

Hetram and anr. Vs. Bhader Ram and anr.

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Court : Rajasthan

Decided On : Dec-03-1973

Reported in : 1973(6)WLN981

Judge : S.N. Modi, J.

Appeal No. : S.B. Civil Regular First Appeal No. 103 of 1971

Appellant : Hetram and anr.

Respondent : Bhader Ram and anr.

Disposition : Appeal dismissed

Judgement :

S.N. Modi, J.

1. This appeal by the plaintiff Hetram and his minor brother Sahabram is directed against the judgment and decree of the Additional District Judge, Ganganagar, dated 31-5-71 dismissing the suit for declaration, possession and mesne profits.

2. The disputes to agricultural land measuring 16 bighas 2 biswas which is a part of khasra no. 167 measuring 32 bighas 6 biswas in villag Dilmana, tehsil Suratgath, distt. Ganganagar. By a deed of sale dt. 9-9-59 which was registered on 10-9-59, Gangaram alias Nandram, the father of the plaintiffs, sold the disputed land measuring 16 bighas 2 biswas to the defendant-respondent Bhaderam for Rs.

10304/-. On 25-10-68 the plaintiffs brought the present suit alleging that the entire khasra No. 167 belonged to their grand-father Arjunram and on the death of Arjunram it devolved upon their father Gangaram. They further alleged that the sale-deed dated 9-9-59 executed by their father was entirely without consideration and no amount whatsoever was paid for the land. It was further alleged that the land being undivided ancestral property, their father Gangaram had no power to sell it. They also pleaded that their father had no debts to repay and consequently, the sale was without any legal necessity or for the benefit of the estate. It was also mentioned in the plaint that both the plaintiffs Hetram and Sahabram were minors at the date of the sale transaction. On these allegations, the plaintiffs prayed that the sale-deed in question be cancelled and a decree for possession of the suit land as also for mesne profits at the rate of Rs. 1000/- per annum from the date of the suit to the date of delivery of possession be granted in their favour. Gangaram, the father of the plaintiffs who was impleaded as defendant no 2 in the suit allowed the suit to proceed ex parte against him. Defendant no 1 Bhaderram alone contested the suit and denied all material allegations made in the plaint. He denied that the suit land was the ancestral property in the hands of Gangaram. According to him, it was self-acquired property of Gangaram and he had full authority to sell it. He further denied that the plaintiff Hetram was a minor on the date of the sale-transaction. He asserted that Hetram was major on 9-9-59. He contended that the suit land was sold by Gangaram for consideration and the entire sale-price amounting to Rs. 10304/- was paid to Gangaram. He further contended that Gangaram sold the land as he was in urgent need of money and, he on the next day, that is, 10-9-59, he purchased from Ratiram for Rs.6000/- land measuring 23 bighas 16 biswas (correct figure is 28 bighas 13 biswas), that is, in excess of the land sold by him. He pleaded that from the sale-transaction the family of Gangaram reaped double benefit. Firstly, there was enlargement of the family estate inasmuch as the land almost double in size was purchased out of the sale-price and secondly, there was a clear saving of Rs. 4304/- to the family. He further contended that the amounts saved out of the sale-price was also subsequently utilized by Gangaram by purchasing 8 bighas of land from Mst. Tulchi on 2-3-64: in the name of Hetram plaintiff. On the above allegations, it was pleaded that the sale-transaction was clearly for the benefit of the estate. It was also pleaded by the

defendant that the suit has been brought as a result of collusion between the plaintiffs and their father as the price of land has considerably increased since the date of the sale-transaction. Several other pleas were also raised but they need not be mentioned here as no arguments in respect thereof were addressed before me. The trial court on the pleadings of the parties framed certain issues which were later on amended. Finally, the following issues survived for consideration:

