

(1929) 11 PAT CK 0001
In the Patna High Court

Kamal Prasad Singh and Others

APPELLANT

Vs

Lalji Prasad and Others

RESPONDENT

Date of Decision : 29-11-1929

Acts Referred:

Citation : AIR 1930 Patna 600

Hon'ble Judges : Wort, J; Ross, J

Bench : Full Bench

Judgement

Ross, J.—This was a reversionar's suit calling in question certain alienations made by a limited owner. There were three conveyances in question; but this appeal is only concerned with one and with only a part of the property affected thereby, viz., 15 gandas share in Rasulpur. One anna share was sold to three persons; and the 15 gandas now in dispute were sold, as to 10 gandas for Rs. 825, to Ishwar Singh and as to 5 gandas for Rs. 412-8,0, to Parmeshwar Singh. The appeal is by the son of Ishwar Singh, and by a transferee from Parmeshwar Singh.

2. The learned Subordinate Judge, while holding that the sale was for legal necessity, directed a reconveyance on payment of, the price, of the property, It is contended by the appellant that if the sale was for legal necessity there can be no direction to re-convey. This proposition is not disputed by the respondents; but it was contended on their behalf that the finding of the learned Subordinate Judge as to legal necessity was wrong.

3. It appears that this conveyance was executed to pay off three bonds, one of which was for Rs. 826, the debt being incurred for the marriage expenses of the daughter of the limited owner who was a married woman. The other two bonds were admittedly executed for legal necessity. The dispute is about the expenses of the marriage of the daughter of the limited owner.

4. Reference was made to a decision of this Court in *Mt. Narain Bati Kunwari v. Ramdhari Singh* [1916] 1 Pat. L.J. 81 but that was a case of a daughter's

daughter. On the other hand, there are two decisions which recognize that the marriage of a daughter may in certain circumstances be a necessity of her maternal ancestor's estate. In *Rustom Singh v. Moti Singh*. [1886] 18 All. 474 it was so held. There the father was unable out of his resources to effect the marriage of his daughter, and thereupon the mother of the girl was obliged to have recourse to the property that came from her father to her. It was held that the money was taken for a necessary purpose. This judgment was considered by Devadoss, J, in *E. Rajagopalachariar Vs. Sami Reddi and Others*, and that learned Judge observed that this was quite in consonance with the principle of Hindu law that a daughter should be married before she comes to age and that it was the duty of the father to see that she was married, and if the father was too poor to do this duty, the mother could, under the circumstances, alienate her property for the purpose of getting the girl married. It is argued that this is contrary to principle because the daughter will confer no spiritual benefit upon her maternal ancestors as after marriage the daughter goes into her husband's family. It may be that strictly in principle, this is so; but this as recognized by an eminent Hindu Judge as a duty upon the mother in certain circumstances entitling her to alienate property that came to her from her father.

5. The finding of fact in this case is that the father, Kabir Prasad, the husband of the limited owner, was a man of no substance and that he could not afford to have his daughter married; and this finding is not questioned. In these circumstances it seems to me that it would be going too far to impugn the conveyance on this ground, especially when the other two items which amount to almost half the consideration are admitted to be legal necessity, In these circumstances I am of opinion, looking at the whole transaction, that this was a sale for legal necessity.

6. Other points were taken, viz., that it was not shown that the lady was in need at the time or that the daughter was married at the time when this money was taken. But the transaction was remote in time, the money having been borrowed in 1871, and it is impossible that evidence should be forthcoming on these points now. The recitals coupled with the circumstances of the case are in my opinion good evidence after that lapse of time It was also argued that the property had been sold improvidently, because the defendants' own evidence shows that it must be worth Rs. 8,000. But property which is now worth Rs. 3,000 might well have been worth much less more than 50 years ago.

7. I think on the whole that the judgment of the learned Subordinate Judge on the point of legal necessity is right. That being so, no reconveyance should have been ordered and the appeal must succeed and the suit be dismissed with proportionate costs throughout with regard to 15 gandas share of the property in suit.

Wort, J.

I agree.