

APPELLATE CIVIL.

Before Mr. Justice Wilberforce and Mr. Justice Abdul Qadir.

BUR SINGH AND ANOTHER—(DEFENDANTS)

Appellants,

versus

HAZARA SINGH AND OTHERS

(PLAINTIFFS),

KHUSHAL SINGH (DEFENDANT) }

} *Respondents.*

Civil Appeal No. 850 of 1918.

1921

June 13.

Limitation—Suit by minor sons for the usual declaration in respect of a sale of ancestral property by their father—part of the price being the money due on mortgages effected more than 12 years before suit—Whether plaintiffs can get any benefit from the fact that a brother of the vendor existed at the time the mortgages were made—also whether the sale should be upheld because it could not be challenged in respect of the greater part of the consideration.

The sons of K. S. (minors) brought the present suit on 12th February 1916 for a declaration to the effect that a sale of ancestral property by their father K. S., effected on 15th June 1905 for Rs. 5,600, should not affect their reversionary rights. The sale-price included Rs. 3,927-12-0, due on previous mortgages effected in 1897-1901, *i.e.*, more than 12 years before the institution of the suit. K. S. had a younger brother A!a Singh, who was born in 1885, but the plaintiffs were not born when the mortgages were effected. The first Court held that the mortgages were not open to attack at the time of suit and granted plaintiffs a declaration that they could obtain possession after their father's death on payment of the mortgage money, Rs. 3,927-12-0. On appeal the District Judge held that the suit was not barred by time in respect of the mortgages and he granted plaintiffs a decree for the whole of their claim.

Held, that the law presumes that a subsequent vendee intends to keep alive a subsisting mortgage for his own benefit, and this presumption applies very strongly in the Punjab where a vendee, dealing with slippery customers such as the Punjab agriculturists and threatened always by collusive suits by reversioners, would always wish to keep alive previous mortgages for his own benefit, and this applies equally to mortgages in favour of the vendee himself as to those which the vendee has to redeem by the terms of the sale-deed.

Gokaldas v. Puranmul (1), and *Ghanya v. Pandit Chhajju Ram* (2), followed. *Mohesh Lal v. Mohant Bawan Das* (3), referred to.

(1) (1884) I.L.R. 10 Cal. 1035 (P. C.).

(2) 38 P. R. 1894.

(3) (1883) I.L.R. 9 Cal. 961 (P. C.)

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Held also, that the plaintiffs could gain no benefit from the fact that the vendor's brother Ala Singh's time for challenging these mortgages had not expired and that the suit was clearly barred by time in respect of the mortgages.

Lachman Das v. Sundar Das (1), *Khiali Ram v. Gulab Khan* (2), *Rajindar Singh v. Abdul Ghani* (3) and *Chanda Singh v. Mukand Singh* (4), followed.

Held further that, it having been found by the District Judge that the vendees took advantage of the youth and inexperience of the vendor and that all the transactions were suspicious, this was not a case in which the Court should uphold the sale merely because it was held to be good to the extent of Rs. 3,927-12-0 out of Rs. 5,000. There is no hard and fast rule on this subject.

Wadhawa Mal v. Wadhawa (2), and *Ali Gauhar v. Mahanda* (6), referred to.

Second appeal from the decree of T. P. Ellis, Esquire, District Judge, Lahore, dated the 1st February 1918, reversing that of Rai Bahadur Lala Rallia Ram, Subordinate Judge, 2nd Class, Lahore, dated the 28th September 1916, dismissing the claim.

MUHAMMAD RAFI AND TEK CHAND, for Appellant.
GANPAT RAI AND DEV RAJ SAWHNEY, for
Respondents.

The judgment of the Court was delivered by—

WILBERFORCE, J.—The plaintiffs in this case are the minor sons of one Khushal Singh. They sued for a declaration that a sale of 420 *Kanals* for Rs. 5000, effected on the 15th June 1905 should, not affect their reversionary rights. The first Court following, *Khiali Ram v. Gulab Khan* (4) held that mortgages amounting to Rs. 3,927-12-0 were no longer open to attack and dismissed plaintiffs' suit with regard to these items. It gave the plaintiffs a declaration that they could obtain possession after their father's death on payment of the mortgage money.

On appeal the District Judge has taken upon himself to dissent from *Khiali Ram v. Gulab Khan* (4) although it is a Full Bench judgment of this

(1) (1927) I.L. R. 1 Lah. 558.

(2) 83 P. R. 1911 (F. B.)

(3) 25 P. R. 1917.

(4) 61 P. W. R. 1915.

(5) 8 P. R. 1908

(6) (1919) 6 Indian Cases 984.

Court and has been subsequently followed. He has also attempted to distinguish it on the ground that the mortgages in this case did not merge in the sale. Further he has held that the suit anyhow is within limitation inasmuch as at the time of the sale Khushal Singh had a minor brother Ala Singh who was alive when the mortgages were effected and competent to contest them, and that this being the case the plaintiffs who are after born sons could tack on the unexpired portion of his limitation. The appeal of the plaintiffs was, therefore, accepted and the suit decreed in its entirety. Against this decision the defendant-vendees have preferred a second appeal.