1. Whether the land in dispute was ancestral and undivided property of Joint Hindu Family and defendant no.2 was in possession of the said land in his capacity as manager and karta of the Joint Hindu Family and was cultivating as such?
2. Whether defendant no. 2 sold the land in dispute for legal necessity and for the benefit of the family estate and of the family?
3. Whether the plaintiffs were minors on 9-9-59? If so, what is its effect on the suit?
4. Whether the plaintiffs are entitled to mesne profits, if so, to what extent?
5. Whether the suit is bad for misjoinder of parties?
6. Whether the court-fee paid by the plaintiffs is insufficient?
7. Whether the plaintiff's suit is barred by time under Article 113, Limitation Act?
8. Whether the defendant no. 1 is entitled to compensatory costs under Section 35A of the Civil Procedure Code. If so, to what extent?
9. Relief?
10. Whether defendant no. 1 incurred Rs.25000 for the improvement of the land in dispute. If so, what is its effect on the suit?

Issues Nos. 3, 5, 6, and 7 were not traversed at the time of the arguments in the lower court by the learned Counsel for the defendant. They were therefore decided against him. The learned trial Judge held that the land in question was ancestral property in the hands of Gangaram. He further held that the sale deed was

executed by Gangaram for consideration. While dealing with issue no.2 the learned trial Judge held that though there was no legal necessity to sell the suit land, the sale in favour of defendant no 1 Bhaderram was for the benefit of the family and its estate. He accordingly held the sale of the suit land to be binding on the plaintiff and dismissed the suit. Aggrieved by the aforesaid judgment and decree, the plaintiffs have come up in appeal to this Court.

3. I have heard Mr. H.G. Jain, Advocate, on behalf of the appellant, while Mr. B.L. Purohit addressed me on behalf of the contesting defendant-respondent Bhader Ram. The main controversy in this appeal has centred round the issue relating to the sale of the disputed land for the benefit of the estate. Mr. Jain has frankly conceded that the trial court's finding that the sale was for consideration is correct. Before dealing with the question as to the sale being for the benefit of the estate, it will be convenient at this stage to dispose of the respondent's criticism on the finding of the lower court that the suit land was ancestral property in the hands of Gangaram. It is contended by Mr. Purohit that the most important document relating to the question whether the suit land was ancestral property or not is Ex.2. It is a certified copy of the mutation entry in the revenue record. It mentions all lands which were owned by Arjunram, the father of Gangaram and which on the death of Arjunram were mutated in favour of Gangaram. A perusal of Ex. 2 shows that khasra no.167 was not included therein. It is contended that non-inclusion of khasra no. 167 in Ex. 2 leads to an irresistible conclusion that khasra no. 167 was not owned by Arjunram and it was not inherited by Gangaram. There is no doubt that an entry from the official record is relevant under Section 35 of the Evidence Act. The difficulty arises because Mr. Purohit does not rely on the entries mentioned in Ex. 2 but on the absence of an entry in respect of khasra no. 167. Section 35 of the Evidence Act provides that an entry in any public or official book, register or record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact. It is thus clear that according to Section 35 entries existing in the official record are relevant and admissible. This section says nothing about the non-existent entry in the official record. It is argued that the public servant who maintained the register would not have omitted to include any

land which has to be entered in it and that the absence of an entry in respect of a particular land therefore becomes relevant under Section 11 of the Evidence Act. Assuming that the absence of an entry is relevant under Section 11 of the Evidence Act, its value will have to be determined in the light of other evidence. The reason being that the absence of an entry in the official record may be due to the fact that the public servant was not enjoined to enter every land or was negligent or had motive to omit some of the lands. Since no other evidence showing the correctness of the entries in Ex. 2 has been produced, much importance cannot be attached to the absence of the entry in Ex. 2 in respect of khasra no. 167.

