PRIVY COUNCIL.

Before Viscount Dunedin, Lord Salvesen and Sir John Wallis.

NIAMAT RAI AND OTHERS (DEFENDANTS) Appellants

versus

DIN DAYAL AND ANOTHER (PLAINTIFFS) Respondents.

1927

March 11.

P. C. Appeal No. 60 of 1926.

(High Court Appeal No. 3117 of 1918.)

Hindu Law—Joint Family Property—Alienation—Necessity—Sale by Manager—Joint Family Business.

The managing member of a joint Hindu family sold part of the joint property for Rs. 43,500, which was the full value. Out of the price, Rs. 38,400 was applied to discharge debts incurred in carrying on a business to which the joint family had succeeded, and the balance was invested in the business. Two minor members of the family sued to set aside the sale.

Held, that even if there had been no joint family business, proof that pre-existing debts to the amount of Rs. 38,400 had been satisfied out of the price, would support the sale, without showing how the balance had been applied.

Krishn Das v. *Nathu Ram* (1), followed.

Held, further, that the manager had authority to raise money, not only to discharge debts arising out of the family business, but also money needed to carry it on. It was a matter for his decision whether the money necessary should be raised by mortgage or a sale, and whether it was better to raise money to continue a business which latterly had not been profitable, or to close it down ; it would be unreasonable to expect a lender or purchaser to go into questions of that kind.

Decree of the High Court reversed.

Appeal from a decree of the High Court (leRossignol and Abdul Qadir JJ.) dated February 21, 1922, reversing a decree of the District Judge of Ferozepore.

(1) (1927) I. L. R. 49 All. 149 : L. R. 54 I. A. 79 (P.C.).

1927

NIAMAT RAI
v.
DIN DAYAL.

The suit was brought by respondents Nos. 1 and 2, two minor members of a Hindu joint family, to set aside a sale of part of the joint property made by the managing member.

The trial Judge dismissed the suit, but on appeal to the High Court the sale was set aside.

The facts of the case and the grounds of the decision appear from the judgment of the Judicial Committee.

1927, Feb. 14, 15.

Dube for the appellants. The High Court took a mistaken view of the facts. The evidence shows that Rs. 38,400 out of the Rs. 43,500, sale price, was applied to discharge debts existing at the time of the sale. The purchasers were not bound to account for the balance, and were entitled to have the suit dismissed: *Krishn Das* v. *Nathu Ram* (1). The High Court wrongly gave weight to a supposition that the money could have been better raised by mortgage: *Phool Chand Lal* v. *Rughoobuns Suhaye* (2). Further, that part of the price which was not applied to discharge debts was applied to carrying on the family business. The manager had authority to borrow money for that purpose.

De Gruyther K. C. and *Wallach* for the respondents Nos. 1 and 2. The burden of the proving that there was necessity for the sale was upon the appellants: *Sham Sundar Lal* v. *Achhan Kunwar* (3). That *onus* was not discharged for the reasons given by the High Court. The business had practically failed, and the manager was not entitled to borrow in order to support it. In effect he was establishing a new business; he was not entitled, as against the minors, to do that: *Sanyasi Charan Mandal* v. *Krishnadhan Banerji* (4).

Dube, in reply. It was not contended in India that the business was a new one, and the evidence shows that it was not.

(1) (1927) I. L. R. 49 All. 149: L. R. 54 I. A. 79.
(2) (1865) 9 W. R. 108.
(3) (1898) I. L. R. 21 All. 71: L. R. 25 I. A. 183.
(4) (1922) I. L. R. 49 Cal. 560: L. R. 49 I. A. 103.

1927

NIAMAT RAI
v.
DIN DAYAL.

