
(1982) 07 GUJ CK 0009
In the Gujarat High Court
Case No : First Appeal No. 771 of 1974

Himatlal Maganlal

APPELLANT

Vs

Rameshchandra Natverlal and Others

RESPONDENT

Date of Decision : 21-07-1982

Acts Referred:

Citation : AIR 1983 Guj 7 : (1983) 1 GLR 256

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Advocate : B.J. Shelat, for the Appellant; H.B. Shah and Rajesh Dave for S.I. Nanavati, for the Respondent

Final Decision : Allowed

Judgement

N.H. Bhatt, J.—This is an appeal preferred by the original defendant No. 1 of the Civil Suit No. 2306 of 1969 decreed by the learned Judge of the City Civil Court, 2nd Court, Ahmedabad in favour of the present-respondent No. 1, the original plaintiff, who had succeeded to get a declaration from the learned Judge that the document of sale dated 19-6-1951, Ex. 74 on the record, which was executed by the defendant No. 2, his father, in favour of the defendant No. 1 (the present appellant), who is his uncle, was to the extent of his 1/4th share, not binding on the plaintiff. As a corollary, the learned Judge further declared that the plaintiff was entitled to receive 1/4th share from the income of the property, which admittedly was let out on long term basis on earlier occasion in favour of the original defendant No. 3, fee New Asarva Manufacturing Co. Ltd., Much was liable to pay only Rs. 1,041/- as the annual rent.

2. The plaintiff's case was that the said sale deed executed by his father, the defendant No. 2 on the record, was without consideration and alternatively for a consideration which was tainted and, therefore, it did not bind the plaintiff, who attained majority for the first time on 16-10-1969 and who Bled the suit in question soon thereafter on 19-11-1969 for the relief which has already been stated by me above.

3. The defence of the defendant No. 1 Was that the defendant No. 2 had executed the sale deed in his favour for the consideration of Rs. 4,000/- against the amount of Rs. 5,000/- paid by the defendant No. 1 to one Anandilal Harilal to discharge the debt of the defendant No. 2 at the time when said Anandilal had filed a criminal complaint against the defendant No. 2, alleging that the defendant No. 2 had cheated said Anandilal, after borrowing title deeds of the property the only evidence of the mortgage transaction, under a false pretext. The defendant No. 1 had undertaken to discharge that debt of the defendant No. 2 and in fact he had done so by paying. Anandilal Rs. 5,000/- and against his acceptance of that liability to pay Anandilal's dues, this, sale deed of the halfshare of the defendant No. 2 in the suit property was executed by the defendant No. 2 in favour of the defendant No. 1, with the remaining liability of Rs. 1,000/- to be met by the defendant No. 2 thereafter, which, the defendant No. 1 alleged, the defendant No. 2 had never done, but with no legal consequences because the defendant No. 1 had not thought it fit to proceed against his brother, the defendant No. 2 for the said amount.

4. The learned Judge had raised various issues at Ex. 43, which are reproduced in para 6 of the judgment under appeal. The learned Judge, in para 7 of his judgment, has held as under :--

(1) It is an admitted position on record that there was partition between the defendant No. 1 and the defendant No. 2 and their mother and the partition deed is at Ex. 71;

(2) It is also not in dispute that the suit property which had already been let to tenant on a long term basis since before the date of that partition, continued to remain as joint property of the two defendants after partition, they two having equal shares therein;

(3) As per the terms of the partition deed, Ex. 71, the mother of the two defendants was to enjoy the income of the rent of the suit property till her lifetime exclusively and after her death the two brothers were to receive the said income jointly, subject to their liability to pay Rs. 100/- every year to each of their three sisters. The mother admittedly had died in the year 1967;

(4) It is also not in dispute that the defendant No. 2 had borrowed money from Anandilal Harilal and for the payment of that debt, the defendant No. 1 had stood surety for defendant No. 2.

5. After noting the above undisputed facts, the learned Judge in para 16 of his judgment has observed as follows:--

"16. Now in view of the averments of the plaintiff in the plaint itself and in view of the evidence of the plaintiff and the evidence of defendant No. 2 as well as the evidence of defendant No. 1, it is established that defendant No. 2 had borrowed money from Anandilal Harilal. This evidence finds considerable support from the averments of the plaint as well as the evidence of the plaintiff and the other