4. The next document in this connection is the sale-deed dated 9-9-59 (Ex.1). It was admittedly executed by Gangaram in favour of the defendant Bhaderram. It contains the recital that the land in question was the ancestral property of the vendor. This recital, in my opinion, is of considerable importance as it appears in a deed inter-parties. Mr. Purohit contends that the recital cannot be received as an admission of the vendee Bhader Ram as the deed was executed by the vendor Gangaram. That is true. But even then it is admissible under Section 13 of the Evidence Act as assertion of the title to the land. Moreover, it is under this document that the defendant Bhaderram claims his title to the suit land. The probative value of this recital as against defendant Bhader Ram is therefore very high. In any case, it forms cogent and strong evidence to prove that the suit land was ancestral property in the hands of Gangaram. I am fortified in my view by a decision of their lordships of the Supreme Court in Harihar Prasad Singh and Anr. v. Deonarain Prasad and Ors. AIR 1956 SC 305. In that case, a question arose whether the lands in dispute were private lands, that is, 'sir lands.' Their lordships held that the description given in the mortgaged deed by the mortgagors of the lands mortgaged 'as properties' in 'sir & khudkasht possession' may not be regarded as an admission by the mortgagees as the deed was executed by the mortgagors but it is admissible under Section 13 of the Evidence Act as assertion of title and when it is under the mortgage-deed that the mortgagees claim, its probative value as against them and as against the lessees who claim against them is high.

5. Besides the sale-deed Ex.1, the plaintiffs have produced oral evidence. PW 1 Hetram, PW 2 Jesaram and PW 4 Ganeshram have all deposed that the suit land was inherited by Gangaram from his father. The testimony of these witnesses is further corroborated by the defendant's own witness DW6 Kalu. The latter has deposed that Gangaram inherited from his father 64 bighas of land and out of it, Gangaram sold 16 bighas to Bhaderram defendant. The evidence of these witnesses clearly proves that the suit land was ancestral property in the hands of Gangaram. There is thus no force in the argument of Mr. Purohit 'that the suit land was not ancestral property of Gangaram.

6. This brings me to the main question relating to the sale being for the benefit of the estate. In this connection, the first contention of Mr. Jain is that the plaintiff Hetram was major on the date of the sale-transaction, that is, 9-9-59. He strongly relies on the written statement filed by the defendant wherein the defendant specifically asserted that Hetram was major on 9-9-59. It is further contended that the sale-transaction cannot be deemed to be for the benefit of the estate, for, admittedly the sale transaction was entered in to by Gangaram without consulting his adult son Hetram. Reliance is placed on the decision of their lordships of the Supreme Court in *Balmukand v. Kamla Wati and Ors.* : [1964]6SCR321 , The relevant Head Note runs as under:

For a transaction to be regarded as of benefit to the family it need not be of defensive character so as to be binding on the family. In each case the court must be satisfied from the material before it that it was in fact such as conferred or was reasonably expected to confer benefit on the family at the time it was entered into. Where adult members are in existence the judgment is to be not that of the manager of the family alone but that of all the adult members of the family including the manager.

7. On the other band, it is argued by Mr. Purohit that the plaintiffs in their plaint specifically pleaded that both the plaintiffs Hetram and Sahabram were minors on the date of the sale-transaction. It is contended that in fact of their own admission the plaintiffs cannot not be heard to say that Hetram was not a minor on the date of the sale transaction.

8. It may be mentioned that the plaintiffs in their plaint pleaded minority of Hetram on the date of the transaction. The defendant in his written statement denied this fact and asserted that Hetram had attained majority on the date of the transaction. Both the parties are now, anxious to back out from the admissions made in their respective pleadings because the plaintiffs probably realised that the majority of Hetram at the time of the transaction would be more beneficial to their case and the defendant, on the other hand, realises that the minority of Hetram would make his task easy in proving that the transaction was for the benefit of the estate. This is why both the parties want to get rid of the admissions unthoughtfully made by them in their pleadings. It is therefore argued by each of the parties that the other should be bound by the admissions in the pleadings but not vice versa. The learned Counsel for the plaintiff appellants has attempted to support his argument by placing reliance on *Firm Srinivas Raj Kumar v. Mahabir Prasad and Ors.* : [1951]2SCR277 . *Babu Raja Mohan Manucha and Ors. v. Babu Mansoor Ahmed Khan* AIR 1943 PC 29, *Tulsi Ahir and Ors. v. Mt. Sonia* AIR 1962 Pat 296 *Mahadulal and Anr. v. Chironjilal* : AIR 1963 MP51 , and *Poonamchand v. Dhingarmal* 1962 RLW 345. In *Firm Srinivas Rajkumar's case* (supra), their lordships of the Supreme Court observed:

