

## APPELLATE CIVIL.

Before Mr. Justice Zafar Ali and Mr. Justice Addison.

KARM CHAND, ETC. (DEFENDANTS) Appellants

versus

RAM LABHAYA MAL, ETC.

(PLAINTIFFS)

MANGLADHA MAL, ETC.

(DEFENDANTS)

} Respondents.

Civil Appeal No. 1251 of 1922.

*Hindu Law—Mitakshara—Alienation of ancestral land by managing co-parcener—for necessity or for the benefit of the family—whether consent of other co-parceners essential.*

*Held*, that where the managing co-parcener of a joint Hindu family governed by *Mitakshara* Law alienates ancestral land either for valid necessity or for the benefit of the family, the transaction is not voidable at the instance of the other co-parceners merely because their consent was not obtained thereto.

*Jagmohan Agrahri v. Prag Ahir* (1), followed.

Gour's Hindu Code, 2nd Edition, paras. 1247-1250, referred to.

*Second appeal from the decree of J. A. Ross, Esquire, District Judge, Attock, at Campbellpur, dated the 20th April 1922, reversing that of Khan Sahib Khwaja Abdul Majid Khan, Subordinate Judge, 1st Class, Campbellpur, dated the 30th November 1921, and awarding the plaintiffs possession of the land in dispute on payment of Rs. 215.*

TEK CHAND and NAND LAL, for Appellants.

BADRI DAS and SHAMAIR CHAND, for Respondents.

The judgment of the Court was delivered by—  
ZAFAR ALI J.—This second appeal involves a question of the *Mitakshara* Law relating to the powers of the father of a joint family governed by that law to sell ancestral property. The plaintiffs are two

1926

May 4.

adult sons and three minor grandsons of the vendor, named Mangladha, and the property sold by him is a building site about seven *marlas* in area situate in the town of Pindigheb. The site was ancestral property inasmuch as Mangladha had, as found by the Courts below, purchased it out of income derived from the ancestral estate. The plaintiffs sued for possession of the site, stating that the sale was without necessity and devoid of consideration. On behalf of the defendants-vendees it was urged that the sale was an act of good management and was effected for the benefit of the family. The trial Court dismissed the suit, but on appeal it has been decreed by the District Judge. The facts are briefly as below :—

Mangladha purchased the site in 1902 for Rs. 380 but he paid to his vendors Rs. 200 only, undertaking to redeem with the balance the mortgage to which the property was subject. He, however, never did so, and in December 1917 he sold it for Rs. 2,000, representing to the vendees that it was free from encumbrance. The mortgagee, however, succeeded in recovering Rs. 215 from the vendees. It is not contested now that Mangladha received the purchase-money and that he is neither a spend-thrift nor a profligate but a well behaved person possessing considerable experience of the world. He was in his youth a *Patwari*, was next employed as manager of the estate of his brother-in-law, and is now a pleader's *munshi*. He has a large family to support and according to all indications he never did anything which was detrimental to the interests of that family. The land was unproductive and yielded no income but the defendants-vendees paid a large amount for it because it adjoined their house which they wanted to extend. It was, therefore, a highly profitable bargain that Mangladha managed to make, and from his character and antece-

1926

KARM CHAND  
v.  
RAM LABHAYA  
MAL.

1926

KARM CHAND  
v.  
RAM LABHAYA  
MAL.

dents it may safely be inferred that he made it for the benefit of his family, and that the purchase-money became an accretion to the family funds. The defendants' contention that the suit was collusive appears to be correct because Mangladha, though impleaded as a defendant, kept strictly aloof and did not lend any support to his vendees from whom he had received so large a sum. Having regard to all these facts and circumstances we come to the conclusion that the sale was for the benefit of the family and that the suit was collusive.

The next question is whether Mangladha possessed authority to sell without consulting and obtaining the consent of his adult sons. Sir H. S. Gour in his Hindu Code points out that the Privy Council as well as the Indian Courts were originally uncertain as to what the correct rule was on this point but that the later authorities lay down the principle that the consent of the other co-parceners is not essential where the managing co-parcener makes an alienation either for a valid necessity or for the benefit of the family, see Gour's Hindu Code, II Edition, paragraphs 1247-1250. The same view was taken in *Jagmohan Agrahri v. Prag Ahir* (1) where the facts were somewhat similar to those of the present case.

We are, therefore, of opinion that the sale was not voidable at the instance of the plaintiffs. This being so, we accept the appeal and reversing the decree of the lower appellate Court we restore that of the trial Court and order the plaintiffs to pay appellants' costs in this Court as well as in the lower appellate Court.

N. F. E.

*Appeal accepted.*