

(1924) 02 AHC CK 0027
In the Allahabad High Court

Jagarnath Pande

APPELLANT

Vs

Sanmukh Pande and Another and Ram Baran Pande

RESPONDENT

Date of Decision : 26-02-1924

Acts Referred:

Citation : (1924) ILR (All) 531

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

Bench : Division Bench

Judgement

Sulaiman and Mukerji, JJ.—Second Appeal No. 1 of 1922 and Second Appeal No. 2 of 1922 arise out of two independent suits Nos. 416 and 440 of 1920, respectively, which were suits brought by Hindu sons to set aside a deed of sale, dated the 13th of December, 1915 in the first case and two mortgage deeds dated the 4th of September, 1905 and the 28th of June, 1912, in the second case. In these second appeals, we are not now concerned with the mortgage deed of the 28th of June, 1912.

2. As regards the sale-deed both the courts below have come to the conclusion that out of the consideration of Rs. 1,000 for which it was executed by the plaintiff's father, Rs. 500 were paid in order to pay off the amount due on a previous usufructuary mortgage deed which has been held not to be an antecedent debt, and out of the balance of Rs. 500, Rs. 200 have not been proved to have been paid as recited in the deed.

3. We may say at once that the view that the amount due on the previous mortgage deed was not a good antecedent debt cannot now be upheld in view of the opinion recently pronounced by their Lordships of the Privy Council in the case of Brij Narain v. Mangal Prasad ILR 1923 All. 95. It was laid down in that case that in order to be an antecedent debt the previous debt need not necessarily be a simple debt but may also be a mortgage debt.

4. As regards the balance of the sale consideration, Rs. 200 were left in the hands of the vendee to be paid to one Nand Kishore. The defendants were not

able to produce evidence which would satisfy the courts below either that this debt was actually due to Nand Kishore or that such a payment was made to him. The finding on this point is a finding of fact which we must accept as final.

5. The result, therefore, is that so far as the sale-deed is concerned, Rs. 200 out of the total consideration of Rs. 1,000, have not been proved to have been required for any necessity or to have been an antecedent debt. In a case of this kind, where the defendants have succeeded in establishing necessity or antecedent debt with respect to a part of the consideration, the difficulty often arises whether the sale-deed should or should not be upheld. It is impossible to lay down any hard and fast rule which could apply equally to every case; for every transaction has to be considered on its own merits and the court has to come to a finding on the merits of every case. The balance which is not proved to have been for valid necessity or antecedent debt is not so insignificant as to be ignored. Therefore, having regard to the course of rulings in this Court, we have come to the conclusion that this sale-deed should be set aside on payment by the plaintiffs of the sum of Rs. 800 which has been found to be a good consideration. We may refer to the cases reported in Gobind Singh v. Baldeo Singh ILR 1903 All. 330, Ram Dei Kunwar v. Abu Jajar ILR 1905 All. 494, Bachchan Singh v. Kamta Prasad ILR 1910 All. 392 and Jai Narain Pande v. Bhagwan Pande ILR 1922 All. 683.

6. We accordingly allow Second Appeal No. 1 of 1922 to this extent that we direct that if the plaintiffs pay Rs. 800 within three months of this date, they would be entitled to recover possession of the property covered by the sale-deed together with costs from the defendants. In default of payment, the suit shall stand dismissed with costs.

[The rest of the judgment is not material for this report.]