A plaintiff may rely upon different rights alternatively and there is nothing in the Civil PC to prevent a party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative. The question, however, arises whether, in the absence of any such alternative case in the plaint it is open to the Court to give him relief on that basis. The rule undoubtedly is that the Court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the plaintiff could have made, was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. A demand of the plaintiff based on the defendant's own plea cannot possibly be regarded with surprise by the latter and no question of adducing evidence on these facts would arise when they were expressly admitted by the defendant in his pleadings. In such circumstances,

when no injustice can possibly result to the defendant, it may not be proper to drive the plaintiff to a separate suit.

Their lordships in the above view took support from the decision of the Judicial Committee in Babu Raja Mohan Manucha's case (supra). The other cases cited by Mr. Jain have followed the decision of their lordships of the Supreme Court. The principle behind all these decisions is to obviate the necessity to drive the plaintiff to a separate suit where the alternative case which the plaintiff could have made in support of the relief claimed by him was expressly admitted by the defendant in answer to the plaintiffs' claim. Obviously the above principle has no applicability to the facts of the present case. The cases cited by Mr. Jain are therefore clearly distinguishable.

9. The question before me is where a party wants to ignore its own admission and proposes to rely upon the admission of the other party, whose admission should be acted upon. A similar question arose before a Single Bench of this Court in *Manraj v. Remeshwar* 1969 RLW 507. My learned brother Hon'ble Shinghal, J. who decided that case held that an admission against admission should put the matter at large. The principle laid down in *Manraj's* case is, in my opinion, just and fair and I respectfully agree with it. I shall therefore ignore the admissions in question in the pleadings of the parties and decide the question about the age of Hetram on the evidence available on the record.

10. On the question of age of Hetram issue No. 3 was framed by the trial court & the parties led evidence to prove their respective allegations. The learned trial Judge, however, did not discuss that evidence, for, the learned Counsel for the defendant did not press that issue at the time of the argument. No discussion on the point is therefore available in the judgment of the lower court. It is significant to note that none of the parties produced any documentary evidence to prove the age of Hetram. It is further significant to note that the parents of Hetram who could possibly say about the exact date of birth of Hatram have also not been examined. Hetram in his statement dated 6.4.70 gave out his age to be 22 years and in his statement dated 11-5-71 as 23 or 23years. Hatram in his statement says that he was born in 1947. He however was not able to point out the exact date of his birth.

From his statement it appears that he was below 18 years on 9.9.59, the date of the transaction in question. In my opinion, he is the best person, who could say about his own age and I see no good ground to disbelieve his testimony on this point. PW 2 Jesaram who is the real maternal uncle of Hatram did not say a word about the age of Hatram although he pointed out the of age Sahabram, the brother of plaintiff Hatram. PW 4 Ganeshram has given the age of Hatram which is much less than what has been given by Hatram himself. That is all the evidence which has been produced by the plaintiffs. On the side of the defendant, no such witness has been examined who could possibly know the age of Hatram. Defendant Bhadarram says that the age of Hatram at time of transaction in question was 20-21 years His evidence cannot be believed for the simple reason that he has not disclosed the source of knowledge as to how he came to know Hatram's age. Similar is the case with DW 6 Kalu. DW 5 Birbal's statement about Hatram's age is hearsay & is inadmissible in evidence. There is thus no reliable evidence on the side of the defendant about the age of Hatram Relying upon the statement of Hatram, I hold that Hatram was minor on the date of the transaction, that is, 9.9.59. In view of the above finding, it is not necessary for me to go in to the question whether Hatram was consulted by his father at the time of the transaction.

