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CHAIRMAN, DISTRICT BOARD, MONGHYR v. SHEODUTT SINGH.

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cannot be taken to have been determined before these findings had been arrived at; and, moreover, the view of the law expressed in *Sant Prasad Singh* v. *Sheodutt Singh*(1) which rested on the decision in *Sahu Ram Chandra's case*(2) has been held to require reconsideration in view of the later decision of the Judicial Committee which has been referred to above [vide *Amolak Chand* v. *Mansukh Rai*(3)].

It follows that this appeal must be allowed and the order of the District Judge exempting three-fourths of the property from sale must be set aside. There will be no orders as to costs.

KULWANT SAHAY, J.—I agree.

APPELLATE CIVIL.

Before Dawson Miller, C.J. and Foster, J.

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May, 6.

DANGAL RAM

v.

JAIMANGAL SARAN.*

Hindu Law—family arrangement and partition—minors, suit by, to set aside—legal necessity, proof of, whether necessary—tests to be applied.

H and his brother *K* were at one time joint in estate but the only joint property which they held was the house in which they lived. Although the brothers had separated in estate the house had not been divided by metes and bounds. *K* had four sons who were also living with him in the same house. Owing to dissension between *H* and *K* there was a likelihood of the value of the property depreciating for want of repairs, and of the house being sold in execution of a rent

*Appeal from Appellate Decree no. 1212 of 1923, from a decision of Babu Phanindra Lal Sen, Additional Subordinate Judge of Shahabad, dated the 11th September, 1923, reversing a decision of Babu Kamini Kumar Banerji, Munsif of Arrah, dated the 18th September, 1922.

(1) (1923) I. L. R. 2 Pat. 724.
(2) (1917) I. L. R. 39 All. 437; L. R. 44 I. A. 126.
(3) (1924) I. L. R. 3 Pat. 857.

decree. The house was practically incapable of division into two equal parts. By an agreement between *H* and *K*, however, the latter, in lieu of his moiety of the house, took from *H* a sum of Rs. 1,000 and gave up the entire house to *H*. The present suit was instituted by the two minor sons of *K* claiming to recover back their share in the house on the ground that the transfer by their father was not for their benefit and was not justified by any legal necessity.

Held, (*i*) that the transaction was really in the nature of a family arrangement and partition; (*ii*) that it was not necessary, in order to support a transaction of this sort, to show that there was any actual legal necessity for such a course; (*iii*) that in order to assail the transaction it must be made out that the course adopted was so detrimental to the interests of those who were interested as minors that it would be inequitable to allow the transaction to stand.

Per *Foster, J.*—In the absence of proof of mistake, inequality of position, undue influence, coercion or like ground, a partition or family arrangement made in settlement of a disputed or doubtful claim is a valid and binding arrangement which the parties thereto cannot deny, ignore or resile from; and this principle is applicable when some of the members of the family are minors or where the settlement has been effected by a qualified owner whose acts in this respect will bind the reversioner.

Kusum Kumari Dasi v. *Dasrathi Sinha* (1), followed.

Query.—Whether the equities of the parties in a case of a family settlement are identical with the equities in a question of legal necessity having regard to the elaborate discussion of the legal weight of a family settlement in the judgment in *Keramatullah Meah* v. *Keramatullah Meah* (2).

Appeal by defendant no. 5.

The facts of the case material to this report are stated in the judgment of Dawson Miller, C. J.

D. N. Varma, for the appellant.

B. N. Mitter, for the respondents.

DAWSON MILLER, C. J.—This is an appeal on behalf of the defendant no. 5 from a decree of the

(1) (1921) 34 Cal. L. J. 323. (2) (1918-19) 23 Cal. W. N. 118.

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Additional Subordinate Judge of Shahabad reversing a decision of the Munsif of Arrah. The suit was instituted on behalf of two brothers, the sons of Kishun Chand, who are minors, in order to recover back from the defendant Haricharan, their father's brother, and from the present appellant their share in a house situated in Arrah town. It appears that Haricharan, the defendant no. 1, and Kishun Chand, his brother, the defendant no. 2, were at one time joint in estate but the only joint property which they held was the house in question in Arrah town which had previously belonged to their father. The evidence shows, and it is not disputed, that these two brothers were by no means on friendly terms. They had separated in estate but the house had not been divided by metes and bounds. The younger brother Kishun Chand had four sons who were also living with him in the same house. Kishun Chand and his brother being upon the terms which I have described, difficulties arose both as to the payment of rent and as to the payment of the municipal taxes and as to the carrying out of repairs to the house, the result being that the property was likely to depreciate in value owing to dilapidation without any repairs being carried out, and there was a further source of danger that in the strained relationship which existed between these two brothers no rent at all might be paid and the house might be sold up under a rent decree.

