclusion in his judgment that the loan was not taken for family purposes or for any legal necessity of the family and was only obtained for personal purposes of Ghisalal and Rameshwar. Therefore, there can be no doubt in the least that the securing loan & mortgaging of the house was not for family necessity.

The learned Judge referred to a number of cases, such as, and a few other cases and then eventually observed as follows:

In view of this result and the law laid down above it has to be clearly held that Nanakram who was a minor at that time of mortgage is not bound by it nor his interest in the house mortgaged or in other family property is liable for realisation of the mortgage debt, and that it is only Ghisalal and Rameshwar or his legal representatives who are bound to pay the mortgage loan and their shares in the house are liable to be sold for their recovery as they had taken the loan.

Then, having observed thus, he further proceeded to say:

It be also mentioned here that Shri Ghisalal and Rameswar were the residents of the Bombay State when the loan was taken and houses were mortgaged and according to the Bombay School of Hindu Law it was permissible for them to alienate or mortgage property of their coparcener Shri Nanakram. I am supported in this conclusion by the authority of the Mysore High Court reported in AIR 1961 Mys. 191. Therefore so far as the right of Ghisalal and Rameshwar Lal to mortgage their shares in the joint family house is concerned, the same cannot be challenged and as it had been observed that Nanakram was not bound by the mortgage it would be only held in law that the mortgage in question is only to the extent of their shares in the house which is a joint family property at the time of mortgage.

6. Learned Counsel for the appellant contends that the conclusion reached by the learned District Judge was erroneous. He maintains that according to Mitaksara which is the School of Hindu Law held to be prevalent in Rajasthan an undivided share of coparcener cannot be alienated by the manager or other coparceners if there is no legal necessity or a family purpose or an antecedent debt warranting such an alienation, unless all the coparceners concerned agree to such an alienation. Learned Counsel submits, that the mere fact that Abu Road at one time formed part of the erstwhile Bombay Presidency or Bombay State for a short period would not mean that the Bombay School of Hindu Law governed such an alienation regarding the undivided share of a coparcener in the Joint Hindu Family property in supersession of the prevailing School of Hindu Law, that is Mitaksara. Learned Counsel placed reliance on a recent decision of this Court reported as Nasirabad Urban Cooperative Bank Ltd. v. Gyanchand Jain and Ors. 1970 WLN 248. It was held in this case that a coparcenary

property can be alienated: (1) by the whole body of the coparceners where they are all adults, (2) by its manager for legal necessity or for the benefit of the estate; (3) by the father for the payment of his own debt provided the debt was an antecedent debt and was not incurred for immoral or illegal purposes and; (4) by the sole surviving coparcener. It was further observed that it is settled that a mortgage of a joint family property between the coparceners without legal necessity or for the benefit of the estate was void in its entirety and could not be held valid even to the extent of the coparcener's interest who makes the alienation. The learned Judge speaking for the Court referred to a number of cases including AIR 1917 P.C. 41, in laying down this proposition.

7. It is true, Abu Road at one time did form part of the Bombay Presidency or Bombay State, as it then was Sirohi was an Indian State comprised in Rajputana agency. When the process of integration of Indian States with the newly formed Dominion of India started after the attainment of independence by India and the lapse of British paramountcy, the State of Sirohi was merged within the Dominion of India and a merger agreement was executed by the Ruler of Sirohi for that purpose. The administration of the erstwhile Sirohi State was, however, handed over to the provincial Government of Bombay. When the Constitution of India became operative from 26-1-1950, the territory of the Sirohi State was partitioned. Abu area including Abu Road was integrated with the State of Bombay & the remaining portion of the territory of the former State was integrated with what was then Part B State of Rajasthan. Again when the States were reorganised with effect from 1-11-1956 and Rajasthan became a Part A State, the Abu area which had hitherto formed part of the Bombay State was re-integrated with the reorganised Part A State of Rajasthan.

