

(1915) 12 MAD CK 0074
In the Madras High Court

Avasarala Seshamma and Another, Pratti Appalaraju and
Indraganti Venkatachellam and Another

APPELLANT

Vs

Sri Ravu Venkatakrishnarayanan Garu
 Vakada Padayya
and Others Vs Sri Ravu Venkata Krishna Eayanim Garu and
Others

RESPONDENT

Date of Decision : 08-12-1915

Acts Referred:

Citation : 33 Ind. Cas. 833 : (1916) 3 LW 413

Hon'ble Judges : Srinivasa Aiyangar, J; Coutts Trotter, J

Bench : Division Bench

Judgement

Coutts Trotter, J.—This appeal is on behalf of the 15th and 24th defendants; who are in possession of certain lands which form item No. 4 of the plaint schedule. The plaintiff seeks to eject them from the lands on the ground that he is the heir of the last male holder, one Venkayya. The defendants' title ultimately rests upon the document Exhibit VI, dated in the year 1876. By that time Venkayya had died, as also his uncle Seetharamayya, who had been, according to the evidence, the manager of the family up to a few years before the deaths of Venkayya. The alienation which is -challenged goes back as far as the year 1876, when by a sale-deed Butchi Venkayamma purported to convey for consideration the property in suit to the plaintiff's father, who had married her daughter. We are, therefore, given the task at this date of enquiry whether that alienation was for consideration and for necessary and proper purposes. I pay no attention to the fact that the plaintiff's father goes into the box and says that it was a gift for which there was no consideration. But as to the question of necessity, the learned Judge has gone carefully into the evidence and decided that the story set up on behalf of the defence is unworthy of belief, The story, shortly was that the money was borrowed for the purpose of discharging a debt of Venkayya, which debt is said to be evidenced by his bond of the year 1875, and that bond bears an endorsement, purporting to be signed by the widow Butchi Venkayamma, that on the 27th April 1876 she sold the suit lands and paid Rs. 500 towards the

principal and paid Rs. 350 towards interest. It seems odd that the endorsement of payment is only signed by the debtor or rather by the widow and is not signed by the creditor who had reason pro tanto to acknowledge the payment. That document is challenged by the plaintiff and the learned Subordinate Judge has carefully examined the facts and the evidence relating thereto and has come to the conclusion that the document cannot be genuine. One remarkable circumstance is that according to the evidence of the defence 7th witness, on which most reliance was placed for the defence, Seetharamayya, the uncle of Venkayya, was the managing member of the family, and in order to be consistent with it, he is driven to say that Exhibit XIII was executed three or four years after Seetharamayya's death. On the other hand, the death register, which was produced and the genuineness of which is hardly challenged, shows that Seetharanayya did not die until six months after the date of this document. It is remarkable that the payment of Rs. 850 should have been made by the widow, who is alleged to have been a gosha lady, without the assistance of the plaintiff's father or any other male members of the family. Another improbable circumstance is the long story set up by the defence 7th witness to account for his retention of Exhibit XIII, to the effect that a sum of Rs. 40 still remained unpaid, which Butchi Venkayamma was unable to pay at the time when she paid Rs. 850. At first he stated that she gave a bond for Rs. 40, but when it was pointed out in cross-examination that that was quite inconsistent with the document. Exhibit XIII, being produced from his custody instead of being surrendered to the debtor by way of discharge of the debt in full, he then changed his story and said that Butchi Venkayamma went on promising to pay the sum of Rs. 40 and never paid it. Exhibits XIV and XIV (a), documents of much later date, which recite the transactions between the widow and the 7th witness for the defence, contain no reference whatever by way of recital or otherwise to the sum of Rs. 40, or to the transaction alleged to have been brought about under Exhibit XIII.

2. I have no hesitation in saying that I viewed the plaintiff's suit with extreme disfavour and if I could possibly, consistent with the exercise of proper judicial discretion, assist the defendants, I should do so. But we have to administer law and not make it. In this case most of the witnesses are very old people and the opinion as to their veracity and reliability formed by the Subordinate Judge who tried the case himself is to be given greater importance than in ordinary cases. It would require an overwhelming case to induce me to differ in a case with witnesses of this character from the learned Subordinate Judge who heard them.