11. It is next contended by Mr. Jain that the sale of the suit land has been erroneously held by the learned Additional District Judge to be for the benefit of the family and binding on the plaintiffs Developing the argument, Mr. Jain emphasised that though it is true that Gangaram purchased another land greater in area, the sale cannot be upheld because under the Hindu Law the manager of the Hindu joint family has no authority to alienate joint family property or any portion thereof in order to raise money to purchase fresh property. He pointed out that the land purchased by Gangaram out of the sale price of the suit land was inferior in quality and was also far off from the family house and it was difficult for the family to look after and manage the property at such a distance. It has also been contended that the purchase of the land from Mst. Tulchi after period of more than 4 years cannot possibly have any connection with transaction in dispute. It has been contended that the purchase of land from Mst. Tulchi was by Hatram in his individual capacity & the sale price was provided by Ratiram, the brother in law

of Hatram. It is contended that the learned Addl. Distt. Judge committed a gross error in holding that the sale price for the land purchased from Mst.Tulchi was paid out the sale price of the suit land. In support of his contention, Mr. Jain has placed reliance on the decision in KPLS Palaniappa Chetty v. Sreenath Devasikemony Pandara Sannadhi AIR 1917 PC 33, Rambilassingh v. Ramayadsinph AIR 1920 Pat 441, Ramkaran Thakur v. Baldeo Thakur AIR 1938 Pat 44, Nirmalsingh v. State 1960 RLW 464, Ballappa Chettiar v. Suppan Chettiar 1960 RLW 464, Bhuraram v. Pema 1966 RLW 492 and Balmukand's case (supra).

12. On the other hand, Mr: Purohit has supported the judgment of the lower court.

13. It is common ground between the the parties that the suit land measuring 16 bighas 2 biswas was sold by Gangaram for Rs. 10304/- on 9-9-59 and on the very next day, that is, on 10-9-59 another land measuring 28 bighas 13 biswas was purohasted by Gangaram for Rs. 6000/- from his son in law Ratiram Looking to the area of the land sold & the area of the land purchased, it is obvious that the transaction of sale was advantageous to the area of the family estate But merely on account of increase in the area it cannot be said that the transaction was beneficial to the interest of the family. The quality of the land purchased as also other circumstances will have to be taken into account in order to come to a conclusion that the transaction was really for the benefit of the estate It appears from the Jamabandhi Ex A/1 that the land sold was of quality known as rohi light loom land. It further appears from Ex. A/1 that the land was lying fallow & its annual rent payable was annas 5 per bighas. It is unfortunate that the Jamabandhi or other revenue record relating to the land purchased has not been produced by either party. In this connection, the Court will have to depend on the oral evidence produced by the parties. So for as the quality of the land purchased is concerned, it appears that it was of the same quality as the land sold by Gangaram. In this connection, a reference be made to the statements of DW 5 Birbal and DW 6 Kalu. The former has deposed that the land sold and the land purchased were both of the quality known as 'kachhi' which, according to the learned Counsel for both the parties denotes land having irrigation facility and located near a water course. The letter has stated that both the lands were of the same quality. On the other side there is the evidence of plaintiff Hetram. Hetram has stated that the land

purchased was of inferior quality than the land sold by Ganagaram. He has further deposed that the land purchased by his father from Ratiram was a sand dune and it was not possible to irrigate that land. As regards the land sold by Ganagaram, he says that it was being irrigated. In his cross examination he admitted that the land purchased by his father from Ratiram had been disposed of, When further questioned, for how much it was sold, he showed his ignorance. He is admittedly joint with his father Gangaram and it is difficult to believe that he did not know the price for which the land purchased from Ratiram was sold. A leading of his statement has left me with the impression that he is suppressing truth.

