

APPELLATE CIVIL.

Before Mr. Justice Martineau and Mr. Justice Brasher.

GOKHA RAM (DEFENDANT)—*Appellant,*

versus

SHAM LAL—(PLAINTIFF) } *Respondents.*
LABHU RAM—(DEFENDANT) }

Civil Appeal No. 324 of 1919.

Hindu Law—Mitakshara—suits by son for annulment of sales effected by his father—where only a small portion of the purchase money is found to be not for necessity—Limitation—Indian Limitation Act, IX of 1908, articles 120, 126.

Seven suits were brought for the annulment of alienations effected by the plaintiff's father. The trial Court passed decrees annulling the alienations subject to the payment by the plaintiff of certain sums for which necessity had been proved: On appeal the District Judge found that it was not proved that the alienor was licentious throughout his life or had no business or occupation, and he accepted six of the appeals and while maintaining the decrees for annulment of the alienations allowed further sums to the alienees on account of antecedent debts which formed part of the consideration for the alienations. The alienees presented second appeals to the High Court.

Held, that even if a small portion of the purchase money is found to be not required for necessity it does not follow that the sale itself was not necessary, unless it can be reasonably presumed, or unless it is proved, that the sale of a lesser area for the exact amount required for necessity was feasible.

Kannu Chetty v. Amrithammal (1), *Naman Mal v. Har Bhagwan* (2), *Felaram Roy v. Bagalanand Banerjee* (3), and *Lala Chatranarayan v. Uba Kanwari* (4), followed.

Held also, that the suits being for the annulment of sales effected by the plaintiff's father were governed by article 126 of the first Schedule to the Limitation Act and not article 120.

(1) (1914) 26 Indian Cases 418.

(3) (1910) 6 Indian Cases 207.

(2) (1921) L. I. R. 2 Lah. 357.

(4) (1868) 1 Beng. L. R. 201.

Second appeal from the decree of Rai Bahadur Misra Jwala Sahai, District Judge, Ludhiana, dated the 15th December 1918, varying that of Lala Chuni Lal, Subordinate Judge, 1st Class, Ludhiana, dated the 1st August 1918, dismissing the plaintiff's claim.

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SHAMAIR CHAND, for Appellant.

FAKIR CHAND, for Respondents.

The judgment of the Court was delivered by—

MARTINEAU J.—Seven suits have been brought by Sham Lal for the annulment of alienations effected by his father Labhu Ram. The Subordinate Judge found that Labhu Ram was a drunkard and a gambler who had wasted his property, that he had no business or occupation on which the money he borrowed might legitimately have been spent, and that the debts he had incurred, except those which could be connected with his son's marriage, were tainted with immorality and not binding on the plaintiff. He passed decrees annulling the alienations, subject to the condition that the plaintiff should pay to the alienees certain sums for which necessity had been proved.

On the appeals of the alienees the District Judge has found that the evidence is not of such a nature as to lead to the conclusion that Labhu Ram was licentious throughout his life or had no business or occupation, and he has accepted six of the appeals, and while maintaining the decrees for annulment of the alienations he has allowed further sums to the alienees on account of the antecedent debts which formed part of the consideration for the alienations. The seven alienees have preferred second appeals Nos. 324 to 326 and 328 to 331 of 1919, which may be disposed of by one judgment.

It will be convenient to take first appeal No. 325 by Atma Ram, to whom Labhu Ram sold a house for Rs. 1,200. The Lower Appellate Court has allowed Rs. 939 which were required for the payment of debts, disallowing only an item of Rs. 100 and one of Rs. 161. It is contended for the appellant that the item of Rs. 100, which is said to have been paid to one Mangu Mal, should have been allowed, the Lower Appellate Court having overlooked certain evidence in coming to the conclusion

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that the payment was not proved. It is unnecessary, however, to go into this matter, as we think the appeal must succeed even if necessity for the sum of Rs. 261 has not been proved.

In *Lala Chatranarayan v. Uba Kanwari* (1), where a widow had sold property for Rs. 995, out of which only Rs. 670 were needed for the payment of a debt, it was held that the mere fact that she had sold the property or more than the amount of the debt did not render the sale invalid.

That ruling was followed in *Felaram Roy v. Bagalanand Banerjee* (2) in which it was held that a sale by a Hindu widow cannot be set aside upon payment of the amount which it was necessary for her to raise to pay off a legal debt simply because the property sold was not sold for a sum which exactly covered that debt.

The same view has been taken by this Court in *Naman Mal v. Har Bhagwan* (3).