The judgment of Their Lordships was delivered by :—

SIR JOHN WALLIS—This is an appeal from a decree of the High Court at Lahore reversing the decree of the District Judge of Ferozepore in Suit No. 40 of 1915, which was brought on behalf of Din Dayal and Bansari Basil, who were minors, to recover certain lands, the property of the joint family, which had been sold by Lachhman Das, the managing member of the family, to defendants 2 to 6, under a sale deed dated the 1st January, 1913. Lachhman Das was made the first defendant, and *Mussammat* Dhani, the mother of the minor plaintiffs, who had joined in executing the sale deed, was also impleaded as the seventh defendant. The suit was instituted by Dal Chand, the minors' brother-in-law, as their next friend. He stated to the Court that he had brought it at the instance of the elder minor, who shortly afterwards attained majority, and was brought on the record as the first plaintiff and next friend of the minor second plaintiff. The plaint alleged that the sale had been made for a nominal sum of Rs. 43,500, that Lachhman Das, the first defendant, had not received the whole of the consideration, and that the sale was made without legal necessity and was not for the benefit of the minors. The price, Rs. 43,500, was shown to have been a very favourable one, and the District Judge found that it had been paid in full and that the sale was justified by necessity, as the family debts amounted to Rs. 38,400. This was the only question argued on the appeal to the High Court, who accepting the contention of the appellants' family counsel that at the time of sale the family debts were not shown to have exceeded some Rs. 22,000 or Rs. 23,000, held that the sale was made without legal necessity, and

1927

NIAMAT RAI
v.
DIN DAYAL.

reversed the decree of the District Judge and decreed the suit without making it a condition that the plaintiffs should refund that portion of the consideration which was applied in the discharge of debts binding on the joint family.

A petition was presented for review of judgment, and in their order dismissing it the learned Judges observed that there was admittedly an arithmetical error in the body of the judgment, as the finding of the Court was that the debts binding on the family were not shown to have exceeded Rs. 30,000 (not Rs. 22,000 or Rs. 23,000), so that the sale was unnecessary so far as Rs. 12,600 were concerned. As regards the omission to direct the repayment of the Rs. 30,900, the learned Judges observed that it had been admitted by the respondents' counsel at the hearing of the appeal that they were not entitled to insist on this, and that in these circumstances the judgment, though bearing hardly on the petitioners, could not be remedied by review, but only by appeal.

The *onus* was, of course, on the defendants to show that the sale was justified, but it must be borne in mind that in this case the first defendant, Lachhman Das, and the minor plaintiffs were the members of a joint family who had succeeded to what is known as a joint family business—that is to say, a business carried on with joint family funds for the benefit of the joint family, that the properties of the joint family, both moveable and immoveable, including the shares of minor members of the family, are liable for debts incurred in carrying on the business, and that it is within the powers of the managing member in a proper case to sell immoveable as well as the moveable property for the purpose of discharging such debts or enabling the business to be carried on.

The sale deed of the 1st January, 1913, contains a recital that it was necessary that the suit lands should be sold for trade business and payment of debt, and also a covenant by Lachhman Das, the managing member, and *Mussammat* Dhani, the mother and natural guardian of the minor plaintiffs, to indemnify the vendors in full should they suffer loss by reason of the minors putting forward a claim after attaining majority. The learned Judges of the High Court appear to have regarded the insertion of this clause as a suspicious circumstance; but, in their Lordships' opinion, experience in this class of cases shows that it may have been no more than a reasonable precaution against the undoubted risk that the vendors who were majors might afterwards make common cause with the vendors who were minors and endeavour by *suppressio veri* and *suggestio falsi* to get the sale set aside. This, indeed, is precisely what has happened in the present case, where Lachhman Das, the managing member of the plaintiffs' family, and the actual vendor, whom the defendants were under the necessity of calling to prove their case, sought to go behind his statement in the sale deed that it was necessary to sell the property for trade business and payment of debts, and gave evidence that the joint family business had come to an end before the date of the sale, that the debts which were discharged out of the sale proceeds were largely fictitious or incurred in speculative transactions of his own, and that there was no sufficient pressure of creditors to justify the sale.

