

Before Mr. Justice Iqbal Ahmad and Mr. Justice Bajpai

INDARJIT SINGH (DEFENDANT) v. JADDU AND OTHERS
(PLAINTIFFS)*

1922
November, 7

Hindu law—Alienation by widow—Consent of next reversioner—Presumption of legal necessity—Nature and extent of presumption—Widow marrying second husband—Marriage of daughter born of the second marriage is not legal necessity justifying alienation of first husband's property—Estoppel—Consenting reversioner bound by the alienation.

In case of an alienation of her husband's property made by a Hindu widow with the consent of the next reversioner, such consent raises a presumption, which is rebuttable, that the alienation was justified by legal necessity. It is to be noted, however, that the only presumption in such cases is that the alienation *itself* was justified by legal necessity, and once that presumption is rebutted there is no presumption that all or any of the items of consideration for the alienation were for justifiable purposes. So, where a sale was effected by a Hindu widow, in which the next reversioner joined, for Rs.4,656, out of which Rs.2,778 was paid in cash and the balance was applied in payment of certain debts which had been incurred by the widow, and it was shown that the Rs.2,778 was not supported by any legal necessity, it was held that the presumption that the sale *itself* was justified by legal necessity was displaced, with the result that there was no presumption in favour of any items of the consideration being justified by legal necessity, and it was for the vendee to prove that the previous debts of the widow were supported by legal necessity; and he having failed to prove it, the plaintiffs reversioners were entitled to an unconditional declaration that the sale was not binding on them.

The next reversioner, however, who had joined in the execution of the sale deed and received a portion of the consideration, was estopped from assailing the validity of the sale and the sale was binding on him.

Where a Hindu widow married a second husband and daughters were born of the second marriage, it was held that the marriage of such daughters could not constitute legal necessity justifying an alienation of the first husband's property.

*First Appeal No. 208 of 1929, from a decree of Shah Munir Alam, Subordinate Judge of Gorakhpur, dated the 31st of January, 1929.

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Mr. *Haribans Sahai*, for the appellant.

Mr. *L. M. Roy*, for the respondents.

IQBAL AHMAD and BAJPAI, JJ. :—This is a defendant's appeal and arises out of a suit brought by the plaintiffs respondents for a declaration that the sale deed, dated the 4th of May, 1928, executed by Musammat Phulesra and Dhanai Sahu in favour of the defendant appellant is not binding on the plaintiffs and other reversioners of Ram Subhag deceased, after the death of Musammat Phulesra.

Ram Subhag was admittedly the last male holder of the property covered by the sale deed. Musammat Phulesra is the widow of Ram Subhag. The relationship of Dhanai and of the plaintiffs with Ram Subhag will appear from the following pedigree. [The pedigree is omitted here.]

The pedigree was admitted by the parties and a reference to the pedigree shows that Dhanai was the nearest reversioner of Ram Subhag on the date of the execution of the sale deed and that the plaintiffs were remote reversioners.

The sale deed was with respect to a four annas share in village Dharampur and the consideration for the same was a sum of Rs.4,656. Out of the sale consideration a sum of Rs.2,778 was paid in cash by the vendee, the defendant appellant, to Dhanai and Phulesra, the vendors, before the Sub-Registrar, and the balance of the sum of Rs.1,878 was left with the vendee for the liquidation or for the payment of the following debts. [Details of the debts are here omitted.]

The plaintiffs' case was that the sale deed was without consideration and without legal necessity, and that Dhanai, the nearest reversioner, was in collusion with the vendee, the defendant appellant, and he joined in the execution of the sale deed simply at the instance of the defendant appellant. The plaintiffs further alleged that

the real value of the property sold was Rs.10,000. On these allegations the plaintiffs maintained that the sale deed was not binding on them.

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The defendant appellant resisted the suit on the ground that the plaintiffs being remote reversioners had no cause of action for the suit and that the sale deed dated the 4th of May, 1928, was supported by consideration and "was executed for valid and legal necessities of paying up antecedent debts which were taken from time to time for meeting valid necessities and for the marriage of a daughter". He emphasised that the fact that Dhanai the nearest reversioner of Ram Subhag had joined in the execution of the sale deed gave rise to a presumption that the sale was justified by legal necessity. He denied the allegation of the plaintiffs that the value of the property in suit was Rs.10,000, and asserted that the property was not worth more than Rs.4,656, the consideration for which it was sold.

