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**(1944) 04 BOM CK 0009**  
**In the Bombay High Court**  
**Case No : O.C.J. Suit No. 411 of 1944 (O.S.)**

Pranlal Bhagwandas

APPELLANT

Vs

Chapsey Ghella

RESPONDENT

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**Date of Decision :** 12-04-1944

**Acts Referred:**

Transfer of Property Act, 1882 — Section 39

**Citation :** AIR 1945 Bom 34 : (1944) 46 BOMLR 760

**Hon'ble Judges :** Chagla, J

**Bench :** Single Bench

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## Judgement

Chagla, J.—This is a vendor-purchaser summons. By an agreement dated April 30, 1943, between the plaintiff and the defendants, the defendants agreed to sell and the plaintiff agreed to purchase from the defendants an immovable property belonging to the defendants situate at Lamington Road, Bombay, for a price of Rs. 1,45,000. The material clauses of the agreement, With which I am concerned in this summons, are cls. 5 and 10. Clause 5 says:

The vendors shall make out a marketable title to the said land hereditaments and premises agreed to be sold. The vendors shall get in all outstanding estates and clear all defects in title at their own expense including all claims by way of sale, exchange, mortgage, gift, trust, inheritance, possession, lease, lien or otherwise. The vendors shall obtain an order of the Court for sale of this property on behalf of the minor Gangji Chapsey at their own costs. Until such order is obtained the purchaser "will not incur any costs for investigation of title. Such order must be obtained within two months and three months" time will run from the date of the order. " Clause 10 says :

The vendors shall get the consent of all persons interested in the premises agreed to be sold and shall get the documents duly executed by them.

2. It seems that one Ghella Ashar had two sons, Chapsey Ghella and Meghji Ghella. We are concerned only with Chapsey Ghella who is defendant No. 1 to

the summons and his branch of the family. The property agreed to be sold admittedly belongs to the joint family of which Chapsey Ghella is the karta. Chapsey Ghella has two sons, Bhawanji and Gangji, defendants Nos. 2 and 3. These are the only male members of the joint family. Besides these male members, the female members of the joint family are! the wife of Chapsey Ghella, Panbai; the wife of Bhawanji, Dewkabai; and a minor daughter of Bhawanji by the name of Nirmala ; two married daughters of Chapsey, Manibai and Umerbai, with whom really we are not concerned ; and an unmarried daughter by the name of Monghibai. Defendant No, 3 was a minor till February of this year. An application was made to the Chamber Judge, Mr. Justice Coyajee, under the inherent jurisdiction of this Court, to sanction, the sale of this property as being for the benefit of the minor Gangji and for appointing his father Chapsey as guardian so that he could convey, his right title and interest to the purchaser. On this application Mr. Justice Coyajee made an order on August 9, 1943, declaring that the agreement for sale was for the benefit of the minor Gangji and appointing Chapsey as the guardian of the interest of Gangji in the joint family property.

3. The contention put forward by the plaintiff is that he is advised that having regard to the existing state of the law in that behalf the female members of the joint family have a right to maintenance not only from the male members personally but also out of the property in their hands, that they can pursue the property even in the hands of a stranger who had purchased it with a notice of their claim and that a bare notice of the existence of such a right is sufficient to make it a burden on the property in the hands of the transferee. It is further urged by the plaintiff that as a large surplus would remain over from the sale-proceeds after the payment of the debts which only amount to Rs. 90,000, though the female members would not be in a position to impugn the sale of the property so far as it is necessary to pay and satisfy the debts, yet nevertheless so far as the right to maintenance and marriage expenses are concerned, the surplus sale-proceeds which in this case amount to about Rs. 50,000 or the corresponding proportionate part of the property even "in the hands of the purchaser may become liable to pay the burden of maintenance and marriage expenses of the female members of the family. Mr. Bhagwati has told me that his client is a willing purchaser; but he is anxious to avoid,; as every purchaser is anxious to avoid, purchasing litigation, and he wants the position to be made clear on this originating summons.

4. Mr. Bhagwati has drawn my attention to the amended Section 39 of the Transfer of Property Act, 1882, which provides that where a third person has a right to receive maintenance or a provision for advancement or marriage from the profits of immovable property, and such property is transferred, the right may be enforced against the transferee, if he has notice thereof or if the transfer is gratuitous ; but not against a transferee for consideration and without notice of the right, nor against such property in his hands. It will be noticed that the amending section has made a considerable alteration in the law as it stood prior

to the amendment. Under the old section the persons who had the right to maintenance were only protected against a transfer of property provided such transfer was with the intention of defeating that right. Such intention is no longer necessary under the section as it stands at present. But there is no doubt that Section 39 of the Transfer of Property Act does not create any new right in favour of any person ; and what I have got to determine is, before I consider the application of Section 39, what right to receive maintenance and provision for marriage Hindu females in a joint family have under the ordinary Hindu law. If they have any right, then they are entitled to enforce that right against the transferee if he has notice of their right. There is no doubt that in this case if the female members of this joint family have a right, Mr. Bhagwati's client has undoubtedly notice of such a right.