14. The next witness examined on behalf of the plaintiff in this connection is PW 4 Gangaram He says that the land sold by Gangaram had no sand dunes and it became irrigable by a canal some two or or three years prior to the sale transaction. According to him, the land sold could give a yield of 15 to 20 maunds of grain per bighas. He was not able to say any thing about the condition and quality of land purchased by Gangaram as he admitted that he had not seen that land. The fact that the land sold by Gangaram had no sand dunes appears to be false in as much as the plaintiff Hetram in his statement dated 6.4.70 admitted that the land sold by his father was levelled by defendant Bhadarram after the sale-transaction. Hetram in his subsequent statement dated 11.5.71 went back on his earlier statement dated 6.4.70 and denied that the land was levelled & made productive with his earlier statement he had no compunction in saying that he did not make such statement. He however showed his ignorance how the court below recording his statement wrote that defendant Bhadarram had levelled the land & made it productive after the sale transaction. It cannot be believed that the learned Additional District Judge wrongly recorded his earlier statement. In my opinion, his subsequent statement is after-thought and false. From his earlier statement it is clear that the land was levelled and made productive by defendant Bhadarram after the sale transaction. In other words, at the time of sale transaction, the land had sanddunes and was unproductive and it was levelled and made productive by defendant Bhadarram after the sale transaction. It may be pointed out that Gangaram, defendant no. 2. and Ratiram could be the best persons to depose as to the quality and condition of the land sold and the land purchased by Gangaram but they have not been produced in the witness-box For this omission, the

defendant Bhadarram cannot be blamed as Ratiram and Gangaram are close relatives of the plaintiff. Ratiram is the brother-in-law and Gangaram is the father of the plaintiffs. It was therefore not expected from defendant Bhadarram to examine so close relatives of the plaintiffs as his witnesses. In the circumstances, I have no hesitation in holding that the land sold and the land purchased by Gangaram were of the same quality. The land sold by Gangaram had sand-dunes and was not productive at the time of the sale transaction. It is strenuously contended by Mr. Jain that had the two lands been of the same quality, there would not have been such a wide gap in the sale-price of the two lands. It is true that 16 bighas 2 biswas of lands. It was sold for Rs. 10304/- whereas 28 bighas 13 biswas of land was purchased for Rs. 6000/- only. But merely on account of difference in the sale-price, it cannot be presumed that the two lands were not of the same quality. Reasons other than the quality of land might be responsible for this wide gap in the sale price of the two lands. It may be that Ratiram who is the son-in-law of Ganga Ram was in urgent need of money and he thought proper to dispose of the land to his close relative at a cheaper rate. Again, it may be that the defendant Bhadar Ram was very much eager to purchase the land in question and he paid much more than the prevailing market rate of the land. What ever may be the reason, the evidence clearly shows that Gangaram sold the suit land on very advantageous terms and his act in selling the ancestral land & purchasing another land was a profitable bargain and it conferred benefit to the family.

15. Mr. Jain's next contention is that the transaction of sale cannot be deemed to be for the benefit of the family as the land purchased by Gangaram was located in a different village & it was not possible for the family to manage it properly with due care & attention. In my opinion, this argument is not at all supported by evidence on record. It is true that the land purchased is located in another village but there is no definite material on the record to show as to how far the land purchased is from the family house. It may be that the two villages are located so close to each other that the land purchased and the land sold were at equidistance from the family house. Again, there is no evidence to indicate that the family felt any difficulty in its management. There is also nothing to suggest that the family suffered any loss on account of the location of the land purchased by Gangaram.

