

APPELLATE CIVIL.

Shadi Lal C. J. and Agha Haidar J.

BUTA MAL (DEFENDANT) Appellant

versus

GOPAL SINGH (PLAINTIFF)	} Respondents.
SHER SINGH (DEFENDANT)	

Civil Appeal No. 1780 of 1924.

Hindu Law—Alienation of joint family property—necessity—“Antecedent debt”—meaning of—Sale—whether can be impeached where necessity is not proved for 3/10ths of the consideration.

Held, that where the purchaser acts in good faith after due enquiry, and is able to show that the sale of the Hindu joint property was justified by legal necessity, i.e., the payment of antecedent debts, the mere fact that 3/10ths of the price is not proved to have been applied to a necessary purpose does not invalidate the sale.

Sri Krishan Das v. Nathu Ram (1), and Ram Sundar Lal v. Lachhmi Narain (2), followed.

Held also, that an “antecedent debt” means a debt antecedent in fact, as well as in time, that is to say, the debt must be truly independent, and not part, of the transaction impeached.

Brij Narain v. Mangal Prasad (3), followed.

Second appeal from the decree of Lala Channi Lal, District Judge, Gurdaspur, dated the 18th March 1924, modifying that of Bawa Daswandha Singh, Subordinate Judge, 3rd class, Gurdaspur, dated the 8th January 1923, by declaring that the sale in question shall not be binding upon the plaintiff after the death of his father, etc.

MEHR CHAND MAHAJAN, for Appellant.

Nemo, for Respondents.

(1) (1927) I.L.R. 49 All. 149 (P.C.). (2) 1929 A.I.R. (Privy Council) 143.

(3) (1924) I. L. R. 46 All. 95 (P.C.).

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July 9.

The judgment of the Court was delivered by—

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SHADI LAL C. J.—On the 20th November 1917 one Sheer Singh sold a plot of land to Buta Mal for Rs 1,000. The vendor's son has brought the present action for the usual declaration that the sale shall not affect his right of succession to the estate after the death of his father.

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The learned District Judge holds that necessity has been proved in respect of all the items constituting the consideration, except two, namely, Rs. 78 due by the vendor to Barkat Ali and Umra, and Rs. 300 paid to the vendor as earnest money.

The debt due to Barkat Ali and Umra was an antecedent debt, and all doubt on the subject has now been set at rest by the Privy Council in *Brij Narain v. Mangal Prasad* (1). As pointed out by their Lordships, an antecedent debt means a debt antecedent in fact, as well as in time; that is to say, that the debt must be truly independent, and not part, of the transaction impeached. The requirements of this definition are satisfied in the present case.

As regards Rs. 300, there can be no doubt that the payment of the money has been established, but the vendee has not proved necessity for this item. The question, therefore, arises whether the transaction should be disturbed, because it has not been shown that 3/10ths of the total consideration was used for necessary purposes. Now, the rule laid down by the Privy Council is to the effect that, where the purchaser acts in good faith and after due enquiry, and is able to show that the sale was justified by legal necessity, the mere fact that part of the price is not proved to have been applied to a necessary purpose does not in-

(1) (1924) I. L. R. 46 All. 95 (P.C.).

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validate the sale—*vide, inter alia, Sri Krishan Das v. Nathu Ram* (1), and *Ram Sundar Lal v. Lachhmi Narain* (2). It is to be observed that, in the latter case, legal necessity was proved by the vendee to the extent of only Rs. 7,744 out of the total price of Rs. 10,767, yet the sale was upheld.

The decision in *Ram Sundar Lal's* case governs the present case: and we must, therefore, hold that the sale, which the vendor had to make in order to pay off his antecedent debts, cannot be impeached simply because the vendee has not established necessity for a portion of the price, which is more than one-fourth, and less than one-third, of the total consideration.

We accordingly accept the appeal, and, setting aside the judgment of the District Judge, dismiss the suit with costs throughout.

N. F. E.

Appeal accepted.

1) (1927) I.L.R. 49 All. 149 (P.C.). (2) 1929 A.I.R. (Privy Council) 133.