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document; he was clearly endeavouring to give to it what he regarded as its legal construction. He said: "It does seem to me that the *iqrarnama* which evidences the transaction, does amount to an admission that the Baghar people had given up all interests in the Simal *thok* and can hardly now claim part ownership in the *sanjait* land therein." That construction may have been the right one or may have been the wrong one; with that we have no concern. We are of opinion that in this particular case both the courts were required to consider instruments of title and documents which were the direct foundation of rights. That being so, we are of opinion that our answer to this reference must be that the Commissioner was right in holding that he was entitled to reverse the judgement and decree of the first appellate court by taking into consideration the evidence on the record on which the first appellate court had come to a contrary conclusion.

Let this answer be returned to the Local Government.

Reference answered.

APPELLATE CIVIL.

Before Mr. Justice Sulaiman and Mr. Justice Banerji.

1926 April, 27.

JADO SINGH AND OTHERS (PLAINTIFFS) *v.* NATHU SINGH AND OTHERS (DEFENDANTS).*

Hindu law—Alienation of joint family property—Facts necessary to support alienation of joint ancestral property —"Benefit to the estate"—Sale of unprofitable property and purchase in lieu thereof of property which was a paying investment.

Though it is impossible to give a precise definition of what is such "benefit to the estate" as will support a sale of joint ancestral property, the term may be held to apply to such a transaction as the sale of inconveniently

* First Appeal No. 495 of 1922, from a decree of Rama Das, Subordinate Judge of Saharanpur, dated the 23rd of September, 1922.

situated, incumbered and unprofitable property and the purchase in its stead of other property which was undeniably a sound investment.

Hunooman Persaud Pandey v. *Babooee Munraj Koonwaree* (1), *Indar Kuar* v. *Lalta Prasad* (2), *Palaniappa Chetty* v. *Sreemath Devasikamony Pandara Sannadhi* (3), *Sadhu Saran Prasad* v. *Brahmdeo Prasad* (4), *Tula Ram* v. *Tulshi Ram* (5), and *Lal Bahadur Lal* v. *Kamleshar Nath* (6), referred to.

THE facts of this case were as follows :—

One Phul Singh, who, with his two sons Nathu Singh and Arjun Singh, constituted a joint Hindu family purchased certain property under a sale-deed dated the 8th of April, 1897, for a sum of Rs. 4,000. Out of this sum, Rs. 700 remained unpaid, and in lieu of it a bond was executed by Phul Singh on the same date, carrying compound interest at the rate of ten annas per cent. per mensem. On the 9th of July, 1908, Phul Singh executed a mortgage bond in lieu of this document for a sum of Rs. 2,450, being the amount due on the previous bond. After Phul Singh's death, his sons Nathu Singh and Arjun Singh, the fathers of the plaintiffs, executed a hypothecation bond, dated the 15th of June, 1912, in order to raise Rs. 500 to pay off interest due on the previous mortgage, and some cash. On the 16th of October, 1912, the sale-deed in dispute in this case was executed by Nathu Singh and Arjun Singh, Nathu Singh acting also as the guardian of his minor son, Jado Singh, plaintiff No. 1. The sale consideration was Rs. 6,650, out of which Rs. 2,600 were left with the vendees for payment of the two previous mortgages; Rs. 3,530 was stated to be required for the maintenance of the minor and for other expenses; and Rs. 520 as earnest money, etc.

(1) (1856) 6 M.I.A., 393 (423).
(2) (1882) I.L.R., 4 All., 532 (543).
(3) (1917) I.L.R., 40 Mad., 709.
(4) (1921) 61 Indian Cases, 20.
(5) (1920) I.L.R., 42 All., 559.
(6) (1925) I.L.R., 48 All., 183.

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It was in evidence that at the time when this sale took place Nathu Singh and Arjun Singh were actually negotiating for the purchase of zamindari property in their residential village in which they were then mere tenants. Within seven months of the registration of the sale-deed, Nathu Singh and Arjun Singh actually purchased property in their residential village for a sum of Rs. 3,000.

The new purchase was an obviously good investment, having doubled in value in the course of about ten years. Some ten years after the sale above referred to, the minor sons of Nathu Singh and Arjun Singh brought the present suit to have it set aside on the grounds usual in such cases. The trial court found that the transaction was for necessity and for the benefit of the family and had resulted in considerable advantage to it. It also found that the whole of the consideration had been paid. It accordingly dismissed the suit.

The plaintiffs appealed.

Munshi *Shiva Prasad Sinha* (for *Dr. Kailas Nath Katju*), for the appellants.