8. The question is whether the Bombay School of Hindu Law applied to the parties living at Abu Road merely on account of Abu Road remaining with the Bombay State hardly for a period of six or seven years. The answer is obviously 'No'. When one territory is transferred from one political unit to another, it does not follow that the personal law of the residents namely, the Hindu Law in the present case, would cease to apply to them in the manner it did. The broader question whether the Bombay School even before the political and constitutional changes was applicable in the erstwhile Sirohi State or not, has not been investigated for want of there being clear assertions on either side. When the several schools of Hindu Law had grown up in the course of centuries first by the commentaries of learned authors like the Gyaneshwar who formulated the principles enshrined in the Mitaksara and the subsequent commentators or Nibandhkars, the political divisions as they exist or existed in the 20th Century, were not because these learned commentators or Nibandhkars had lived centuries back. It is difficult to accept the position that the Schools of thought propounded by them would be strictly confined according to the boundaries of a particular unit or State for the time being, In dividing the Schools or sub-schools of Hindu Law only broad areas of the country could have been indicated. In Mulla's Hindu Law 13th Edition at page 45, where the sub divisions of Mitaksara have been indicated, regarding Maharashtra or Bombay School, it has been said that it is current in Western India. Likewise regarding Dravida or Madras School it has been said that it is current in Southern India. These could, in the very nature of things, be broad territorial areas and they need not go only according to the boundaries of the Bombay State or Bombay Presidency as they existed at different times. Former Sirohi State was situated on the border of Rajputana quite near the borders of Gujarat and Abu Road is situated quite near the Gujarat-Rajasthan Border. In the absence of clear evidence it may be difficult to determine whether a particular party would be governed by Mitaksara as such or by the so-called Mayukha or Bombay School but one can go by the principle that Mitaksara is all pervasive throughout India, except in the case of Bengal, subject to its modifications by local Schools that had developed as a result of the subsequent commentaries or Nibandhs which established the local superiority of such subsequent commentaries or Nibandhs in a particular area in preference to Mitaksara. Therefore, there will be a presumption at any rate regarding a place not obviously falling within the State of Gujarat or Maharashtra that it is governed by Mitaksara as such, unless the contrary is established. In the present case, there was no plea in the courts below that the parties were not governed by Mitaksara but by the Bombay or Mayukha School of Hindu Law which permitted alienation of even undivided shares in the coparcenary property by a coparcener. Apart from this the parties were Agarwals. The history of the Agarwals is that they originated from a place in Hariyana and they mostly

live in South East Punjab, Western U.P. and Northern Rajasthan. They had migrated to other provinces later in the course of a few centuries. This is what is said in the Hindi Vishwakosh about the Agarwals:

^vxzoky og oS'; o.kZ ds vUrZxr ,d og`r~ leqnk; ;k tkfr fo'ks'k dh laKk gS A yksd es bl 'kCn dk mPpkj.k vxzoky Hkh fd;k tkrk gS A vxzoky tkfr dk ?kuk lafuos'k nf{k.k iwohZ iatkc] mRrjh jktLFkku vkSj if'peh mRrjizns'k ds HkkSxksfyd {ks=ks es ik;k tkr gsS A O;kikj okf.kT; ;k vU; dkj.kks ls ns'k ds nwljs Hkkxks es Hkh bl tkfr dk izpkj gqvk gS] fdUrq izpkj ds bfrgkl xr lw=ks ds ihNs dh vksj VVksyus ls bl ckr ds Li'V ladsr feyrs gsS Afd iatkc jktLFkku vkSj if'Peh mRrjizns'k ls gh bl tkfr ds fo'k'v ifjokj fiNys ,d lkgLoo.kkasZ es vU;= QsSyrs x;s gS A

vxzokysk dh tkrh; mfUur Hkh mij RkF; dh vksj ladsr djrh gS A budk pkj.k fookg ds volj ij tks 'kk[kksPpkj djrs gS ,oa muds ikl tks tkrh; ijEijk ds mufrrx rF; lqjif{kr gS muls fofnr gskr k gS fd vxzoky tkfr ds ewy iq:'k jktk vxzlsu Fks A mu vxzlsu ds 18 iq= Fks A muls 18 xks=ks dk vkjEHk gqvk A vxzlsu dh jkt/kkuh vxjkskg uxjh Fkh A bl vuqefr ds ewy es ,srgkfld rF; okaf'kd :i ls gh [kkstk tk ldk gS vkSj iqjkrRo ds vokZphu mRruu ls bl bfrgkl dks leZFku izkIr gqvk gS Abl bfrgkl dk fufoZokn oa'kkxzg gS fd vxzoky tkfr dk ewy LFkku vxzksnd uxj es Fkk A ftls bl le; vxjkskg dgk tkrk gS Anf{k.k iwohZ iatkc ds fglkj ftys es Qrsgkckn ls fljlk 'kSjh'kd dks tkus okyh IM+d vxjkskg dh cLrh gS Aftlds ikl gh nwj rd iqjkus Vhys Qsys iM+s gS AHkkjrh; iqjkrRo foHkkx us [kkast dh x;h FkhA mles dqN iqjkus rkacs ds fIDds feys Fks A mu ij ;g ys[k ik x;k gS A^^vxksnds vxkp tuin^^ vFkkZr vxksnds ds LFkku es vxkp tuin dh eqnzks; A vxksnd Li'V gh laLd`r vxzksnd dk izkd`r :i gS AtSls iatkc ds nwljs LFkku i`Fknd dk yksd izpfyr :i Hkh gksvk gks x;k oSls gh vxzksnd vc vxjkskg dgykrk gsSSA vxzksnd jkt/kkuh Fkh vkSj mlds pkjks vksj ,d tuin jkT; Fkk A fIDds ij bl tuin dk uke cxkp fd;k gqvk gS Ablk laLd`r :i vxzR; ;k vxz gksuk pkfg, A vxztuin vkSj vxzksnd es tks tu fuokl Fkk mldk jktuSfrd laxBu tuin ds ;qx es iuius okys vU; tuinks ds leku gh jgk gksxk A