16. Coming to the transaction relating to the purchase of land from Mst. Tulchi, it is common ground between the parties that in the year 1964 laad measuring 8 bighas was purchased by Hetram from Mst. Tulchi for Rs. 4500/-. It is also not in dispute that this land was resold by Hetram for Rs. 15,000/-. The defendant's case is that this transaction was a benami transaction and the real purchaser of the land from Mst. Tulchi was Gangaram. According to the plaintiff Hetram, this land was purchased by him in his individual capacity and the sale-price was provided by his brother-in-law Ratiram. The latter has not appeared in the witness-box to corroborate the testimony of Hetram. That apart, it is not easy to believe that a person who had sold his land a few years ago was in a position to advance money to the tune of Rs. 4500/-. The defendant, on the other hand, has examined DW 5 Birbal who is the brother of Mst. Tulchi's husband, and it appears from his statement that this transaction was settled through him. DW 5 Birbal has stated that the land from Mst. Tulchi was purchased by Gangaram in the name of Hetram and the entire sale-price was paid to Mst. Tulchi by Ganga Ram. I see no good reason to disbelieve the testimony of DW 5 Birbal. It is significant to note that in the year 1964 Hetram was either a minor or he might have attained majority just a few months before the transaction. In the circumstances, it is highly probable that Gangaram must have purchased this land in the name of his son Hetram on account of his love and affection toward Hetram. The real purchaser is thus Gangaram and the name of Hetram in the sale-deed was inserted benami. This bargain certainly proved to be profitable as it fetched Rs. 15000/- on being resold after four or five years. From the evidence discussed above, it is clear that the ancestral land sold by Gangaram had sand-dunes and it was levelled and made productive by defendant Bhadaram after the sale-transaction. It is further clear that the land purchased by Gangaram out of the ancestral land was of the same quality and had irrigation facilities. The area of the land purchased was almost double the area of the land sold and there was obviously enlargement of the family estate. It is further clear that that ancestral land was sold at very advantageous terms in comparison to the land purchased by Gangaram. Gangaram by the sale of the ancestral land not only increased the area of the family estate but also saved Rs. 4304/- out of the sale price of the ancestral land. Though there is no evidence to show that this saving was utilised in purchasing and from Mst. Tulchi but the fact

remains that within a few years of the sale-transaction Gangaram purchased 8 bighas of land from Mst. Tulchi for Rs. 4500/- and it was resold for Rs. 15000/-. Considering all the circumstances, it could safely be said that the transaction for sale of the ancestral land was a profitable one and advantageous to the family estate. It cannot thus be said that Gangaram by selling the ancestral land with a view to purchase another land acted imprudently or that defendant Bhadaram had no good reason to be satisfied that Gangaram was not acting for the benefit of the family estate. It is, however, strongly contended on behalf of the plaintiff that even if it be assumed that the transaction was a profitable one or that it was expected to be beneficial to the family, it cannot be upheld because under the Hindu Law. Gangaram as manager of the Joint Hindu Family, had no authority to sell joint family property in order to purchase fresh one. In support of his contention, reliance has been placed on several decisions already enumerated above. The earliest case relied upon by Mr. Jain is Palahiappa Chetty's case (supra) wherein their lordships of the Judicial Committee while dealing with alienation by a mehnat of debuttar land which is governed by the same principle as alienation by the manager of a Hindu Joint Family, observed:

No indication is to be found in any of them (cases cited before their lordships) as to what is, in this connection, the precise 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 portions 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 connection, to be taken as benefits and what not.

It is contended by Mr. Jain that there is nothing in the above decision to encourage the notion that any transaction which might bring profit to the state could be regarded as beneficial to the estate. It is further contended that the above observation in fact indicates that any act for which benefit to the estate can be claimed must be of a defensive nature undertaken for the protection and for the benefit of the estate already in possession of the defendant. He therefore

contends that any transaction for the purpose of raising money in order to purchase fresh property cannot be regarded as an act for the benefit of the estate. In my opinion, the illustrations given by their lordships in the above case can by no means be treated as exhaustive. In the above case their lordships enumerated certain obvious cases of benefit to the estate and in clear terms emphasised that it was impossible to give a precise definition of the expression 'benefit to the estate' applicable to all cases. Their lordships also observed that it was difficult 'to draw the line as to what are benefits and what are not' and that clearly indicates that their lordships did not intend to lay down any exhaustive rule. In *Jagatnarain and Anr. v. Mathuradas and Ors.* AIR 1928 All 454, a Full Bench of the Allahabad High Court examined a large number of decisions including *Palaniappa Chetty's case* (supra) and held that the expression 'benefit of the estate' has a wider meaning than a mere compelling necessity and did not relate to the transactions of purely defensive nature. It was further held that in order to sustain an allegation of joint family property made by the manager, the transaction must be to the benefit of the estate and was such as a prudent owner would have carried out with the knowledge available to him at the time, though the degree of prudence required from the manager would be a little greater than that expected of a sole owner of the property. The view taken by the Full Bench of the Allahabad High Court in the above case was approved by their lordships of the Supreme Court in *Balmukand's case* (supra), and it was observed as follows:

We have no doubt that a transaction to be regarded as one which is of benefit, to the family it need not necessarily be only of a defensive character. But what transaction would be for the benefit of the family must necessarily depend upon the facts of each case. In the case before the Full Bench the two managers of family found it difficult to manage the property at all with the result apparently that the family was incurring losses. To sell such property and that too on advantageous terms; and to invest the sale proceeds in a profitable way could certainly be regarded as beneficial to the family.