Dr. *Surendra Nath Sen* and Mr. *B. Malik*, for the respondents.

THE judgement of the Court (SULAIMAN and BANERJI, JJ.), after stating the facts and the Court's agreement with the finding as to payment of consideration arrived at by the court below, thus continued :

The main argument before us is that even assuming that Rs. 2,600 were for a valid consideration for the alienation, there was no justification to raise a

further sum in order to purchase fresh property, as is alleged by the defendants. That about Rs. 3,000 out of the sale consideration were utilized towards purchasing this fresh property, is fully established by the oral evidence and the circumstances of the case. The learned Subordinate Judge has believed this story and we have no hesitation in agreeing with his view. In fact this point has not been pressed before us very seriously.

What has been strongly urged is that there was under the Hindu law no justification for the fathers of the present plaintiffs to raise money by transferring joint property in order to purchase fresh property. The contention is that such a course amounted to a mere speculation, which was wholly unauthorized. Before we go into the question of law it is necessary to state the circumstances under which the fresh property was acquired.

The plaintiffs' fathers were mere tenants in village Asanwali, and it is only natural to suppose that they must have been very anxious to become zamindars in that village. They had acquired property in 1897 in village Salempur, some two miles from their village, where they had some cultivation. On this property there were mortgage debts carrying interest at 7½ per cent., compounded every year, the amount having accumulated to about Rs. 2,600. For a long number of years they had been unable to pay off this amount and discharge the debt and there seemed to be no prospect of their being able to do so in any way other than by transferring a part of it. The learned Subordinate Judge has found that the creditors were pressing for the payment of this money. In fact the last hypothecation bond was executed in order to pay off some interest on the previous one. A demand for

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further payment of interest was therefore not at all improbable. The Government revenue shown against this property in the sale-deed of 1912 was less than that shown in 1897; this suggests that the property might have deteriorated in quality. The learned Subordinate Judge has found that although the plaintiffs' fathers were good managers and it might be assumed that they were doing their best, they found it difficult to cultivate lands situated not in their residential village but in a village some two miles off. He has further found that it was foresight and prudence on their part to sell the property distantly situated and purchase property in lieu of it nearer home where cultivation could be managed by them at a smaller cost. This was doubly so when the result would be to free themselves from the anxiety of the old debt bearing compound interest which would otherwise go on swelling. He was further satisfied on the oral evidence that the property in Asanwali was the better of the two, both in respect of the quantity of the yield and its price. He has therefore come to the conclusion that the transaction was prudent and beneficial from every point of view. We agree with this view fully. He has further pointed out that as a matter of fact this transaction has proved very beneficial and has resulted in considerable advantage to the family. The property which they purchased for Rs. 3,000 on the 5th of July, 1913, is now worth about Rs. 6,000 and has thus appreciated considerably in value. The plaintiffs along with their fathers are admittedly in possession and in enjoyment of it and they wish to retain it. At the same time they desire that the sale-deed, by means of which money was raised to acquire the property now in their enjoyment, should be set aside so that they may get back the other property also. As we are agreeing with the view of the learned

Subordinate Judge on the facts, we do not think it necessary to discuss all the oral evidence in detail and we content ourselves with stating that we accept these findings as fully justified by the evidence.

It has, however, been very strongly contended on behalf of the plaintiffs that even assuming all these findings, the whole transaction cannot be upheld because the plaintiffs' fathers had no authority to transfer joint property in order to raise money to purchase fresh property, and it is urged that under no circumstances can a sale of a joint property in order to acquire fresh property be justified, as it can never be a case of legal necessity. As to the question whether it might not be a transaction for the benefit of the family, the argument that has been pressed before us is that in view of the pronouncements of their Lordships of the Privy Council in the case of *Palaniappa Chetty* v. *Sreemath Devasikamony Pandara Sannadhi* (1), there can be no benefit to the family unless it amounts to a preservation or protection of the family property.

As early as 1856 their Lordships of the Privy Council in the leading case of *Hunooman Persaud Panday* v. *Babooee Munraj Koonwaree* (2) laid down the law as follows :—

" The power of the manager for an infant heir to charge an estate not his own, is, under the Hindu law, a limited and qualified power. It can only be exercised rightly in a case of need, or *for the benefit of the estate.* But *where, in the particular instance, the charge is one that a prudent owner would make, in order to benefit the estate, the* bonâ fide *lender is not affected by the precedent mismanagement of the estate.* The actual pressure on the estate, the danger to be averted, *or the benefit to be conferred upon it,* in the particular instance, is the thing to be regarded."

(1) (1917) I.L.R., 40 Mad., 709. (2) (1856) 6 Moo. I.A., 393 (423).