We may state at once that in our opinion *Khiali Ram v. Gulab Khan* (1) correctly lays down the law. It has been subsequently followed in other judgments of this Court, e.g., *Rajindar Singh v. Abdul Ghanî* (2) and *Chanda Singh v. Mukand Singh* (3). The District Judge obviously acted contrary to law in refusing to follow a Full Bench judgment of this Court. We next consider that he has been guilty of misinterpreting the law in holding that the previous mortgages executed before the birth of the plaintiffs and now not open to challenge on the ground of limitation did not merge in the sale. The District Judge's decision followed in part a Privy Council judgment *Mohesh Lal v. Mohant Bawan Das* (4) which lays down that the merger of mortgages in a subsequent sale deed is a question of the intention of the parties in each case. The views of their Lordships were somewhat modified in *Gokal Das v. Puroonmal* (5), in which it is held that the law presumes that the subsequent vendee intends to keep alive a subsisting mortgage for his own benefit. This view of the law has been followed by this Court in *Gharaya v. Pandit Chajju Ram* (6). It is evident that a vendee in this Province dealing with slippery customers such as the Punjab agriculturists and threatened always by collusive suits by reversioners would always wish to keep alive previous mortgages for his

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(1) 33 P. R. 1911 (F. R.)

(2) 25 P. R. 1917.

(3) 61 P. W. R. 1915.

(4) (1888) 11 L. R. 9 Cal. 981 (P. C.)

(5) (1884) 11 L. R. 10 Cal. 1035 (F. C.)

(6) 33 P. R. 1894

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own benefit. The presumption, therefore, held to exist by their Lordships of the Privy Council applies, in our opinion, very strongly to this Province. We can find no force whatever in the attempt of the District Judge to distinguish between prior mortgages executed in favour of a subsequent vendee and those which the vendee has to redeem by the terms of the sale-deed.

There remains the question whether the minor plaintiffs in this case were competent to challenge the prior mortgages executed as they were more than 12 years before this suit. The view of the Lower Appellate Court that the plaintiffs would gain any benefit from the fact that Ala Singh's time for challenging these mortgages had not expired is plainly incorrect. The point hardly requires any authority but a clear authority on the point is *Lachman Das v. Sundar Das* (1). Counsel for the respondent attempted to argue that as Ala Singh was still a minor time was not yet running as against the mortgages. This is clearly a fallacious view of the law. The opinion of the District Judge if correct would involve the intolerable inconvenience of accumulated successive disabilities, which, for an interminable period, might subvert titles apparently well established, and produce the most ruinous instability. We hold, therefore, that on every legal point discussed the District Judge has taken erroneous views.

The only other point involved is whether the sale transaction being good to the extent of Rs. 3,927-12-0, out of Rs. 5,000 should be upheld in the whole or whether the plaintiffs should have a right of obtaining possession on paying the money due. Mr. Tek Chand for the appellants cites *Wadhawa Mal v. Wadhawa* (2) and *Ali Gauhar v. Mohanda* (3) in favour of the view that the whole transaction should be upheld. There is, however, no hard and fast rule on this subject and in the present case we do not think that Mr. Tek Chand's contentions should be accepted. It has been found by the lower appellate Court that

(1) (1920) I. L. R. 1 Lah. 568.

(2) 8 P. R. 1908.

(3) (1910) 6 Indian Cases 934.

the vendees took advantage of the youth and inexperience of the vendor and that all the transactions are suspicious.

In these circumstances we accept the appeal and restore the decree of the first Court. Parties can bear their own costs in all Courts.

A. N. C.

Appeal accepted.

APPELATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Martineau.

Mussammatt JIND KAUR AND OTHERS (DEFENDANTS)
Appellants
versus
 INDAR SINGH AND OTHERS (PLAINTIFFS)
Respondents.

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Dec. 22.

Civil Appeal No. 252 of 1919.

Succession—Murderer and his son excluded from succession to property of the deceased—Public Policy.

Held, that when a person has been murdered with the sole object of securing his property, the murderer as well as his son is excluded from inheriting the property of the deceased, notwithstanding that it is ancestral property, as their succession would be opposed to public policy. The murderer's right in such a case is swept away and with it is carried away the right of every one who claims *through* and not merely *from* him.

Muhammad Khan v. Sis Bano (1), and *Vedanayaga v. Vedammal* (2), followed.

Sadhu Singh v. Secretary of State (3), distinguished.

Roda v. Harnam (4), *Mussammatt Shar Khanam v. Kalandhar Khan* (5), *Soni Ram v. Kanhaiya Lal* (6), *Sreemutty Manokarani Debi v. Haripada* (7), *Gangu v. Chandrabhagabai* (8), *Nilmodhab Mitter v. Jotindra Nath* (9), and *Sundar v. Satig Ram* (10), Gour's Hindu Code, page 921, and Trevelyan's Hindu Law, pages 357 and 412, referred to.

(1) 41 P. R. 1906.

(2) (1904) I. L. R. 27 Mad. 591, 600.

(3) 18 P. R. 1908 (F. B.).

(4) 18 P. R. 1895 (F. B.).

(5) 74 P. R. 1900.

(6) (1913) I. L. R. 35 All. 227 (P. C.).

(7) (1914) 24 Indian Cases 311 (P. C.).

(8) (1907) I. L. R. 32 Bom. 275.

(9) (1913) 17 Cal. W. N. 341.

(10) 26 P. R. 1911 (F. B.).