These contentions were supported by very worthless evidence and were rightly rejected by the District Judge, who proceeded to deal with the items which the first defendant deposed to in his evidence that he had paid on the 2nd and 3rd January, 1913, after the

1927

NIAMAT RAI v. DIN DAYAL.

receipt of the consideration money. Of these items, the District Judge found that Rs. 38,400 were proved to have been paid in discharge of debts owing at the date of the sale, and that a further sum of Rs. 5,110 out of the sale-proceeds had been invested in the business, and on these findings he rightly upheld the sale.

On appeal, a distinction, to which their Lordships will refer later, was taken between debts owing when the sale was negotiated and debts incurred subsequently but before the execution of the sale deed; and the learned Judges came to the conclusion that debts due at the date of negotiation should alone be taken into account, and on the admission of the appellants' counsel they found that these debts were not shown to have exceeded some Rs. 22,000 or Rs. 23,000, a figure which, as already stated, they raised on review to Rs. 30,900, which was Rs. 12,600 less than the amount of the purchase money. This figure of Rs. 30,900 included two debts, items 1 and 2 in the District Judge's judgment, which had been incurred subsequent to the date of negotiation in discharge of earlier debts; and as regards items 4 and 5, which the learned Judges disallowed, Mr. Dube has called attention to the evidence that Rs. 2,500 in item 4 was borrowed to pay a previous debt, and that, as found by the District Judge, the two hundis, each Rs. 2,500, were given in renewal of previous hundis, thus showing that the whole of the Rs. 38,400 allowed by the District Judge had been applied in discharge of liabilities existing at the time when the sale was negotiated. It was also proved that out of the balance of the purchase money, Rs. 5,000 odd, Rs. 4,100 were lent to another firm in the ordinary course of business and subsequently repaid. It appears from the judgment of the learned Judges of the High Court that if they

had been satisfied that the whole of the Rs. 38,400 paid out of the sale proceeds was paid in discharge of debts incurred before the negotiation of sale, they would have been of opinion that the sale ought to have been upheld. With this conclusion their Lordships agree, but they are of opinion that undue importance was attached by the learned Judges to the question whether some of the payments were made in discharge of debts incurred in the interval between the negotiation of the sale and the execution of the sale deed. Even if there had been no joint family business, proof that the property had been sold for Rs. 43,500 to satisfy pre-existing debts to the amount of Rs. 38,000 would have been enough to support the sale without showing how the balance had been applied, as held by their Lordships in the recent case of *Krishn Das* v. *Nathu Ram* (1).

Where there is a joint family business, the manager, as already pointed out, has authority to raise money not only for the payment of debt, but also for the purpose of carrying on the business. The learned Judges of the High Court were of opinion that, as in this case the business had recently resulted in loss, the managing member was not justified in putting more money into it, and that in any case he should have raised money by mortgage instead of by sale. As regards the latter question, it is not clear that borrowing, probably at a high rate of interest, would have been more beneficial than sale. In any case, this was a question for the manager to decide. It was equally a question for the manager whether it would be better to raise more money or to close down the business, and it would, in their Lordships' opinion, be unreasonable to require a lender or purchaser to go into questions of this kind, as to which he would rarely be in a

(1) (1927) I. L. R. 49 All. 149: L. R. 54 I. A. 79 (P. C.).

1927

NIAMAT RAI
v.
DIN DAYAL.

position to form a sound opinion. In the present case the decision to raise more money would seem to have been a wise one, as the business afterwards earned profits with which more lands were purchased.

That, however, is immaterial. In their Lordships' opinion it is established that the money realised by the sale was required for the purpose of paying the debts and carrying on the business, and that the sale was therefore justified. Their Lordships are therefore of opinion that the appeal should be allowed and the decree of the District Judge restored, and that the respondents should pay the costs in the Courts below and of this appeal; and they will humbly advise His Majesty accordingly.

A. M. T.

Appeal accepted.

Solicitors for appellants: *T. L. Wilson & Co.*

Solicitors for respondents Nos. 1 and 2: *Ranken Ford and Chester.*