The trial court overruled the pleas urged in defence. It held that as Dhanai, who was the nearest reversioner, had, by joining in the execution of the sale deed, precluded himself by his own act from suing, the plaintiffs, who were the remote reversioners, were entitled to maintain the suit. It further found that the sale deed was without consideration and "certainly there was no legal necessity". On these findings it decreed the plaintiffs' suit in terms of the reliefs prayed for in the plaint.

The vendee has come up in appeal to this Court and it is argued on his behalf that Dhanai, the next presumptive reversioner, having joined in the execution of the sale deed and the sale having been made with his knowledge and consent, there is a strong presumption that the sale was for legal necessity and for purposes justified by law and that the burden of proving want of legal necessity lay heavily upon the plaintiffs, which burden they failed to discharge. It is further argued that the finding of the

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court below that the sale was without consideration is not sustainable.

Before proceeding to deal with the question whether the plaintiffs have succeeded in proving that the sale itself was not justified by legal necessity, we propose to consider the correctness or otherwise of the finding of the court below that the sale deed was without consideration. If that finding stands, it is manifest that it would be unnecessary to deal with the question of legal necessity urged by the learned counsel for the defendant appellant.

[After discussing the evidence on this point the judgment proceeded.]

The plaintiff respondent gave evidence in the case but he did not deny the fact that the sale deed assailed by him was supported by consideration. He did not allege that any of the previous transactions of loan that are recited in the sale deed were not genuine transactions and were not supported by consideration. It is clear, therefore, that the evidence as regards the passing of consideration was all one way and entirely in favour of the defendant appellant, and as such we are not prepared to agree with the finding of the court below that no consideration passed under the sale deed. The promissory note with respect to which Rs.34 was left with the vendee was not proved, but the balance of the sale consideration was proved. In short the payment of Rs.4,622 by the vendee to the vendors or their creditors was proved and to that extent the sale was supported by consideration.

The next question that arises for consideration is whether the sale is binding on the plaintiffs. When an alienation made by a Hindu widow or a Hindu father or manager of a joint Hindu family is assailed by the person entitled to challenge the same, the question that arises for consideration is whether the alienation *itself* was one justified by legal necessity, and the fact that the transferee is unable to prove that a small portion of the consideration was applied for purposes of

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legal necessity is no ground for setting aside the alienation; vide *Sri Krishan Das v. Nathu Ram* (1). In the case of a transfer made by a Hindu widow in possession of her husband's estate this burden can be discharged by the transferee either by proving that there was pressing necessity for the transfer or such necessity as is recognized as lawful by Hindu law, or by proving that the alienation was made by the widow with the consent of the whole body of persons constituting the next reversion. But an exception to this rule is furnished by cases in which the alienation is made by the widow not with the concurrence of the entire body of reversioners but with the consent of only the nearest reversioner. In such cases the consent of the nearest reversioner to the alienation affords presumptive proof of the fact that the alienation itself was justified by legal necessity, and, therefore, the burden initially does not lie on the transferee to show that the alienation was for legal necessity; vide *Rangasami Gounden v. Nachiappa Gounden* (2). The consent of the nearest reversioner to the alienation is, however, not conclusive proof of the existence of legal necessity. It merely raises a presumption of the existence of such necessity and the presumption is a rebuttable one; vide *Muhammad Sa'id Khan v. Kunwar Darshan Singh* (3).

As the sale assailed by the plaintiffs in the present case was made jointly by Mt. Phulesra and Dhanai Sahu, the nearest reversioner, the defendant appellant started with a presumption in his favour that the sale *itself* was justified by legal necessity, and the burden of proving the contrary lay on the plaintiffs respondents. It is to be noted, however, that the only presumption in such cases is that the alienation *itself* was justified by legal necessity, and once that presumption is rebutted there is no presumption that all or any of the items of consideration for the alienation were for justifiable purposes. The question, therefore, arises,—has that presumption that the sale was justified

(1) (1926) I.L.R., 49 All., 149.

(2) (1918) I.L.R., 42 Mad., 523.

• (3) (1927) I.L.R., 50 All., 76.

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by legal necessity been displaced by the evidence in and the circumstances of the present case?