3. I am, therefore, reluctantly compelled to dismiss this case with costs, except with a slight modification as to the payment of costs in the 1st Court, for which we pass a separate order, which is common to all the appeals.

Srinivasa Aiyangar, J.

4. I agree.

In Appeal No. 384 OF 1914.

Coutts Trotter, J.

5. The question raised in this appeal is with regard to two sale-deeds, Exhibits II and III, which are sought to be set aside by the plaintiff as reversioner. Those deeds are dated the 8th March 1876. One of them was for Rs. 500 and the other for Rs. 2,000, the one for Rs. 2 000 being Exhibit III. They were sales effected by Venkayya's widow Venkayamma, and the question is whether the purchasers have discharged the onus that lay upon them of satisfying the Court either that the money was in fact paid for a necessary purpose, or that having made reasonable enquiries they were satisfied that it was likely to be used, or was intended to be used for a necessary purpose. The learned Judge has found that a portion of the money raised by the sales of the lands covered by Exhibits II and III was used in the discharge of a mortgage, Exhibit L. Exhibit L was a mortgage, dated the 9th August 1867 for a capital sum of Rs. 680 borrowed by Seetharamayya, the uncle of the last male owner, and it was, therefore, a debt which it might well be necessary for the widow to discharge. We agree with the finding of the learned Subordinate Judge that the proof is adequate that that debt was discharged out of the proceeds of the sale of the lauds covered by Exhibits II and III. He has found that the figure which was paid was a sum of Rs. 1,400. The evidence in respect of that is the evidence of the 9th witness for the defendants; and he says that the widows sold the lands (that is, the lands covered by Exhibits II and III) and paid to him Rs. 1,300 or Rs. 1,400 towards the discharge of the "above deed," that is, Exhibit L. It is from that piece of evidence-in-chief that the learned Judge fixed the figure of Rs. 1,400 as the amount which could be definitely proved to have been in fact used in discharge of debts of the husband of the widow. But people never let well alone, and the plaintiff proceeded to cross-examine him and in cross-examination he said this: At the payment 1 returned to the above widow the mortgage-deed and the documents given by Seetharammayya with it. I settled the amount due to me on the above mortgage deed. Nothing was paid on it before that." We know, it is not contested from other evidence, that the actual amount due on that date on the mortgage was not Rs. 1,400 or 1,300 but Rs. 1,780. The view that 1 take very strongly is that, when a man is speaking of a transaction which took place 40 years back, he is much more likely to remember the fact that the whole amount was paid off than to be quite certain as to what the amount was; and I think his evidence is much more reliable where he says that the whole amount due was paid off than where he speculates after such lapse of time what the actual sum paid to him was. We can ascertain the whole amount due to him, and our finding is that the sum paid was Rs. 1,730. Reliance was placed on the sentence in his deposition in which he says: I do not remember if I gave up any portion of the debt;" and it is suggested that although Rs. 1,730 was due, he might have obtained a lesser sum. Before I give effect to such a contention as that, I should like to know what the question and answer were: If the question and answer were, e.g.

Q. Do you remember giving up any portion of the debt?

A. No.

6. No inference could be drawn from the deposition. There was no object for him to give up anything and there was a grown-up son of the mortgagee by his first wife who had an interest in the matter and who was not likely to allow the witness, who was only managing the properties, to remit any sum of money in which he had an interest.