Again, their lordships in para no. 9 of the judgment observed:

Thus, as we have already stated, that for a transaction to be regarded as of benefit to the family it need not be of defensive character so as to be binding on the family. In each case the court must be satisfied from the material before it that it was in fact such as conferred or was reasonably expected to confer benefit on the family at the time it was entered into.

It may be mentioned here that their lordships of the S.C in the case before them did not uphold the contract for sale for there was no allegation in the plaint that the transaction was such as was regarded to be beneficial to the family when it was entered into by the vendor Pindidas. Apart from that it was also found that the adult members had stoutly resisted the plaintiff vendee's claim for specific performance and from this their lordships inferred that adult members would not have resisted the suit if they were satisfied that the transaction was of benefit to the family. In view of the authoritative pronouncement of their lordships of the Supreme Court in Balmukand's case (supra), it is unnecessary to refer other decisions cited by Mr. Jain. It is now well settled that the expression 'benefit of the estate' has a wider meaning than a mere compelling necessity and is not limited to transactions of purely defensive nature. For a transaction to be regarded as beneficial to the estate, the court must be satisfied on the material before it that it was in fact such as conferred or was reasonably expected to confer the benefit on the family at the time it was entered into. Viewed in the light of the principles laid down in Balmukand's case (supra), the question arises whether the evidence adduced in the present case is sufficient to prove that the purchase of the land from Ratirarn could be said to have conferred benefit on the estate. Where land is sold at a high price with a view to invest the sale-proceeds in the purchase of equally good land larger in area at a comparative low price; I fail to see why the sale should be condemned as not being for the benefit of the family. As already pointed out above, Gangaram sold 16 bighas 2 biswas of ancestral land for Rs. 10304/- and purchased equally good land measuring 28 bighas 13 biswas for Rs. 6000/- only. The land sold by Gangaram was unproductive as it has sand-dunes and was not of much utility to the family. In these circumstances, if the ancestral land was sold and from its Sale proceeds Gangaram purchased another land & thereby he increased the family estate with a clear saving of Rs. 4304/-, it cannot, in my opinion, be said that the sale transaction conferred no benefit to the family at the

time it was entered into. The subsequent facts further reveal that within a few years, 8 bighas of land was purchased by Gangaram from Mst. Tulchi for Rs. 4500/- and it was resold for Rs. 15000/-. In view of the above circumstances, the transaction for sale of the ancestral land was in my opinion advantageous and beneficial to the family and the trial court rightly upheld the transaction to be binding on the plaintiff.

17. Mr. Jain, however, submitted that the purpose of the family would have been served had Gangaram sold a smaller area of the land so as to fetch Rs.6000/- needed for the purchase of another land. In this connection, he has placed reliance on the decision of this Court in *Bhuraram v. Pema* 1966 RLW 492. The facts of that case are clearly distinguishable with the facts of the present case. In that case, it was held that the sale was justified only for the purpose of raising Rs. 2750/- and therefore the transfer of the whole of the agricultural holding measuring 10 bighas for Rs. 5500/- was found unsustainable as there was no evidence to show that it was not possible to sell a lesser portion of that property for equal advantage. It is therefore clear that the sale in that case was not upheld as the legal necessity proved was far less than the value of the property for which the manager sold the ancestral land. The present case is not that of legal necessity. Gangaram in the present case sold the land for the sake of enlargement of family estate and with a view to confer benefit to the family. The whole transaction is therefore valid as it was for the benefit of the estate.

There is no force in this appeal and it is dismissed with costs.

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