

APPELLATE CIVIL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Jai Lal.

DAYA RAM AND OTHERS (DEFENDANTS) Appellants

versus

HARCHARN DAS (PLAINTIFF),
GAURI DIAL AND ANOTHER } Respondents.
(DEFENDANTS)

Civil Appeal No. 834 of 1923.

Hindu Law—Mitakshara—Alienation—Joint ancestral property—without necessity, etc.—Decree setting aside alienation—whether should be subject to condition that plaintiff should refund the consideration money paid.

Held, that under the Mitakshara Law where the sale of Hindu coparcenary property is found to have been made, not for legal necessity or for the payment of the antecedent debts of the vendor, his son is entitled to a decree setting aside the alienation of the joint family property without any condition being imposed upon him to refund the consideration paid by the alienee to the vendor.

Srinivasa Aiyangar v. Kuppuswami Aiyangar (1), *Badam v. Madho Ram* (2), and *Kali Charan v. Jaggu* (3), followed.

Koer Hasmat Rai v. Sundar Das (4), and *Amir v. Malik Kahan Chand* (5), dissented from.

Second appeal from the decree of Rai Sahib Lala Murari Lal Khosla, Additional District Judge, Hoshiarpur, dated the 18th January 1923, affirming that of Sheikh Abdul Aziz, Subordinate Judge, 2nd class, Hoshiarpur, dated the 11th July 1922, granting the plaintiff a declaration to the effect that the sale in question shall not affect his reversionary rights after the death of Gauri Dial.

(1) (1920) I. L. R. 44 Mad. 801. (3) (1921) 67 I. C. 89.

(2) (1921) I. L. R. 2 Lah. 338. (4) (1895) I. L. R. 11 Cal. 396.

(5) (1922) 73 I. C. 818.

MOTI SAGAR, MEHR CHAND MAHAJAN, and HARGOPAL, for Appellants.

JAGAN NATH AGGARWAL and BADRI DAS, for Respondents.

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The judgment of the Court was delivered by—

SIR SHADI LAL C. J.—This appeal arises out of an action brought by a member of a joint Hindu family governed by the Mitakshara Law to impeach a sale of the coparcenary property made by his father. The District Judge, concurring with the Court of first instance, has held that the alienation was not for legal necessity or for payment of the antecedent debts of the father; and while finding that the whole of the consideration passed he has granted a decree setting aside the alienation.

The vendees have preferred a second appeal to this Court, and the question debated before us is whether the plaintiff should, before recovering the property, refund the purchase money unless he shows that the money was raised by the father for immoral or illegal purposes. The contention urged by the appellants is supported by the judgment of a Division Bench of the Calcutta High Court in *Koer Hasmat Rai v. Sundar Das* (1), but that ruling has not been followed by other High Courts. The rule laid down by this Court is to the effect that the decree in favour of the son should not be conditional on his refunding to the vendees the amount paid by them to the father, *vide Badam v. Madho Ram* (2). To the same effect is another judgment of a Division Bench of this Court, *vide Kali Charan v. Jaggu* (3). There are no doubt observations to the contrary in the judgment of *Amir v. Malik Kahan Chand* (4), but it appears that

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the judgment in *Badam v. Madho Ram* (1), was not brought to the notice of the learned Judges who decided that case. The Madras High Court also has dissented from the doctrine laid down by the Calcutta High Court in *Koer Hasmat Rai v. Sundar Das* (2), and has affirmed the rule that a son is entitled to get a decree setting aside the alienation of the joint family property without any condition being imposed upon him to refund the consideration paid by the alienee to the father, *vide Sirinivasa Aiyengar v. Kuppuswami Aiyengar alias Veerasamy* (3).

The balance of the authorities is opposed to the contention raised by the appellants, and we are not prepared to dissent from the rule laid down by this Court in *Badam v. Madho Ram* (1). We accordingly dismiss the appeal with costs.

N. F. E.

Appeal dismissed.

(1) (1921) I. L. R. 2 Lah. 338. (2) (1895) I. L. R. 11 Cal. 396.
(3) (1920) I. L. R. 44 Mad. 801.