7. So far there is no difficulty. But the appellants want to carry the matter further, and say that the whole of the Rs. 2,500 has been satisfactorily shown in this case to have been paid in circumstances that will render the alienations valid by Hindu Law. The facts are these: The deeds recite that the lands were sold for the discharge of the debts of the vendors' husband; but they do not specify what were the debts or give the names of the creditors. Undoubtedly we can gather from those recitals that the 8th defendant, who is called as the 16th witness for the defendants, is speaking the truth when he says that the widows stated at the execution of the sale-deeds that they sold the lands for the discharge of their husbands' debts; and we are prepared to accept that evidence as corroborated by the recitals in the deeds. We know that there was owing the money under the mortgage, Exhibit L, which we have already found to have been discharged pro tanto out of these funds; and it is also a fact that there was in existence a judgment-debt, which is evidenced by Exhibit XXII, for about Rs. 1,500 and that a warrant of execution had actually been taken out about this very time. It is suggested by Mr. Narayanamurthi that in those circumstances we can infer that the money was raised under Exhibits II and III for the purpose of discharging not only the debt under the mortgage Exhibit L, but also the judgment-debt under Exhibit XXII. The first position he takes up is this. He says there is evidence on which it can be found that not merely these debts existed, but that there were representations made to the purchasers of the lands at the time of purchase by persons other than the widows that the money was being raised for the discharge of these specific obligations; and he relies for that again upon the evidence of the 8th defendant. He is an old gentleman of 70 years of age; and in chief he said that he was present at the execution of the sale-deeds Exhibits II and III by the widows; and he goes on to say: "The widows stated at the execution of the above sale-deeds that they sold the above lands for the discharge of their husbands' debts. They said that those debts were due to N. Seetanna (that is Exhibit L), By Logayya (that is Exhibit XXII)" and certain other persons. In* chief he said nothing about any statement made by the plaintiff's father, who was then managing the affairs of the widows and who would no doubt have a very strong interest as the father of the ultimate reversioner in seeing that the alienations were proper and legal. But in cross-examination he says this: I was simply present at the execution of the sale-deeds.... It was my father that settled the terms of the purchase of the lands", which latter reads to me as if he meant this: "I was present at the actual execution of the sale-deeds;

but it was my father, and not I, who was present at the time of the preliminary discussion that led up to their execution;" his father, of course, being the actual purchaser. Then, later on he says: it was plaintiff's father that specified the debts due by the widows." He never said this before. "My father asked plaintiff's father to state for the discharge of whose debts the lands were being sold. My father did not enquire if the debts were really due. He had the sale-deeds executed as soon as the debts were specified." So far, one would think, this" was another instance of gaps in the case of the defendant being supported by cross-examination. But unfortunately he goes on like this: No. I was not present when the sale deeds were executed. My father himself transacted the business and got the deeds executed." I am quite willing to make all allowances for defects of memory in a person of 70 years of age: and I am bound to say myself that I strongly suspect there was some preliminary discussion at which it was extremely likely that the plaintiff's father made some such statements. But even though I do not think so and even though in a case of this sort where a person is speaking of a transaction which took place 40 years ago, we should not cast an intolerable burden of proof after such lapse of time on him, I do not think that any one can with conscience act upon evidence of this kind with such appalling contradictions. I have the greatest reluctance in coming to that conclusion and would act upon that evidence if I could; but I am afraid it is not possible. Therefore, one can only suppose that as far as the names of creditors are concerned, they were suggested to him and as far as his actual recollection goes, he had no reliable or trustworthy recollection at all. So much for that. I, therefore, come to the conclusion that there is no proof in this case that the defendants or their predecessors-in-title made any enquiry aliunde, other than what the widows said, as to the necessity for raising the money, or the nature of the debts in regard to which they proposed to raise the money. But Mr. Narayanamurthi says that the case goes much further than that and even without such evidence he is entitled to succeed. As I understand it, he puts his case in two ways. The first way he puts it is this: He says: I have proved the existence of debts. I have shown that the father of the next reversioner was an attesting party to the deeds and must be taken to have consented to the transaction as being in the interests of his own minor son: and the Court is on that entitled to infer without, evidence that the purchaser made enquiries and got answers that corresponded to the facts, namely, that there were two debts which were sufficient to account for the amount of money given by him, Rs. 2,500." That is the first way he puts his case, that is, that it is a legitimate inference from the facts that enquiry was made and that answers in accordance with the facts were given. But he is prepared to go even further than that, and he says "I have given proof of necessity. Although I cannot show that the money was in fact applied for the discharge of debts or any necessary purpose, yet even if no enquiry was made at all, nevertheless the purchaser is protected." I do not think the case he cited Hunoomanpersaud Panday v. Musammatt Babooee Munraj Koonweree 6 M.I.A. 393 : 18 W.R. 81: Sevostre 253 N.; 2 Such. P.C.J. 29 : 1 Sar. P.C.J. 552 : 19 E.R. 147 in any way supports him. It is quite true that when