A perusal of the sale deed leads to the conclusion that the immediate cause for the sale of the property was the supposed necessity to raise the sum of Rs.2,778 in cash. The other items mentioned in the sale deed were previous debts. It appears from paragraph 8 of the written statement and the statement that was made by the vendee under order X, rule 1 of the Code of Civil Procedure that the sum of Rs.2,778 was raised for the purpose of meeting the expenses of the marriage of Musammat Phulesra's daughter. The plaintiffs' case was that Ram Subhag died issueless and that after his death Musammat Phulesra married Rameshwar Teli, and that two daughters were born to her as a result of this union. The defendant appellant did not deny that Musammat Phulesra married Rameshwar Teli in *sagai* form after the death of Ram Subhag, and stated that he could not say whether the "daughter was born to Ram Subhag or to anyone else". Indeed, the plaintiffs' evidence on the point remained entirely un rebutted. The defendant appellant did not examine himself as a witness in the case, and none of his witnesses contradicted the plaintiffs' statement on this point. On the contrary, Bachoo Patak, defendant's witness, admitted that Musammat Phulesra had her *sagai* with Rameshwar Teli. Indradeo, another witness of the defendant, admitted that Musammat Phulesra has got two daughters and they are minors and unmarried. It is common ground that Ram Subhag died 24 years before the suit. It follows that the minor daughters of Musammat Phulesra could not be the daughters of Ram Subhag. It is manifest, therefore, that expenses of the marriage of those daughters could not constitute legal necessity justifying an alienation of Ram Subhag's property. Therefore the conclusion is irresistible that on the 4th of May, 1928, the date of the execution of the sale deed, there was no pressing necessity

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for the sale of Ram Subhag's property. Thus the presumption with which the defendant appellant started, because of Dhanai having joined with the widow in the execution of the sale deed, was displaced. The position, therefore, is that the sale *itself* was not justified by legal necessity, and was not binding on the plaintiffs respondents, and the plaintiffs were entitled to the declaration that the sale was not binding on them and on the other reversioners except Dhanai.

The question, however, remains whether that declaration ought to be granted to the plaintiffs unconditionally. If any amount out of the sale consideration is found to be for legal necessity, the plaintiffs must, as a condition precedent to the declaratory decree prayed for, repay that amount to the vendee when they become entitled to the possession of the property after the death of the widow and Dhanai. It is manifest from the observations made above that the burden of proving the validity of the items constituting the sale consideration lay on the vendee, the defendant appellant. We have already held that the sum of Rs. 2,778 was not for legal necessity. The other debts that were sought to be liquidated by the execution of the sale deed in dispute and which are mentioned in the said deed were debts incurred by Musammat Phulesra alone or in conjunction with Dhanai. Neither of those debts were incurred by Ram Subhag, the last male holder. There is no evidence on the record to show that the income of the property left by Ram Subhag was not sufficient for the justifiable needs and for the maintenance of Musammat Phulesra. The recital in the mortgage deed that the amounts advanced by the respective mortgagees were required for payment of Government revenue or for the purchase of bullocks was no evidence against the plaintiffs respondents. Neither Musammat Phulesra nor Dhanai nor the defendant appellant gave evidence in the case. In short, there was no evidence to prove that any of the items constituting the sale consideration was for legal

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necessity. The plaintiffs were, therefore, entitled to the unconditional decree granted to them by the court below.

The decree of the lower appellate court, however, requires modification in one respect. The lower appellate court has decreed that the sale deed is not binding on the plaintiffs and other reversioners of Ram Subhag deceased. Dhanai is undoubtedly bound by the sale. He joined in the execution of the sale deed and received a portion of the consideration of the same. He, therefore, is estopped from assailing the validity of the sale deed. The decree of the lower appellate court will, therefore, be modified by the addition of the words "except Dhanai Sahu" after the words "other reversioners of Ram Subhag deceased". In other respects the appeal fails and is dismissed with costs.

Before Sir Lal Gopal Mukerji, Acting Chief Justice, and
 Mr. Justice Bennet

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KISHWAR JAHAN BEGAM (DEPENDANT) v. ZAFAR
 MUHAMMAD KHAN (PLAINTIFF)*

Interest—Beneficiary under a deed of waqf entitled to interest against a mutwalli—Equitable jurisdiction to allow interest—Trusts Act (II of 1882), section 23(b).

Where a mutwalli unreasonably delays the making of payment to a beneficiary under a deed of waqf, the beneficiary is entitled to receive interest from the mutwalli on equitable grounds.

Where a case, in England, would fall within the common law jurisdiction, no equitable principles are to be applied in awarding or withholding interest; but where a case would fall within the equitable jurisdiction exercised by the Court of Chancery, equitable considerations might induce the court to allow interest. A suit by a beneficiary, entitled under a deed of waqf to a certain share in the profits of a zamindari property, against the mutwalli for accounts and recovery of the profits due would fall under the latter class and interest could be allowed on equitable grounds.

*First Appeal No. 221 of 1929, from a decree of S. Iftikhar Husain, Subordinate Judge of Pilibhit, dated the 22nd of December, 1928.