
(1922) 05 AHC CK 0055
In the Allahabad High Court

Jainarain Pande and Others

APPELLANT

Vs

Bhagwan Pande and Others

RESPONDENT

Date of Decision : 16-05-1922

Acts Referred:

Citation : 80 Ind. Cas. 1006

Hon'ble Judges : Lindsay, J;Kanhaiya Lal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The plaintiffs in this case seek to set aside a sale-deed of a certain fixed rate tenancy, which was executed by Richhpal Pande in favour of the defendants on the 8th of June 1911. One of the plaintiffs is the brother of Richhpal Pande; the other plaintiffs are his sons. The allegation of the plaintiffs was that they were living jointly with Richhpal Pande, that the said property was their ancestral property and that Richhpal Pande transferred the same without any legal necessity. The sale was made for Rs. 375. The Trial Court found that Rs. 101 out of the sale consideration represented the amount taken for legal necessity, but the lower Appellate Court held that the amount taken for legal necessity was Rs. 275-3-0. The Court of first instance had decreed the claim for possession on payment of Rs. 101 to the defendants-vendees, but the lower Appellate Court dismissed the claim in its entirety, observing that Rs. 275-3-0 represented the bulk of the sale consideration.

2. The question in such cases, however, is not whether the consideration which was taken for legal necessity formed the bulk of the consideration, but whether the portion which was not taken for legal necessity was such a small portion as might reasonably be left out of account. In *Girdharee Lall v. Kantoo Lall* 11. A. 321 at p. 332 : 14 B.L.R. 187 : 22 W.R. 56 : 3 S P.C.J. 380 (P.C.) the sale of a certain ancestral property, effected by a father for the payment of his debts, was upheld, though a small part of the consideration was not accounted for. Their Lordships there observed: "There is no suggestion either that the bond or the

decree was obtained benami for the benefit of the father, or merely for the purpose of enabling the father to sell the family property and raise money for his own purpose. There is nothing of the sort suggested and nothing proved. On the contrary, it was proved that the purchase-money for the estate was paid into the bankers of the fathers and credit was given to them with the bankers for the amount, and that the money was applied partly to pay off the decree, partly to pay off a balance which was due from the fathers to the bankers, and partly to pay Government revenue, and then there was some small portion of which the application was not accounted for. But it is not because there was a small portion which was not accounted for, that the son, probably at the instigation of the father, has a right to turn out the bona fide purchaser who gave value for the estate and to recover possession of it with mesne profits.

3. The point for determination in each case, therefore, is whether the portion of the consideration, which was not taken for legal necessity, was such a small part as ought not to be taken into account in determining whether the sale should be set aside or upheld. It is not always possible for the manager of a joint Hindu family to sell property exactly for the amount for which the legal necessity might exist. He might be able to raise a loan by a mortgage, but it might not always be possible for him to find a mortgagee willing to take a mortgage of the property for the amount required, unless the security given leaves a sufficient margin to cover the principal and interest that might eventually fall due on the transaction. In many cases the sale of a portion might be out of the question and fail to command either a purchaser or its proper value.

4. The property here sold was a fixed rate tenancy, measuring 2'48 acres and assessed to a small rent, but probably yielding a considerable profit to the family. The amount required to meet the legal necessity was only Rs. 275-3-0, and it is not possible to say that Richhpal Pande could not have sold a portion of the property and raised the money that was required for the purpose of meeting the family requirements, and thus saved the rest of the property for the family use.

5. In *Gobind Singh v. Baldeo Singh* 25 A. 330 : (1903) A.W.N57 and *Bam Dei Kunwar v. Abu Jafar* 27 A. 194 : (1905) A.W.N68 sales have been set aside under similar circumstances. In *Nathu Ram v. Kanhaiya Lal* 80 Ind. Cas. 226 the same question had arisen, and, following the above decisions, the sale was not upheld as the portion of the consideration for which no legal necessity had been established, was not such a trifling amount as could be left out of account. As there pointed out, it is difficult to decide cases of this nature upon any fixed arithmetical principle, and the circumstances established in each case have to be taken into consideration, with the nature of the property, to determine whether the amount, which represented the money not taken for legal necessity, was such a small or trifling sum as might be left out of account in determining whether the transaction should be upheld or annulled.

6. A reference has also been made to the decision in *The Deputy Commissioner of Kheri v. Khanjan Singh* (1907) 11 C.W.N. 474 : 9 Bom L.R. 591 : 5 C.L.J. 344 : 4

A.L.J. 232 : 2 M.L.T. 145 : 17 M.L.J. 233 : 29 A. 331 : 10 O.C. 117 : 34 I.A. 72 (P.C.). In that case the sale was annulled on payment of the amount for which the legal necessity was found to have been established. In *Felaram Roy v. Bagalanand* 6 Ind. Cas. 207 : 14 C.W.N. 895 stress was laid on the fact that "it would manifestly be impossible and possibly prejudicial to the interest of the estate, if the widow were held to be bound in every instance to sell property, for payment of a debt due from her husband, for exactly the sum due to the creditor." But that difficulty does not exist here, because a portion of the fixed rate tenancy could at any rate have been sold in order to raise the amount for which the legal necessity existed. In the circumstances the entire sale cannot be upheld.

7. We allow the appeal accordingly, set aside the decree of the lower Appellate Court and give the plaintiffs-appellants a decree for possession of the disputed property on payment of Rs. 275-3-0 within six months from this date. In case of payment, the plaintiffs will get their proportionate costs from the contesting defendants in all the Courts. If they fail to pay the said amount as above directed, the suit shall stand dismissed and the contesting defendants will get their costs from the plaintiffs appellants in all the Courts.