In these circumstances it was obviously necessary that some sort of arrangement should be made so that each brother should have a separate portion of the house divided by metes and bounds for which he alone would be responsible. When I say each brother, I include with Kishun Chand his sons, because Haricharan was entitled to one-half and Kishun Chand and his sons were entitled to the other. Now it so happened that the house, which apparently was not a very large one, was practically incapable of division into two equal parts and the question which then arose was what sort of arrangement should be

come to. There can be no doubt that if it were a question of partition by metes and bounds and if it was found that the property was of such a nature that it could not be conveniently partitioned into equal shares, then the proper course would be that one party or the other should in lieu of his half-share receive compensation from the other co-sharer. Now that is in effect what actually happened in this case. The younger brother Kishun Chand, in lieu of his moiety of the house, took from Haricharan a sum of Rs. 1,000 in satisfaction of his share and gave up the entire house to Haricharan. It is not contended that the sum of Rs. 1,000 was not adequate for the half-interest in the house. There is no dispute about that. When Haricharan got possession he, according to his case although there is no direct finding upon this matter, effected some improvements in the house thereby increasing its value. He also sold to the defendant no. 5, the present appellant, certain rooms in the house, and so matters continued for some time until the present suit was instituted on the 25th February, 1922, by Jaimangal and Ajodhya Prasad, the two minor sons of Kishun Chand, claiming to recover back their one-fifth share in the house on the ground that the transfer by their father to Haricharan was not for their benefit and was not justified by any legal necessity and was not in fact binding upon them.

The learned Munsif before whom the case came for trial considered that the arrangement which is now in question in the suit had been brought about with the help of the panches and might be looked upon as a partition between the two brothers. He also found that it was not practicable to partition the house as there was not room for two exit doors one for each party. It was also stated in the evidence, according to the Munsif, that the transaction was one which arose out of a desire for partition. The actual transfer by Kishun Chand to Haricharan was made by a sale-deed, but the learned Munsif considered that this was in fact tantamount to

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partition. He found also that the transaction was for the benefit of both parties concerned including the plaintiffs and he dismissed the plaintiffs' suit.

On appeal the learned Subordinate Judge, although he does not question the facts found by the Munsif in so far as they were pure findings of fact and not inferences, dealt with the question purely from one point of view, namely, whether in fact Kishun Chand, the father of the plaintiffs, acting on their behalf in the transaction which I have mentioned, had done something which was really for the benefit of the plaintiffs, then minors, and the conclusion he came to was that Kishun Chand had not done the best he could have done in the circumstances and, therefore, he thought that he had not acted like a prudent guardian in selling away this house which was the only ancestral property remaining in the family merely in order to avoid family quarrels.

Now, perhaps I ought to point out that the learned Subordinate Judge appears to accept the view presented by certain of the witnesses that without disposing of the property there did not appear to be any way of escape from the daily quarrels that took place between the brothers, and in order to put an end to what was an intolerable state of affairs involving almost certain deterioration to the property, it was agreed that the elder brother should purchase the house paying adequate remuneration to the others for their share. With great respect to the learned Subordinate Judge it appears to me that he entirely failed to take into consideration the fact which to my mind was the essential element in this case, namely that this is not an ordinary case of transfer of property by the karta of the family involving the interest of the minors who not being of age were unable to give their consent. Had that been so and had the transferee failed to show that there was either any justifying necessity of the sale or any benefit to the estate, then no doubt the minors might

have had the sale set aside; but that was not really the transaction in this case. The transaction was really one in the nature of a family arrangement and further it was one certainly in the nature of a partition. Both these brothers were entitled to a half share in the house and for that purpose to have it partitioned by metes and bounds; but it having been found that in the circumstances, the house could not be partitioned in equal shares without a great deal of inconvenience, the only other course to adopt was that one party should take compensation for his share from the other. In such circumstances it seems to me that it is not necessary, in order to support a transaction of that sort, to show that there was any actual legal necessity for such a course. On the other hand, it seems to me that it must be made out that the course adopted was so detrimental to the interests of those who are interested as minors that it would be inequitable to allow the transactions to stand. Undoubtedly to my mind a partition in the circumstances was the proper thing. If that partition could not be effected in the ordinary way by dividing up the house by metes and bounds then the only other course to adopt was that which was in fact taken on the advice of the panches.

For these reasons, although the learned Subordinate Judge has arrived at a conclusion that it is not sufficiently proved that the course adopted was the best in the interest of the minors, still I think that the transaction, in the particular circumstances of the case, is unassailable and the decision must be set aside and the decree of the Munsif restored. The appellants are entitled to their costs here and in the lower appellate court.