evidence on record at the initial stage when the mother of the plaintiff gave notice to defendant No. 1, she had referred to the criminal case having been filed against her husband and regarding the responsibility to pay up the dues of defendant No. 2 to Anandilal, having been taken by defendant No. 1 and about the document having been taken from defendant No. 1 by practising (sic?) without consideration. Therefore, it is sufficiently borne out on record that the defendant No. 2 had borrowed money from Anandilal. Plaintiff and his mother had no personal knowledge about the alleged amount, which was borrowed by the defendant No. 2 from Anandilal, but I do not find any reason to disbelieve the evidence of defendant No. 1 and Anandilal on this point. I believe the evidence of Anandilal Harilal on the point as true and considering his evidence along with the evidence of defendant No. 2 as well as the evidence of defendant No. 1 who had taken, the liability of paying up the dues of Anandilal Harilal on behalf of the defendant No. 2 and on payment of these dues that Anandilal had withdrawn the complaint against defendant No. 2. It is pertinent to note that upon defendant No. 1 taking over the liability to pay the said dues, this transaction of sale was entered into between the two brothers. Defendant No. 1 paid in all a sum of Rs. 5,000/- to Anandilal and according to him, for a sum of Rs. 4,000/-, he purchased the undivided half share of defendant No. 2 in the suit property and besides that he paid another sum of Rs. 1,000/- on behalf of defendant No. 2 to Anandilal Harilal, and according to defendant No. 1, defendant No. 2 has not repaid to him that amount of Rs. 1,000/-. Considering the pleadings of the parties and the evidence on record, I find the defendant No. 2 agreed to transfer his undivided share in the suit property to defendant No. 1. The defendant No. 2 has also admitted that after this arrangement was done, Anandilal has never demanded his dues from him. It is thus clear that Anandilal was paid his dues, and obviously those were paid up by defendant No. 1 because it is not the case of defendant No. 2 that he had paid up those dues to Anandilal."

6. It is to be noted with pertinence that in this case, there were examined the plaintiff, who had attained the majority just a few days before filing of the suit, his mother Savitaben, the defendant No. 2 Natvarlal Ex. 64, who, despite the alleged severance of relationship and almost at war with his wife and the child, stood by the plaintiff and there was the evidence of the defendant No. 1 and Anandilal Harilal. That evidence was read by me in material parts at the instance of Mr. H.B. Shah, the learned advocate for the original plaintiff. Mr. Shah wanted to show that the debt due to Anandilal was tainted in so far as the said debt was required to be incurred, to the knowledge of the defendant No. 1, to meet the Satta debts. As far as the plaintiff and his mother are concerned, they had to admit, despite their bold assertions in the examination-in-chief, that they had no personal knowledge about the character of the debt due to Anandilal. Even the defendant No. 2, who was interested in salvaging the 1/4th share parted with by him as per the sale deed Ex. 74, had to admit in clear terms that he had no evidence whatsoever to show that he was required to borrow money from Anandilal on various occasions totalling about Rs. 6,500/- to meet the gambling

debts. After all this evidence was gone through, it appeared clear to me that there was no material on record to show that the debt in question was avyavaharik or tainted with illegality and/or immorality and I felt that Mr. Shah was not in a position to push the matter any further in that regard.

7. With the above findings neatly recorded by the learned trial Judge, he landed himself into a grave error of law when he tried to examine the case only from the point of legal necessity. The written statement made it clear that the sale-deed, Ex. 74, was required to be executed by the defendant No. 2 in favour of his brother, the defendant No. 1 the appellant herein, because Anandilal claimed Rs. 6,500/- or so from the defendant No. 2 and that debt at any rate was required to be met because it was secured by equitable mortgage. The learned Judge unfortunately forgot this whole aspect when he came to deal with the matter in paragraph 18 and onwards of his judgments. Even if the case was required to be seen from the point of view of legal necessity, this appellant had a dear-cut case. Payment of antecedent debt, if not tainted, is a species of the genus "legal necessity", but for the sake of convenience they are, more often than not referred to separately as two separate causes. Here the principle that would be applicable would be the one pertaining to the pious obligation of a son to account for the father's debt to the extent of his share in the joint family property. The learned Judge unfortunately did not note this principle, glaring in the face in view of the record of the case and more glaring because of his finding already recorded by me above -as extracted from his judgment. In view of that finding, it was inevitable for the learned Judge to hold that the deed, Ex. 74, was executed by the defendant No. 2 in favour of his brother, the defendant No. 1, to pay his own debt, which debt, according to law, may not fall directly within the term of "legal necessity" or the term antecedent debt of the family. The principle of pious obligation recognised by the Privy Council and the Supreme Court does not confine itself to the question of legal necessity at all, A son is bound to defray his father's debt except the one which is tainted with illegality or immorality, irrespective of the fact that the father had no genuine necessity to incur that liability. Say for example a father is over-spending after his clothes, after the needs of the family --and it is established in this case that the defendant No. 2 in a sense was extravagant --but nevertheless he cannot be brandished as a man following illegal or immoral path. A son shall be liable to meet with such debt of the father. This clear proposition of law unfortunately escaped the notice of the learned Judge, who totally went off the tangent and, therefore, decreed the plaintiffs suit without any justification whatsoever. The only course left open to me is to allow this appeal by setting aside the trial Court's judgment and consequently dismiss the plaintiffs suit with no order as to costs throughout because the same are not pressed by Mr. Shelat under instructions of his clients, who was sitting behind his back.