APPELLATE CIVIL.

Before Mr. Justice Addison.

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Jan. 12.

KIRPAL SINGH AND OTHERS (PLAINTIFFS) Appellants

versus

SOHAN SINGH AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 1408 of 1926.

*Custom—Alienation—*Kalals*—District Sialkot—Necessity—Antecedent debts—Money borrowed for trade and personal necessities—Second Appeal—whether findings of lower appellate Court open to challenge.*

Held, as regards the payment of antecedent debts (it having been found that the vendee acted honestly and made proper inquiry whether the debts were actually due and that there was nothing to put him on his guard) that these were findings of fact which cannot be challenged in second appeal.

Devi Ditta v. *Saudagar Singh* (1), *Jhandu* v. *Niamat Khan* (2), and *Jagat Singh* v. *Ganda Singh* (3), referred to.

Held also, that considering that the parties were *Kalals* (whose usual occupation is trade and service) and that the vendor's sole source of income was the land from which he received only Rs. 8 a month, insufficient for his bare necessities, the lower Courts were right in allowing the item of Rs. 1,500 raised for the purpose of being lent out on interest, as a prudent and proper transaction.

Muhammad Hassan-ud-Din v. *Saif Ali Shah* (4), and *Ram Kishen* v. *Khiali* (5), referred to.

Santa Singh v. *Waryam Singh* (6), and *Muhammad Usman Khan* v. *Ata Mohy-ud-Din* (7), distinguished.

Held further, that the finding that part of the price was required for personal necessities was a finding of fact which could not be contested in Second Appeal.

Ram Kishen v. *Khiali* (5), followed.

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(1) 65 P. R. 1900 (F.B.).
(2) (1919) I. L. R. 1 Lah. 472.
(3) (1922) 69 I. C. 47.
(4) (1923) I. L. R. 4 Lah. 122.
(5) (1924) A. I. R. (Lah.) 685.
(6) 19 P. R. 1915.
(7) (1922) 5 Lah. L. J. 304.

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Second appeal from the decree of M. V. Bhide, Esquire, District Judge, Sialkot, dated the 19th March 1926, affirming that of Pandit *Omkar Nath, Zutshi, Senior Subordinate Judge, Sialkot, dated the 4th November 1925, dismissing the plaintiffs' suit.*

TEK CHAND, for Appellants.

MOTI SAGAR, for Respondents.

JUDGMENT.

ADDISON J.

ADDISON J.—One Bahadur Singh, a *Kalal* of the Sialkot district, sold 24 *kanals* 18 *marlas* of land to Sohan Singh for Rs. 4,000 by a registered deed, dated the 14th June 1924. The plaintiffs, who are some of his nephews, brought a suit for the usual declaration that the sale should not affect their reversionary rights as it was without consideration and necessity. The two Courts below have concurred in dismissing the suit and the plaintiffs have preferred this second appeal.

Bahadur Singh's wife has two brothers, namely, Manohar Singh and Sukhdev Singh, the latter of whom has a son, Danishmand Singh. Danishmand Singh has been living with the vendor since his childhood, as his own mother died when he was very young. Bahadur Singh, in March 1923, executed a will in favour of this boy and the plaintiffs then sued to have the will set aside. Bahadur Singh, during the pendency of this suit, revoked the will and the suit was thereupon dropped. It was after this that the sale in question took place.

The trial Court held that, though the parties were *Kalals*, they were governed by agricultural custom and that the land was ancestral. It, however, dismissed the suit as it held the sale to be for consideration and necessity.

The only point argued on behalf of the plaintiffs-appellants before the District Judge was the question

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of necessity and that is the only point before me. The consideration for the sale in question was made up of three items :—

(1) Rs. 500 for payment to the Punjab National Bank,

(2) Rs. 1,000 to pay off a promissory note dated the 28th June 1923, executed by the vendor in favour of Manohar Singh, his wife's brother and uncle of Danishmand Singh, the boy who has lived with the vendor for most of his life. It was stated in the deed that this money had been advanced to the vendor to defray the expenses of an illness he had suffered from, namely, paralysis.

(3) Rs. 2,500 for personal necessities and *karobar*.

As regards the first item of Rs. 500, both Courts have held that this money was borrowed from the Punjab National Bank by the vendor some 17 days before the sale and was repaid shortly after the sale. Both Courts have also held that the land held by the vendor is of very poor quality, and that the income therefrom is not more than Rs. 8 per mensem.

They have further held that the vendor was a man of good character and that it was not even alleged the he was of immoral character or recklessly extravagant. This being the case, they have come to the conclusion that it was enough for the vendee to enquire as to the existence of this debt and to advance the money when he discovered that it was due, especially as there was nothing to put him upon his guard or to make him think that there was anything wrong with this debt.