FOSTER, J.—I agree. It appears to me also that the legal justification of the sale made by the plaintiffs-respondents' father Kishun Chand has been measured by too narrow a standard. The actual conclusion of the learned Subordinate Judge in the court of appeal has been that the transaction was not

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for the benefit of the minors, nor was it a prudent measure. Judged by itself, this would at first sight appear to be a final finding of fact; although, even so, the judgment would be open to the criticism that after quoting the case of *Hanooman Prasad Pandey* v. *Moonraj Koonweree*(1) it would have been a more satisfactory discussion of the case if the court had contemplated the question whether there were damages to be averted by the sale.

However, as I have said, it appears to me that the case can and should be discussed on a much wider legal ground. We can take it that the sale of the moiety of the house, made by the defendants 2 and 3, Kishun Chand and his elder son Nathuni Lal, was for a fair price. There is no doubt of this and it has not been disputed. We know that the price was settled by the panches appointed to settle the dispute between the parties in this matter. We also know that there were constant quarrels, and that those quarrels were such as would necessarily arise between two people who were not disposed to take the same view as to their enjoyment of a common property. The two brothers were certainly beset with difficulties as to the mode of enjoyment of their patrimony. They had already separated, but the house was still undivided. They each had a right to partition arising out of their legal status. Had they gone to court what would have happened? There is no doubt that their right of partition would have been declared; but it appears to me extremely likely that the provisions of Act IV of 1893 would have been invoked. In section 2 powers are given to a court to order sale instead of division in partition suits where the nature of the property to which the suit relates makes the division unreasonable or inconvenient; and in section 3 facilities are given to a shareholder in the property to acquire the property at a valuation by way of sale. The order so made will have under section 8 the force of a decree.

(1) (1854-57) 6 M. I. A. 393.

It may be noted that this method of dealing with the property is treated as a substitute for partition

" whenever a decree for partition might have been made, it appears to the Court..... "

So perhaps the procedure may not amount precisely to a partition. In view of the facts proved in this particular case, the transaction may be regarded as a family settlement. A family settlement is (inter alia) an arrangement by which the method of enjoying the ancestral property comes to be settled between the parties. We know that to family arrangements great importance is attached by the courts.

Now reverting to the findings of fact, I have already mentioned that the price was a fair one; and I might also mention that though in the plaint there is a suggestion of a fraudulent and collusive transaction, yet in the judgments showing upon what lines the contest between the parties proceeded there is no suggestion of fraud or coercion or misrepresentation or undue influence or mutual mistake. If, therefore, the transaction was a partition or a family arrangement (whichever we may choose to call it), then it would seem that the case of *Kusum Kumari Dasi* v. *Dasarathi Sinha*(1) will be applicable. The rule there is very clearly stated, that in the absence of proof of mistake, inequality of position, undue influence, coercion or like ground, a partition or family arrangement made in settlement of the disputed or doubtful claim is a valid and binding arrangement which the parties thereto cannot deny, ignore or resile from; and this principle is applicable where some of the members of the family are minors, or where the settlement has been effected by a qualified owner whose acts in this respect will bind the reversioner.

The question might arise whether the equities of parties in case of a family settlement are identical with the equities in a question of legal necessity; having regard to the elaborate discussion of the legal

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weight of a family settlement in the judgment in *Keramatullah Meah* v. *Keramatullah Meah*(1). In that judgment it is suggested that the doctrine of legal benefit is applicable, though it is at the same time stated that the court should not be disposed to scan with too much nicety the quantum of consideration. What appears to me, however, to be quite clear is the point with which I began, namely, that what my Lord has called the legal justification of the transaction should be tested on much wider grounds in the cases where there is a family arrangement in existence. If the learned Subordinate Judge had taken into his view the fact that there was a partition and a family arrangement, there can be little doubt that his judgment would have been more complete and more correct.

There is only one point to add. It appears to me that as this family arrangement has been acted upon by the defendant Haricharan's act in improving the house, and by the sale to the present appellant Dangal Ram, the court should be inclined not to upset the existing arrangement, especially as there is really no case made out sufficient to raise the apprehension that the respondents have been unfairly treated.

Appeal decreed.

APPELLATE CIVIL.

Before Ross and Kulwant Sahay, J.J.

EAST INDIAN RAILWAY CO.

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v.

April, 23.

BHIMRAJ SRILAL.*

Railways Act, 1890 (*Act IX of* 1890), *sections* 77 *and* 140—*notice to the Traffic Manager, whether sufficient*—

*Appeal from Appellate Decree no. 756 of 1923, from a decision of P. T. Mansfield, Esq., I.C.S., District Judge of Gaya, dated the 2nd May, 1925, confirming a decision of M. Shah Mahammad Khalilur Rahman, Subordinate Judge of Gaya, dated the 11th February, 1923.

(1) (1918-19) 23 Cal. W. N. 118.