

(1960) 01 CAL CK 0027
In the Calcutta High Court
Case No : A.F.A.D. No. 425 of 1954

Sushila Bala Dasi and Others

APPELLANT

Vs

Bibhuti Bhusan Pandit and Others

RESPONDENT

Date of Decision : 21-01-1960

Acts Referred:

Citation : AIR 1961 Cal 180 : (1961) 1 ILR (Cal) 219

Hon'ble Judges : P.N. Mookerjee, J;Niyogi, J

Bench : Division Bench

Advocate : Ganganarayan Chandra, for the Appellant; Panchu Gopal Ganguly, for the Respondent

Final Decision : Allowed

Judgement

P.N. Mookerjee, J.—This is the defendants' appeal, arising out of a suit for a declaration that a sale-deed, executed by pro forma defendant No. 4 Santosh Bala (who was a minor at the time) through her father Rakhal. was not binding upon the plaintiff. The plaintiff claims to be the reversioner to the estate of his deceased brother Golok. Santosh Bala, was the widow of Golok. The sale appears to have been made by her on account of certain alleged legal necessities, which were stated before the Courts below by the answering defendants, who are the purchasers under the aforesaid kobala and who are the appellants before us, as necessities for her maintenance necessities for meeting the expenses of treatment and Sradh of Golok and the necessity of meeting or paying some arrears of tent in respect of Golok's properties.

2. The trial Court accepted the above defence of legal necessity and dismissed the plaintiffs suit. The actual findings of the trial court were that the necessity for maintenance had been proved, at least to the extent of the amount mentioned, namely, Rs. 324/-, but, so far as the other alleged necessities were concerned, the expenses for treatment of Golok had not been proved to have been incurred nor also was there any pressure for payment of the alleged rent dues, and, as to the Sradh expenses, the trial court's finding was not very definite either way.

The learned Munsif, however, upon the view that, at least the maintenance expenses, which were necessary for the widow and which were, certainly, a legal necessity, could not be met except by the sale of the disputed properties and, as the purchaser defendants paid a fair price, namely, Rs. 999/- for the kobala in suit, the sale should be upheld and the plaintiff-reversioner's suit should be dismissed.

3. The lower appellate court, upon appeal by the plaintiff, has reversed the above decision of the learned Munsif, upon the view that, of the necessities alleged, only the necessity for the widow's maintenance to the extent of Rs. 324/- as aforesaid, had been proved and, that being so, having regard to the admitted price of the suit kobala, namely, Rs. 999/-, the sale cannot be upheld and the said kobala should be held to be not binding upon the plaintiff as next reversioner as stated in the plaint but only upon his (the plaintiff reversioner's) paying back to the purchasers defendants (who are the appellants before us) the sum of Rs. 324/-, which was, admittedly, necessary for the maintenance of the widow, by depositing the same in the trial court to the credit of the said purchasers defendants (Nos. 1 to 3) within two months of the arrival of the records in the said Court below.

4. It appears from the record before us that the learned Subordinate Judge, who heard and disposed of the above appeal, recorded a clear and specific finding which is found at page 16 of the Paper Book to the effect that

"it has clearly been established that the widow had practically nothing in her hands to defray the expenses of her maintenance. She had no means to raise money in any other way. There was, therefore, undoubtedly a pressure on the estate and she had undoubtedly compelling necessity for raising money for her maintenance by sale of the properties."

In view of this finding, it seems to us that the decision of the court of appeal below cannot be maintained. The finding quoted is a clear finding of legal necessity and, for supporting or justifying a sale by the widow or other limited heir on a finding of legal necessity, it is not necessary that legal necessity for the entire amount of the purchase money should be found. If there is legal necessity for the sale or, in other words, if the said necessity cannot be met except by a sale of the properties in question, as has been found by both the courts below in the present case, and the purchaser pays or has paid a fair price which also is the finding of the two courts below in the instant case before us, there can be no question that the sale must be upheld as a sale, justified by legal necessity, even though the actual price paid may, as a matter of fact, exceed the amount of the said legal necessity. That, in deed, was the view, taken by this Court in the case of *Kalipada Koer v. Purnabala Dassi* AIR 1948 Cal. 269, where Chakravarti, J., as he then was, explained and laid down the true law on the point as above, after referring to and considering the leading decisions thereon, and we respectfully agree with the same.

5. In the above view, we hold that the decision of the court of appeal below cannot be sustained and this appeal should succeed and the judgment and decree of the learned Subordinate Judge should be set aside and those of the trial court should be restored.

6. In the circumstances of this case, however, and, having regard to the state of the law on the disputed question, we would direct the parties to bear their own costs throughout.

7. If the plaintiff respondent has deposited any money in court in pursuance of the direction, given by the lower appellate court, as aforesaid, and if the said money be still there, he will be entitled to withdraw the said amount.

Niyogi, J.

8. I agree.