vxzoky tkfr ds ewy iq:'k vxzlsu ds lECu/k es fu'fpr ,srgkfld rF; miyC/k ugh gS A;g tuin ;x ;k lkaer izFkk Fkh fd IkzR;sd tkfr vius uke ds vuq:i ewy iq:'k dh dYiuk dj gksrh Fkh A bu tkfr;ks ds jktuSfrd laxBu dks Js.kh dgrs Fks AJs.kh;ka ewyr% 'kL=ksithoh tkfr;k FkhA vxztuin dh Js.kh Hkh blh izdkj jktuSfrd lsfo/kku dks ekuus okyh Fkh A Js.kh ds laxBu dh xgjkBZ dqy Fkk A izR;sd dqy es mldk o`) iq:'k ew.kkZfHkf'kr gksrk Fkk A vxzlsuh ds ijeks'B dqy iq:'k vxzlsu ds :i es izfl) gq, A 'kklu dh n`fV ls ;g Js.kh vius tuin es mlh izdkj lax vkn'kZ ls iszfjr Fkh tSls ikf.kfudkyhu vU; laaa/k jkT; Fks A vxz tuin ds voy{k.k vkSj eqnzks mlds futh izHkqRo ds |ksrd FkhA vuqHkwfr jktk vxzlsu dks {kf=; ekurh gS A bldh laxfr ;g gS fd ewyr% ;g Js.kh 'kL=ksithoh FkhA dkydze ls fdruh gh Js.kh;ka ;k tkfr;ka d`f'k] okf.kT; vkfn =`fr;ks es yx xbZ A bl dkj.k mUgs ckrf'kL=ksithoh la?k ;k Js.kh dgk tkus yxk Fkk A vFkZ'kkL= us bl izdkj ds la?kks dk mYys[k vk;k gS A;g vueku laxr tku iM+rk gS fd vxzoky tkfr us vius fodkl ds vkjEHk es gh okrkZ vFkkZr d`f'k Ik'kqiky vkSj okf.kT; dks iz/kku :Ik ls viuk fy;k Fkk A Hkkjrh; bfrgkl es vxzoky tkfr dk mYys[k yxHkx 13 oh 'krkCnh ls feyus yxrk gS A bues mls vxzksrdkU;; vFkkZr~ vxzksrdca'kh dgk x;k gS Avxzksrd uke Hkh izkphu vxzksnd dk ewpd gSA vxzksnd ls ckgj Qsykrs gq, tks vxzoky jktLFkku dh vksj x;s Fks A ekjokM+h dgyk;s vkSj e/; ns'k es vkds ;s oS'; ;k ns'kh dgyk;s A

9. Agroha was the original home of Agarwals and they mostly lived in South East Punjab Northern Rajasthan and Western U.P. For trade and commerce they, however, migrated to other parts of India. I am, therefore, unable to hold on the material available on record that the parties were governed by the Bombay School of Hindu Law. As I have already observed, the mere fact that Abu Road where the parties resided had remained with the Bombay State for six or seven years would not make any difference regarding the personal law of the parties and, by and large, Rajasthan is governed by Mitaksara School of Hindu Law as such. I am, therefore, unable to uphold the conclusion reached by the learned District Judge that it was up to Ghisalal and Rameshwarlal to have transferred their undivided share in the joint Hindu family property when there was no legal necessity or any purpose of the family for doing so, nor was there any antecedent debt to be paid off.

10. In the circumstances the decree that has been obtained by the respondent Lalit Kumar regarding the sale of the mortgaged property cannot be sustained The decree would, however, remain effective as a simple money decree against Ghisalal and the legal representatives of Rameshwarlal.

11. The result is that I allow this appeal and modify the judgment and decree of the court Below in the above terms with the further addition that the appellant Nanakram shall in no manner be liable for the payment of

the amount of the decree. The parties are left to bear their own costs of this appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com