5. It is conceded by Mr. Bhagwati that the joint family property at Lamington Road is being sold for legal necessity. As I have pointed out, there are joint family debts amounting to Rs, 90,000 and the property has to be sold in order to pay those debts. It is also conceded that the property is being sold at a fair market price. It is also by now a well-established principle of Hindu law that a bona fide purchaser is not bound to look to the application of sale-proceeds of a property which is sold for legal necessity. If he is satisfied-and in this case, he is satisfied-that the property is being sold for legal necessity, it is no concern of his to see what the karta of the family does with the sale-proceeds when they are realized.

6. It is true that the right of a Hindu female to receive maintenance and a provision for marriage is not purely a personal right but is a right to receive maintenance and a provision for marriage out of joint family properties. But it is equally true that a Hindu female has no right in any specific property belonging to the joint family. The right that she has to maintenance or to a provision for marriage expenses is a right which is not crystallised into a charge and, therefore, that right does not attach to any specific property belonging to the joint family. It is also not disputed that the right of a Hindu female to receive maintenance or a provision for marriage expenses can be defeated by joint family properties being sold or alienated for the payment of joint family debts. Debts contracted by a Hindu take precedence over the right of his wife for maintenance and of his daughter for maintenance and marriage expenses. The only difficulty, according to Mr. Bhagwati, that arises in this case is that whereas the debts to be paid for which the property is being sold are only Rs. 90,000, the amount that the karta would receive would be Rs. 1,45,000. The question, therefore, that arises is whether a Hindu female has a right to receive maintenance from a property which has been alienated for legal necessity. One has only to state the question to realize that the answer must be in the negative. Once the property is alienated for legal necessity and goes out of the joint family, the right of the Hindu female belonging to that family to receive maintenance from that property must come to an end. To my mind the fact that the sale-proceeds realized are larger than the debts to be paid is entirely an irrelevant

question; once it is conceded that the property is sold for legal necessity and also it is conceded that the purchaser is not bound to look to the application of the sale-proceeds, the fact that the karta realizes more than what is necessary to pay the joint family debts does not give any right to the Hindu female to look to the property which has been alienated for her maintenance or for her marriage expenses. Therefore, in my opinion, neither Panbai nor Dewkabai would have any right of maintenance in the property which is agreed to be sold by defendant No. 1 to the plaintiff nor would Nirmala and Monghibai have any right to look to this property for their maintenance and for their provision for marriage expenses.

7. My attention has been drawn to a recent decision of our Court of Appeal reported in Radhabai Gopal v. Gopal Dhondo: (1942) 45 Bom. L.R. 980. In that case a wife was living separately from her husband and she filed a suit against him and obtained a decree. After the decree was passed but before she could apply for the execution of that decree, her husband sold all his property to his natural father. The wife then filed a suit to recover maintenance from her husband (defendant No. 1) and sought to levy charge for her maintenance on lands sold to her husband's natural father (defendant No. 2). The father (defendant No. 2) claimed that he was a bona fide purchaser for value without notice. The Court of Appeal held that the father (defendant No. 2) having purchased the property with notice of the wife's claim was bound to give priority to her claim for maintenance except to the extent of Rs. 9,518 which represented debts of her husband (defendant No. 1) and which were binding on her. I do not think that this decision lays down that where a bona fide purchaser purchases his property for an amount which exceeds the joint family debts the female members of the joint family have any right to be paid out of the property to the extent of the difference between the purchase price and the joint family debts. The decision of Mr. Justice Divatia and Mr. Justice Lokur definitely turns on the very exceptional facts of that case. As I have pointed out, the husband (defendant No. 1) sold all his property to his natural father (defendant No. 2) immediately after a decree was passed in favour of the wife ; and Mr. Justice Lokur at p. 989 of his judgment definitely holds that the object of the sales by the son to the father must have been to defeat the claim of the son's wife. Again, at p. 991 the learned Judge says that the father was fully conversant with the affairs of his son, his strained relations with his wife and her right to get her maintenance from him and with all this knowledge he purposely bought from his son his entire immovable property. Then, further on, on the same page the learned Judge says :

In order to defeat the plaintiff's (wife's) claim he (the father) purchased nearly twice the property by fraudulently [inflating the debts of her husband (the son)]. The payment of the genuine debts of Rs. 9,518 cannot be questioned and it takes precedence over the plaintiff's right of maintenance. But having notice of that right, defendant No. 2 (father) fraudulently purchased the entire property for a consideration, out of which Rs. 7,982 was not needed for the payment of debts, and that amount cannot have priority over the plaintiff's right of

maintenance. Hence, taking an equitable view of the case, we hold that 7,982 [17,000 or roughly 16/37 part of the property in suit is liable to bear the burden of the plaintiff's maintenance.

8. I might point out that in, this case defendant No. 1 in the affidavit he has made on the summons states that there are other joint family properties worth about Rs. 16,000 besides the property he has agreed to sell and which is the subject-matter of this originating summons.

9. Parties have agreed that the costs of the originating summons will be costs in the sale.