It has also been held by the Madras High Court in *Kannu Chetty v. Amirthammal* (4) that if in the case of a sale by a widow a small portion of the purchase money was not required for urgent necessity it does not follow that the sale itself was not due to necessity, unless it could be reasonably presumed or unless it is proved that the sale of a lesser area for the exact amount required for necessity was feasible.

The principle enunciated in these rulings is applicable with all the more force to the case of an alienation by a male proprietor. In the present case it was necessary for Labhu Ram to sell the house in order to pay his debts which amounted to Rs. 939, and the fact that he obtained by the sale an additional sum of Rs. 261 for which he is not shown to have had any necessity is not a sufficient reason for annulling the sale.

The same principle applies to appeal No. 330, which relates to a sale in favour of Fattu and Buta, effected for the purpose of paying debts due to different persons. The sale was for Rs. 1,400 of which all but Rs. 200 has been allowed.

(1) (1868) 1 Beng. L. R. 201.
 (2) (1919) 6 Indian Cases 207.

(3) (1921) I. L. R. 2 Lah. 357.
 (4) (1914) 26 Indian Cases 418.

Appeal No. 324 relates to a sale in favour of Gokha for Rs. 1,900, out of which the Lower Appellate Court has allowed Rs. 1,500 on account of Labhu Ram's share in a mortgage-debt due to the vendee. No necessity was proved for the remaining items. This case is distinguishable from appeals Nos. 325 and 330, as the mortgage which was to be paid off by the sale was a mortgage of the very property which was sold, and it was a mortgage with possession. There was no other debt to be discharged, and the sale of the property merely for the purpose of paying off the mortgage which existed on it was perfectly useless. The decree annulling this sale was, therefore, correct.

Similar remarks apply to appeal No. 328, which is by Ram Rachpal, to whom Labhu Ram sold land for Rs. 900 for the purpose of paying off two mortgages held by Ganesha Mal on the same land. The Lower Appellate Court disallowed two items amounting to Rs. 160, for which no necessity was shown. It is true that Ganesha Mal's mortgages carried interest, but the mortgage-deeds contained no provision for his recovering principal or interest either from the mortgaged property or from other property of the mortgagor, and the mortgagee could only get possession of the mortgaged property if the mortgagor made default. There was, therefore, no necessity whatever for Labhu Ram to sell the mortgaged property, and the sale has been rightly annulled.

Appeal No. 329 relates to an alienation in favour of Nikka for Rs. 900, out of which Rs. 750 have been allowed. This alienation was not a sale, but a mortgage, so that the remarks made above in regard to appeal No. 325 do not apply to this case. The findings that necessity has not been proved for the items disallowed are findings of fact, and counsel for the appellant has not been able to say anything in support of the appeal. There was an additional mortgage to Nikka for Rs. 99, but no evidence was given of the payment of the money.

Appeal No. 331 relates to an oral sale to Muhammad Shah for Rs. 400. The District Judge has disallowed the whole of this sum, finding that no necessity for any item has been proved. The finding is one of fact, and nothing has been said in support of this appeal.

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There remains appeal No. 326, the subject of which is a sale of land to Rahmat and others for Rs. 2,500. The land was mortgaged with possession to one Rosha for Rs. 1,225, and the Lower Appellate Court has allowed that item and Rs. 35 for registration expenses, disallowing the two remaining items of Rs. 740 and Rs. 500, for which the vendees failed to prove any necessity. Nothing has been urged with regard to the items disallowed, and there was clearly no necessity for the sale, as Labhu Ram could have allowed the land to remain in mortgage with Rosha. The main argument advanced is that the suit was barred by limitation under article 120 of the 1st Schedule to the Limitation Act, having been instituted more than six years after the sale, which took place on the 25th January 1911. Had the suit been merely for a declaration that the suit should not affect the plaintiff's rights the argument would have been correct, but the plaintiff sued for the annulment of the sale, and in fact obtained a decree for annulment, so that Article 126 applies, and the period of limitation is 12 years. The fact that the plaintiff was not given a decree for possession as well as for annulment of the sale does not make Article 126 inapplicable. We hold, therefore, that the suit was within time and that the decree is correct.

The result is that we accept appeals Nos. 325 and 330, reverse the decrees passed in those cases, and dismiss the suits with costs throughout. We dismiss appeals Nos. 324, 326, 328, 329 and 331 with costs.

C. H. O.

*Appeals Nos. 325 and 330 accepted,
the remainder dismissed.*