APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Jai Lal.

1927

Nov. 24.

PIRA AND OTHERS (VENDEES)
MAULA DAD KHAN AND ANOTHER (DEFENDANTS) } Appellants.

versus

FATTA (PLAINTIFF)
NAMAN (DEFENDANT) } Respondents.

Civil Appeal No. 2436 of 1923.

Custom—Alienation—Chela Sials—*village Chela, district Jhang—Necessity.*

Held, that a sonless proprietor among *Chela Sials* of village Chela, district Jhang, is not allowed to alienate his ancestral property except for necessity, notwithstanding that the tribal bond of the village has been broken.

First appeal from the decree of Sardar *Indar Singh, Senior Subordinate Judge, Jhang, dated the 9th July 1923, declaring that the mortgage and sale deeds shall not affect the plaintiff's reversionary rights.*

MUHAMMAD MONIR, ANANT RAM and SHIV CHARAN DAS, for JAGAN NATH, AGGARWAL, for Appellants.

Nemo, for Respondents.

JUDGMENT.

BROADWAY J. BROADWAY J.—One Naman a *Chela* of *Mauza* Chela in the District of Jhang on the 11th of March 1921 mortgaged 114 *kanals* 7 *marlas* of land to *Khan Bahadur Nawab* Maula Dad Khan, Honorary Magistrate, and one Hidayat. The mortgage was not to be redeemed for 30 years and the charge on the property was to the extent of Rs. 1,000.

On the *30th of March 1921* Naman executed a sale-deed by which he sold the same land, that had

1927

PIRA
v.
FATTA.

BROADWAY J.

been mortgaged, to Lohla, Walli, Pathana and Ghulam Hussain for Rs. 3,500. The vendees undertook to redeem the mortgage when it became redeemable, that is, after 30 years. On the 2nd of May 1922 one Fatta, a first cousin of Naman, instituted a suit against the mortgagees and vendees challenging both the mortgage and the sale on the ground that the property mortgaged and sold was ancestral, that both the sale and mortgage had been without consideration and for no necessity and praying for a declaration to the effect that the sale and mortgage would not affect his reversionary rights on the death of Naman. The alienees joined in contesting the suit. They denied that the property was ancestral, pleaded full consideration and valid necessity and also urged that inasmuch as the tribal bond in this village had been broken Naman had an unrestricted right to alienate his property.

The trial Court held that the property was ancestral, that the tribal bond had indeed been broken but nevertheless on the evidence Naman was governed by custom and that he being a sonless proprietor his right to alienate was restricted. On the question of consideration it was found that only Rs. 600 of the mortgage consideration appeared to have passed and there was no necessity for that or any other amount. The plaintiff was accordingly granted a decree.

Against this decree the mortgagees and vendees have preferred this joint appeal and Mr. Muhammad Munir has taken us through the relevant portions of the record with meticulous care. It has been urged that the evidence on the record did not warrant the conclusion that the property was ancestral; further that inasmuch as it had been found that the tribal bond

1927

PIRA v. FATTA.

BROADWAY J.

had been broken the unrestricted right to alienate should have been recognised. Finally it was urged that at least Rs. 600 out of the Rs. 1,000 which formed the consideration for the mortgage should have been allowed as being for necessity on the ground that it at any rate was a previous debt.

Now the evidence with regard to the ancestral nature of the property appears to me to be conclusive. The history of the village shows that it was founded by one Chela and that the village was called after his name. It is true that the case was not very well handled in the Court below by the various counsel concerned, with the result that it became necessary to examine the *Kanungo* more than once. Taking his evidence as a whole, as Mr. Muhammad Munir says we ought to do, the impression left on my mind is that according to the revenue papers Chela is undoubtedly the ancestor of the plaintiff Fatta and the alienor Naman and as Chela owned the entire village I see no reason to differ from the conclusion arrived at by the Senior Subordinate Judge that the property in suit is ancestral *qua* the plaintiff.

Next it was urged that as the tribal bond had been broken the presumption of a restricted right to alienate had been rebutted. That appears to have been fully recognised by the learned Senior Subordinate Judge who has clearly come to his conclusion in this part of the case on the evidence led by the plaintiff. A large number of sales and mortgages nearly 300 in all appear to have been effected within the last 35 years and it is these sales and mortgages which account to a large extent for the heterogenous state of the village. The learned Senior Subordinate Judge points out in his judgment that none of these sales and mortgages were shown to have been effected

1927

PIRA
v.
FATTA.

BROADWAY J.

by sonless proprietors in the presence of any collaterals. I have asked Mr. Muhammad Munir to select out of the long list of alienations one which could be said to have been effected by a sonless proprietor but Mr. Muhammad Munir very frankly and very properly admitted that it was impossible for him to do so. On the other hand the plaintiff has led oral evidence consisting of members of the same tribe, and, in some instances, family who agree in asserting that they, *Chelas* and *Sials*, in this village are governed by the ordinary custom prevailing in the province and that a sonless proprietor can only alienate his property for necessity. After an examination of this evidence which includes two instances proved up to this Court in 1900 and 1917 I find myself in agreement with the learned Senior Subordinate Judge and hold that these *Chela Sials* are not allowed to alienate their ancestral property except for necessity. It should of course be understood that I am confining my finding to sonless proprietors.

As to the question of the allowance of Rs. 600, it appears that Rs. 600 were claimed by Lohla to whom this amount was to be paid by the *Nawab Sahib* when he executed the mortgage. Curiously enough it is this very Lohla who is one of the vendees when the deed of sale was executed 20 days later. Having regard to all these circumstances I am afraid I must agree with the learned Senior Subordinate Judge in thinking that the whole of this transaction, mortgage and sale included, is a highly suspicious one. Lohla's debt, in my opinion, cannot be treated as a just antecedent debt, and as it has not been proved to be separately for necessity, I do not think we can interfere with the decision of the Court below. I

1927

PIRA v. FATTA.

would, therefore, dismiss this appeal, but, as there has been no representation on the other side, without costs.

JAI LAL J.

JAI LAL J.—I agree.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

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

HINDUSTAN ASSURANCE AND MUTUAL BENEFIT SOCIETY, LTD., LAHORE (DEFENDANT) Appellant

versus

1927

Nov. 30.

KHALSA BANK, LTD., GUJRANWALA (PLAINTIFF)
MANGAL SAIN (DEFENDANT) } Respondents.

Civil Appeal No. 1924 of 1926.

Indian Companies Act, VII of 1913, Directors of Assurance Company—Articles of Association—general authority—limited to the business of the Company—Contract of suretyship by directors—whether ultra vires*—Ratification by shareholders—*onus probandi*—benefit derived by Company from loan—Cause of action—alteration of.*

Under one of its Articles of Association the Directors of an Assurance Company were authorised " to enter into contracts for the Society and to contract, on behalf of the Society, such debts and liabilities as they may, in the exercise of their discretion, consider necessary in transacting the business of the Society ..... ".

Held, that this clause included such acts as were necessary for the transaction of the ordinary business of the Society and for purposes incidental thereto, but that a contract to stand surety for the payment of a debt due by a third person could not be regarded as coming within the ambit of the clause.