
(1923) 06 AHC CK 0032
In the Allahabad High Court

Bajnath Rai and Others

APPELLANT

Vs

Gokul Rai and Others

RESPONDENT

Date of Decision : 14-06-1923

Acts Referred:

Citation : AIR 1924 All 37 : (1923) ILR (All) 718 : 74 Ind. Cas. 498

Hon'ble Judges : Sulaiman, J;Lindsay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Lindsay and Sulaiman, JJ.—This is a plaintiffs' appeal arising out of a suit for setting aside three sale-deeds, two of which were executed on the 4th of December, 1901, and the third on the 30th of July, 1913, by the fathers and grandfathers of the present plaintiffs, on the ground that these alienations of ancestral property were without any legal necessity. There was no suggestion in the plaint that the debts had been contracted for any illegal or immoral purposes.

2. The defendants transferees contested the claim mainly on the ground that the debts had been incurred for family necessities and were binding on the plaintiffs. It was also pleaded that the claim was barred by time inasmuch as the plaintiffs were not born at the time of the first transfers.

3. The court below found that the plaintiff No. 1 was alive at the time when the transfers of 1901 took place and that the two remaining plaintiffs were born before the execution of the third sale-deed. It accordingly held that the plaintiffs were entitled to maintain the suit. It, however, dismissed the suit on the ground that the burden lay on the plaintiffs to prove that the transactions were without any legal necessity and inasmuch as the plaintiffs had failed to discharge that burden, the claim stood dismissed. It relied mainly on two authorities, namely, Gobardhan v. Abdul Ghafur 1887 WN 106 and Sukhdeo Jha v. Jhapat Kamat 54 Ind.Cas. 946.

4. The plaintiffs have come up in appeal to this Court, and, on their behalf, it is

strongly contended that the burden of proof was wrongly laid on them.

5. Both the cases referred to by the learned Subordinate Judge were cases in which the mortgagees were suing to enforce their mortgage and were, therefore, not parallel cases. In the first of these two cases all that Sir John Edge, C.J., remarked was that where a son comes into court to ask relief against a sale effected by his father for an antecedent debt, it would be for the son to make out a case for the relief asked.

6. In the Patna case, however, at page 948, there is an observation by Sultan Ahmad, J., to the effect that courts have always drawn a distinction between a case where the property has passed out of the hands of the family by mortgage, sale or other alienation by the father, and the son sues for the recovery of the same, and the case where the mortgagee seeks to enforce the mortgage executed by the father against the sons who are in possession of the property. In the former case the son must show the grounds on which he seeks to set aside alienation by the father. In the latter, it is the mortgagee who has to show how he claims for the repayment of the debt of the father.

7. If the learned Judge intended to lay down a general proposition of law that in every case where a Hindu son brings a suit to recover possession of properties from transferees, the burden lies on him to prove that the transfer was without any legal necessity, then we would be inclined not to agree with that view. Of course, in every case the burden prima facie lies on the plaintiff to establish his case; but where it is either admitted or proved that the plaintiff was a member of a joint" Hindu family, that the property transferred was an ancestral property, that it had been transferred without the plaintiff's consent and not apparently in lieu of any antecedent debt or at an auction-sale, the burden would lie on the defendant transferee to justify the alienation.

8. It is, however, not necessary for us to remand the case, for both the parties produced all the evidence which they intended" to produce, and no evidence has been shut out. We, therefore,, propose to consider the case on its merits, and, in the circumstances, we are of opinion that the evidence which the defendants have been able to produce is quite sufficient; we, therefore, hold that the defendants have discharged the burden of proving that these were good transfers. The result is that the degree of the lower court must be upheld. The appeal is dismissed accordingly.