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It is quite clear that the benefit to be conferred upon the estate was something distinct from mere need or the pressure upon it. At least this was the view which was accepted by this Court in several cases. We may only refer to the case of *Indar Kuar* v. *Lalta Prasad* (1). MAHMOOD, J., pointed out that there was a distinction between litigation undertaken to protect the property and litigation the object of which was to obtain a possible benefit for the estate, and then remarked :—

"As a general rule, the former class of litigation would no doubt amount to legal necessity; and in regard to the latter class of litigation it may be laid down that, if such litigation ends in actual benefit to the estate, any alienation which may have been necessary for prosecuting the litigation would be valid and binding upon the reversioner, on the analogy of the maxim—he who enjoys the benefit ought to bear the burden also."

Since then this Court has accepted the view that a transfer of joint property by the manager can be justified if it is not a mere speculation but results in actual benefit to the estate. The other members of the family cannot retain the benefit and at the same time repudiate the transaction by means of which the benefit has been acquired.

We do not think that their Lordships of the Privy Council in the case of *Palaniappa Chetty* v. *Sreemath Devasikamony Pandara* (2), meant to depart from the view expressed in *Hunooman Persaud's* case. All that their Lordships remarked was that in the reported cases no indication was found as to what is the precise nature of the things to be included under the description "benefit to the estate." Their Lordships then observed :—

"It is impossible, their Lordships think, to give a precise definition of it applicable to all cases *and they do not attempt*

(1) (1882) I.L.R., 4 All., 532 (534). (2) (1917) I.L.R., 40 Mad., 709.

to do so. The preservation, however, of the estate from extinction, the defence against hostile litigation affecting it, the protection of it or portions from injury or deterioration by inundation, these and such like things would obviously be benefits. The difficulty is to draw the line as to what are, in this connection, to be taken as benefits and what not."

The case before their Lordships was one in which a shebait of temple property had granted a lease in perpetuity " solely for the purpose of getting capital to embark on the money-lending business." Their Lordships held that that could not be considered a benefit to the estate. Their Lordships, however, further proceeded to consider whether on facts the transaction was in reality beneficial and came to the conclusion that it was not.

When their Lordships themselves remarked that it was impossible to give a precise definition of "benefit to the estate " applicable to all cases and that they did not attempt to do so, it is difficult to accept the contention of the learned vakil for the plaintiffs that by implication their Lordships meant to confine the scope of the word " benefit " to the cases mentioned by their Lordships as coming *obviously* under that head. Every case has to depend on its particular circumstances and facts. It is impossible to hold that in view of the remark of their Lordships the view of this Court has been altered so as to make it impossible for the manager of the joint Hindu family to transfer property in order to acquire another property in lieu of it. If such were the view, exchanges would be absolutely prohibited and managers would find it impossible to get rid of properties small in extent, distantly situated and difficult to manage, in order to acquire property more beneficial and useful. The case decided by their Lordships of the Privy Council has been a subject of consideration by the Patna High Court in at least two cases which have been brought

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to our notice, and the view of the Patna Judges certainly is that this case does not overrule the previous decision. We may here refer to *Sadhu Saran Prasad* v. *Brahmdeo Prasad* (1) and *Kalika Nand Singh* v. *Shiva Nandan Singh* (2).

In the case of *Tula Ram* v. *Tulshi Ram* (3), it was held that where joint family property had been mortgaged to obtain a loan on the representation that the money was required for the purpose of purchasing certain zamindari property and the purchase was not in fact an unprofitable or improvident transaction but proved beneficial to the family, the debt was incurred for the benefit of the family and was binding on all the members thereof. This was in accordance with the previous view held by this Court. Later on came the case of *Bhagwan Das Naik* v. *Mahadeo Prasad Pal* (4). At page 393 the learned Judges referred to the case decided by MAHMOOD, J., already quoted by us, and remarked that the mere borrowing of money to pursue litigation, the object of which was to obtain *a possible benefit* for the estate was held not to be justified under the doctrine of "legal necessity" as known to the Hindu law, *though possibly if the litigation resulted in benefit to the estate, the debt would be binding in accordance with the principle of equity embodied in the maxim quoted.* The learned Judges then referred to the case of their Lordships of the Privy Council and stated that there was nothing in the remarks in that case to encourage the notion that an adventure in the shape of a speculative suit which might possibly bring profit to the estate could possibly be regarded as a "benefit to the state" or a "legal necessity." We agree with this view. It was further remarked that "the observations of their Lordships