A preliminary objection has been taken that this is a finding of fact which cannot be challenged on

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second appeal. I agree. In *Devi Ditta* v. *Saudagar Singh* (1) it was held that an outsider who pays antecedent debts in consideration of the transfer of property if he acts honestly and makes proper enquiry whether the debts are actually due is not responsible if he has been deceived and is entitled to have the alienation declared binding. This ruling covers the case of the item of Rs. 500 while *Jhandu* v. *Niamat Khan* (2) is also in point. Another authority of this Court is *Jagat Singh* v. *Ganda Singh* (3).

The next item is the one of Rs. 1,000 due on the pro-note, dated the 28th June 1923, in favour of Manohar Singh. As remarked by the District Judge, this item may be suspicious, but the District Judge, after considering all the circumstances, held that so far as the vendee was concerned it was a just antencedent debt within the meaning of the rulings already quoted. This again is a finding of fact, which cannot be attacked in second appeal. Besides, on the evidence this appears to have been the only possible conclusion that could be arrived at. The vendee found a pro-note which was due, the vendor was of good character and not extravagent, and it was impossible for him to come to the conclusion that it was merely a nominal debt, for which a document was written in order to injure the reversioners. The appeal must also fail as regards this item.

The last item of Rs. 2,500 was advanced for personal necessities and for trade, or rather money-lending. Both Courts have come to the conclusion that there was *bonâ fide* necessity for the advance of this item, Rs. 1,500 of which were after the date of

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(3) (1922) 69 I. C. 47.

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the sale in dispute lent out at interest by the vendor. The findings on this question are that Bahadur Singh, the vendor, owned only about 15 *bighas* of poor land, 4 *bighas* of which were already under mortgage, this mortgage having been effected 5 or 6 years previously and acquiesced in by the reversioners as they have brought no suit to set it aside. This in itself helps to show that the vendor was not well off and could not live upon the income from his land which was not more than Rs. 8 a month. The vendor used to be in the Army, but had to retire some 25 years ago without a pension. Since then his only source of income has been his land, *i.e.*, Rs. 8 a month, together with certain sums, which had been lent out by his father, and which he had been able to collect. The sums collected, however, it has been held, must have been exhausted before the sale took place. That means that at the time of the sale he had only Rs. 8 a month as income from his land, while he had some six years before to mortgage part of his land. It was for these reasons that the Courts below held that part of this money had been advanced for personal necessities while the portion of it advanced to lend out at interest was also considered to be a prudent and proper transaction, and therefore necessary, as that was the only way in which he could get a sufficient income to live upon. The Courts below distinguished the case of *Jats*, who had been agriculturists from time immemorial, who had no connection with trade and for whom it might not be a necessary purpose to sell ancestral land to put the money into business. But they considered that the case was different with *Kalals*, whose usual occupation was trade and service.

The finding of the learned District Judge was attacked before me on the ground that it was against

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the principle laid down in *Santa Singh* v. *Waryam Singh* (1), which was followed in *Muhammad Usman Khan* v. *Ata Mohy-ud-Din* (2). The first ruling undoubtedly laid down that a *Jat* agriculturist could not alienate his ancestral land in order to start trading. Since that time, however, there have been other rulings of this Court, the principal of which is *Muhammad Hassan-ud-Din* v. *Saif Ali Shah* (3). That was a case where the consideration for a mortgage was said to be a small amount due on a prior mortgage together with money taken for purposes of trade. The parties were *Sayyad* agriculturists. The property mortgaged was an ancestral *sarai*. In that case the mortgagor had only 10 or 11 *kanals* of land, which did not supply him with sufficient income upon which he could live. For that reason, the Judges who decided the case thought he was justified in alienating the *sarai* for the purpose of trade. They did not think that the Division Bench which heard the 1915 case intended to lay down that in no circumstances could a member of an agricultural tribe alienate ancestral property for purposes of engaging in trade.

In the case before me the facts are very similar. The vendor is a *Kalal*. *Kalals* usually engage in trade or money-lending, and take up service. The income of his land was totally insufficient for his wants. It seems to me, therefore, that his alienating part of that land to invest it in trade in order that he should be able to live was a necessary purpose.

It was also held in *Ram Kishen* v. *Khiali* (4), that the rule prevailing among *Jats*, who have been agriculturists from time immemorial, that an aliena-

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(2) (1922) 5 Lah. L. J. 304.
(3) (1923) I. L. R. 4 Lah. 122.
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tion of ancestral land for the purpose of raising money to be invested in trade is not permissible, cannot properly be applied to the community of *Brahmans*. In that case too the parties were governed by agricultural custom. It was held in the same case that the finding of the lower appellate Court that the share of the price of one of the vendors was required for his personal necessities was a finding of fact, which could not be contested in second appeal. This authority, therefore, covers the case of the complete item of Rs. 2,500, as to which it has been found by the lower appellate Court that it was advanced partly for personal necessities and partly for investing in trade.

In my opinion, the Courts below came to the correct conclusion and I dismiss this appeal with costs.

A. N. C.

Appeal dismissed.