Courts are speaking on the question of necessity, the test they apply is either the existence of necessity or the making of reasonable enquiries. But it does not at all follow that a further step is not necessary, namely, that there should be some connection between the money advanced by the person who advances it and the necessity that is proved. It seems to me in accordance with the decisions of the Privy Council, especially the case of Maheshwar Baksh Singh v. Satan Singh 23 C.P 766 : 23 I.A. 57 and of Amarnath Sah v. Achan Kuar 14 A.P 420 : 19 I.A. 196 : 6 Sar. P.C.J. 197 that quite a different set of considerations arise when the purchaser or lender is only able to establish the existence of debts in fact or of necessary purposes. There must be shown connection, as I have already said, between those debts or necessary purposes and the money advanced. That is obvious when one considers that there may be cases in which failure to supply that connecting link may lead to conclusions wholly in conflict with the purpose and the idea with which those loans or sales are permitted and in some cases validated. In the first place, it may be that the slightest enquiry would have shown the purchaser or lender that there were other funds belonging to the husband's estate available to the widow which she could have used to extinguish those debts without alienating any property at all. Another factor is this that the widow may be raising other sums from other persons purporting to raise them for the same purpose, and may be, therefore, provided with funds to satisfy those necessary purposes if she chose to use them. That is not merely a consideration in the air, because I think there is very grave reason in this case to suppose that the widow was raising funds at any rate for the purpose of specifically satisfying the judgment-debt, Exhibit XXII, from other persons than the predecessor-in-title of the defendants. Exhibit I appears strongly to point in this direction. But even if there was not such positive evidence, it is one of the factors that must put the purchaser on his guard. His enquiries may have led him to know something which he did not know; it may not affect his going on with the transaction; but enquire he must. It may be a hardship to require a man to show that a dead person made enquiry of a particular nature a number of years ago But there is the law, and in my opinion the purchaser, or the descendant or other representative-in-interest of the purchaser, when the purchase is from a Hindu widow must discharge that burden, however hard on him it may be; and must show that he made some enquiry allude and I do not think it can be left a matter for inference because if we leave it in that position, that the Court may infer that enquiry was made at the time, the rule would be made useless. In our opinion, there is nothing beyond the Rs. 1,730 which we can possibly hold to be binding upon the estate. With regard to what is to be done on that finding Mr. Srinivasa Aiyangar canceled very properly that where a substantial portion of the money paid by the purchaser can be shown to have been applied to necessary purposes, the proper course is to allow him to retain the land on payment of the balance of the purchase price as to which it cannot be shown that it was applied towards necessary and legal purposes. In this case we think that the re is no difficulty in holding, that the Rs. 1,730 which went towards the discharge of Exhibit L was taken or may be assumed to have been taken from the Rs. 2,000

raised by Exhibit III and, therefore, the order will be that the defendants Nos. 8, 14 and 19 to 22 will retain those lands on payment to the plaintiff of the sum of Rs. 270 with interest at 6 per cent, per annum, from the date of suit. With regard to Exhibit II that will be set aside, and the defendants must give up possession to the plaintiff of those lands and pay mesne profits to be ascertained by the Court below as from the date of suit. With regard to the costs of this appeal each party must bear their own costs. The memorandum of objections will be dismissed with costs. Appeals Nos. 246, 249 and 353 are dismissed with costs subject to this modification, that, in each case, each of the defendants will get costs in the lower Court calculated on the value of the properties retained by him.

Srinivasa Aiyangar, J.

8. I agree.