(1) (1921) 61 Indian Cases, 20. (2) (1921) 63 Indian Cases, 625.
(3) (1920) I. L. R., 42 All., 559.
(4) (1923) I. L. R., 45 All., 390.

rather import that any act for which the character of "legal necessity" or "benefit to the estate" can be claimed, must necessarily be a defensive act, something undertaken for the protection of the estate already in possession, not an act done with the purpose of bringing fresh property into possession, and *which may or may not be successful under the chances attending upon litigation.*" It is obvious that the transfer of family property in order to enable the members to embark upon litigation in the hope of acquiring property on the success of uncertain litigation cannot amount to justification. The learned Judges had before them the case of a manager who had made four mortgages and spent the borrowed sums in support of a futile claim for mutation, which ultimately fell, the mortgagee knowing that these sums had been borrowed for the purpose of that litigation. That case therefore has no resemblance to the case before us. In the same way the case of *Shankar Sahai* v. *Bechu Ram* (1), which was a case where family property was transferred in order to acquire necessary funds to pre-empt other property, is not directly applicable. On the other hand, the case of *Jagmohan Agrahri* v. *Prag Ahir* (2), decided by a Bench to which LINDSAY, J., who had decided the case in *Bhagwan Das Naik* v. *Mahadeo Prasad Pal* (3) was a party, goes further than even the present case, for there the disposal of ancestral property by a Hindu father which was inconveniently situated and was not sufficiently profitable, was upheld, though the sale consideration was applied not for the purchase of fresh property but for the extension of the family business, which though not of a speculative nature subsequently failed. On the strength of these authorities we are therefore unable

(1) (1925) I.L.R., 47 All., 381. (2) (1925) I.L.R., 47 All., 452.
(3) (1923) I.L.R., 45 All., 390.

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to hold that in no case can a transfer of joint property made in order to acquire another property in its place be justified. In this particular case we have already referred to various circumstances showing the foresight and prudence of the managers. We might here point out one more important circumstance. At the time of the sale-deed the only male members of the family were Nathu Singh and Arjun Singh and Nathu Singh's minor child Jado Singh. The adult members were the only persons who could judge of the prudence and prospective benefits of the transaction that they were entering into. Nathu Singh not only acted as the manager of the family but also as the guardian of the minor son. These people were in the best position to judge whether the transaction was prudent and beneficial or not. That their judgement was not wrong has been demonstrated by the enormous increase in the value of the property and the actual benefit which has accrued. The plaintiffs have derived full benefit from it and are determined to retain the property. Under these circumstances it seems to us impossible to allow them to get rid of the sale-deed by means of which they were provided with the means by which the unencumbered property which they are retaining was acquired. We have already remarked that a good portion of the amount was utilized for payment of antecedent debts which cannot possibly be avoided by the plaintiffs. Even if any small sum of money out of the large sale consideration had not been required for any legal necessity and was not utilized towards the acquisition of this other property, the sale could not be avoided unless it were shown that the money was not at all paid to the plaintiffs' fathers and that the consideration which was actually paid was not equal to the real value of the property. We might in this connection quote

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the recent Full Bench case of *Lal Bahadur Lal* v. *Kamleshar Nath* (1).

Having regard to all these circumstances we are of opinion that this appeal must be dismissed. We accordingly dismiss it with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Sulaiman.

EMPEROR *v.* MAHTAB RAI AND ANOTHER.*

1925 *December*, 9.

Act No. XLV of 1860 (*Indian Penal Code*), *section* 251—*Tendering to a bank for exchange coins which had been used as ornaments and from which the solder had been imperfectly removed and coins which had been reduced in weight otherwise than by legitimate wear—Knowledge of tenderers.*

Two persons, who carried on a business as dealers in coins at Delhi, came to Moradabad on the 24th of May, 1925, (on which date, being a Sunday, the Bank was closed) and obtained an introduction to the cashier of the local branch of the Imperial Bank. They had with them a large number of coins, and they offered to the cashier a commission of 3 per cent. if he would change them. On further examination of these coins at the Bank the next day, the Bank officials sent for the police and the two dealers were arrested. The coins which they had brought were sent for examination to the Calcutta Mint. The report of the Mint expert, which was duly proved at the trial, showed that a considerable number of the coins tendered were old and worn coins which had been used at one time as ornaments and from which the solder had only been partially removed in order to keep up their weight, whilst many more were coins of recent date which were not much worn but had been carefully subjected to a process of clipping or filing so as to reduce their weight to the lowest limit of wastage allowable under the law.

* Criminal Revision No. 600 of 1925, from an order of H. Beatty, Sessions Judge of Moradabad.

(1) (1925) I.L.R., 48 All., 183.