

## APPELLATE CIVIL.

Before Mr. Justice Le Rossignol and Mr. Justice Campbell.

1921  
Nov. 12.

BADAM AND OTHERS (DEFENDANIS) } —Appellants,  
VENDEES

versus

MADHO RAM (PLAINTIFF), AND } —Respondents.  
MUL RAJ (DEFENDANT)

Civil Appeal No. 2022 of 1918.

*Hindu Law—Joint Family—suit by son for a declaration that sales of joint property effected by his father shall not affect his rights as a co-parcener—whether decree should be made conditional on plaintiff refunding his share of the purchase money to the vendees.*

Plaintiff, the son of a Hindu, sued for a declaration that three sales of joint family property effected by his father should not affect his (plaintiff's) rights as a co-parcener. The lower Courts decreed plaintiff's claim. The defendants vendees presented a second appeal to the High Court and urged that the decree should be made conditional on plaintiff refunding to the vendees his share of the purchase money.

*Held*, that it would be opposed to principles observed in the majority of the rulings cited to make the decree conditional on plaintiff refunding his share in the purchase money.

*Sahu Kam Chandra v. Bhup Singh* (1), *Himmat Bahadur v. Bhawani Kanwar* (2), *Bahatur Singh v. Desraj* (3), *Chandradeo Singh v. Mata Prasad* (4), *Ram Dayal v. Ajudhia Prasad* (5), *Madan Gopal v. Suti Prasad* (6), *Kilaru Kotayya v. Palavarapu* (7), *Muthukrishna v. Kanoji* (8), *Ram Dyal v. Suraj Mal* (9), and *Madho Parshad v. Mehrban Singh* (10), referred to.

*Koer Hasmat Rai v. Sundar Das* (11), not followed.

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| (1) (1917) I. L. R. 39 All. 43, 44 (P. C.). | (6) (1917) 40 Indian Cases 451.           |
| (2) (1908) I. L. R. 30 All. 352.            | (7) (1918) 47 Indian Cases 192.           |
| (3) 53 P. R. 1901 (F. B.).                  | (8) (1917) 39 Indian Cases 504.           |
| (4) (1909) I. L. R. 31 All. 176 (F. B.).    | (9) (1914) 23 Indian Cases 891.           |
| (5) (1906) I. L. R. 28 All. 328.            | (10) (1890) I. L. R. 18 Cal. 157 (P. C.). |
| (11) (1885) I. L. R. 11 Cal. 396.           |   |

*Second appeal from the decree of Lt.-Colonel B. O. Roe, District Judge, Ambala, dated the 2nd April 1918, affirming that of Sayad Nurullah Shah, Junior Subordinate Judge, 2nd Class, Ambala, dated the 28th August 1917, decreeing plaintiff's claim.*

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MANOHAR LAL, for Appellants.

GOKAL CHAND, for Respondents.

The judgment of the Court was delivered by—

LEROSSIGNOL, J.—This and the two connected appeals arise out of actions brought by the son of a Hindu for a declaration that three sales of joint family property effected by his father shall not affect his (plaintiff's) rights as a co parccener.

The finding of fact arrived at by the Court below is that the sales were not effected for an immoral purpose, but that they were without necessity and were not for the benefit of the family and the plaintiff's prayer has been granted.

In second appeal the only point urged is that though the sales must be set aside they should be set aside only on equitable terms and the only matter debated before us has been whether to the plaintiff's decree should be attached a condition that he must refund to the vendees the amounts paid by them for the properties sold.

As a preliminary point it was urged that the prayer should not have been confined to a declaration, but should have been for possession in as much as the plaintiff could have been given at least joint possession with the vendees, the transferees of his father.

This objection, involving as it does the right of a son to separate possession from his father during his father's life time, need not detain us, for it is raised for the first time in this Court and does not affect the merits of the case.

On the main dispute, the argument for the defendants appellants is that the success of the plaintiff's suit will force them to sue plaintiff's father on the ground of failure of consideration, and that the shares of

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both father and son in the co-parcenary property will be liable to satisfy their decrees.

It is retorted that at the present moment and till the defendants obtain decrees, the plaintiff's father owes no debt.

In *Koer Hasmat Rai v. Sundar Das* (1) it was held that sons could not recover property alienated by their father without refunding the whole of the sale price inasmuch as if the sale were set aside, the vendees would be entitled to recover from the alienor the purchase money which would become a debt due by the father and so recoverable from the whole of the joint property. *Himmat Bahadur v. Bhawani Kunwar* (2) was referred to by appellants, but the *ratio decidendi* in that case was that the sale price was brought into the common purse of the whole family.

For the respondent *Sahu Ram Chandra v. Bhup Singh* (3) has been cited, but that judgment throws no light on the problem concerning us.

*Bahadur Singh v. Desraj* (4) deals with a mortgage and does not help us. *Chandradeo Singh v. Mota Prasad* (5) was a suit to enforce a mortgage against joint family property.

In *Ram Dayal v. Ajuahia Prasad* (6) a son was decreed one-half of the property and there appears to have been no prayer that he should first pay a portion of the sale price.

In *Chandradeo Singh v. Mata Prasad* (5) it was held by a majority that though a son might be liable to pay a mortgage debt due by his father, he could resist a mortgage based on that very same debt.

In *Madho Parshad v. Meharban Singh* (7) the vendor had died at the time of the suit and their Lordships held that an equity which might have been enforced against the vendor's interest while it existed could not be made to affect that interest when it had passed to a surviving co-parcener.

(1) (1885) I. L. R. 11 Cal. 396.

(4) 53 P.R. 1901 (F.B.).

(2) (1908) I.L.R. 30 All. 352.

(5) (1909) I.L.R. 31 All. 176 (F.B.).

(3) (1917) I.L.B. 39 All. 437, 444 (P.C.).

(6) (1908) I.L.B. 28 All. 328.

(7) (1890) I. L. R. 18 Cal. 157 (P.C.)

*Madan Gopal v. Sati Prasad* (1), *Kilarn Kotayya v. Polavarapu* (2), *Muthankrishna v. Kanoji* (3), also have been cited and it has been pointed out that in *Ram Dyal v. Suraj Mal* (4) the Allahabad Court refused to follow *Koer Hasmat Rai v. Sundar Das* (5).

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The point is one on which there has been much conflict and in appellants' favour there stand only *Koer Hasmat Rai v. Sundar Das* (5) and the obiter dictum in *Madho Parshad v. Meharban Singh* (6), but in all the other rulings the Courts have marked the distinction between the liability of the sons to pay their father's debts and their right to avoid an alienation of the family property.

It is difficult to see how the distinction is of much benefit to the sons, except in this respect that it forces alienees to look more carefully into the necessity for the alienation and so acts as a check on the alienation of family property.

In these cases if we issued decrees conditional on the payment of the son's share of the purchase price, we should be in effect granting the vendee a lien on the son's share in the property sold, and that course would be opposed to principles observed in the majority of the rulings cited.

For these reasons we must decline to interfere and we dismiss the appeals with costs.

[*The remainder of the judgment is not required for the purpose of this report—Ed.*]

*Appeal dismissed.*

(1) (1907) 40 Indian Cases 451.

(2) (1918) 47 Indian Cases 192.

(3) (1917) 39 Indian Cases 504.

(4) (1914) 23 Indian Cases 891.

(5) (1885) I.L.R. 11 Cal. 396.

(6) (1890) I.L.R. 18 Cal. 157 (P.C.)