

APPELLATE CIVIL.

Before Shadi Lal C.J., and Abdul Rashid J.
BALWANT SINGH (PLAINTIFF) Appellant

versus

MST. KESAR KAUR AND OTHERS
(DEFENDANTS) Respondents.

Civil Appeal No 2741 of 1927.

Custom—Alienation—Restriction on alienation—whether applicable to land which has ceased to be agricultural—Sale—where necessity for a small part of the consideration is not established.

Held, that the rule of custom which allows a reversioner to challenge an improper alienation of ancestral land ordinarily applies to agricultural land, and it was not intended that the custom should restrict the alienation of land which has ceased to be agricultural and acquired the character of urban property.

Held also, that assuming that the custom restricting alienation was applicable to such property the real question to be considered was whether the sale itself was justified by necessity. If the purchaser has paid a fair price for the property sold and made due inquiry as to the necessity for the sale, the mere fact that a small part of the price is not proved to have been applied to necessary purposes would not invalidate the sale.

Sri Krishan Das v. Nathu Ram (1), relied upon.

First appeal from the decree of Shahzada Sultan Asad Jan, Senior Subordinate Judge, Gujranwala, dated 28th July, 1927, dismissing the plaintiff's suit.

JAGAN NATH AGGARWAL and ASA RAM, for Appellant.

BADRI DAS, DEWAN MEHAR CHAND and CHARAN DAS SODHI, for Respondents.

SHADI LAL C.J. SHADI LAL C. J.—On the 18th April, 1920, Ranjodh Singh, a *Jat* of the village of Mananwala

in the district of Sheikhpura, mortgaged a plot of land measuring about 24 *kanals* to *Mussammatt Jiwan Kaur* for Rs. 24,000. The mortgagor died on the 4th April, 1922, and his widow *Mussammatt Kesar Kaur* sold the land on the 22nd February, 1925, to *Shankar Shah* and *Atma Ram* for Rs. 46,000.

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In May, 1925. *Balwant Singh*, the brother of the deceased *Ranjodh Singh*, brought two actions impeaching the alienations on the usual ground that they were made without consideration and necessity and should not affect his right to succeed to the estate after the death of the widow. The trial Judge has upheld both the transactions, and dismissed the suits. Against the decrees dismissing his suits the plaintiff has preferred two appeals, which may conveniently be dealt with in one judgment.

It may be stated at the outset that the property is situate in the town of *Gujranwala*, and, though nominally agricultural land, it is no longer used for agricultural purposes. It is beyond dispute that on the 7th March, 1903, *Ganga Singh* (the father of the mortgagor and the plaintiff), along with his brother and nephew, granted a lease of a large plot of land, including the property in question, for a period of twenty years to two merchants of *Gujranwala*, the rent reserved being Rs. 210 per annum. The evidence on the record shows that the lessees used the land for constructing a factory and for building houses. Indeed, the property was too valuable to be applied to agricultural purposes, and the sole reason for its fetching an abnormally high price at the time of the sale in February, 1925, was that it was situate within the Municipal limits of a growing town, and had been, or was going to be, employed for industrial and

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residential purposes. Now, the rule of custom which allows a reversioner to challenge an improper alienation of ancestral land ordinarily applies to agricultural land, and it was hardly intended that the custom should restrict the alienation of land which has ceased to be agricultural and acquired the character of urban property. It is significant that during the period of fourteen years from 1911 to 1924 there have been more than seven hundred alienations of land in the town of Gujranwala, but that not one of them has been successfully impeached. In view of the nature of the property involved in this case, and of the number of alienations which have remained uncontested, the trial Court has decided that the plaintiff is not entitled to impeach the alienations in question.

Assuming, however, that the custom restricting an alienation of agricultural land governs the transactions in dispute, the question arises whether they were made for necessary purposes. A perusal of the mortgage deed executed by Ranjodh Singh shows that out of Rs. 24,000 borrowed by him, Rs. 23,500 were required for discharging the debts due by him to various creditors named in the deed, namely, Manak Chand, Badri Nath, Sahib Singh, Ganesha Singh, Narain Singh, the Zamindara Bank and Chandī Ram. The balance, Rs. 500, was borrowed for defraying the expenses of the mortgage deed and for personal necessities.

Of the creditors specified in the deed, Manak Chand was paid, on the 19th April, 1920, Rs. 14,400, which sum was due to him on a mortgage, dated the 3rd February, 1917. The mortgage was for Rs. 10,000 and the interest thereon amounted to

Rs. 4,400. This mortgage has not been contested by the plaintiff, and it must, therefore, be held that necessity for Rs. 14,400 has been established.

There is also evidence to show that Rs. 1,700 were paid to Sahib Singh, a first cousin of the plaintiff as well as the mortgagor, and Rs. 2,959 to Narain Singh and his brother Ganesha Singh. These debts were due to the creditors from the mortgagor on bonds and pro-notes. Rs. 1,048-8-0 were paid to the Zamindara Bank, Rs. 2,000 to Badri Nath and both of them were previous creditors. The total of these items including the money paid to Manak Chand exceeds Rs. 22,000, and the remaining sum which is less than Rs. 2,000 was used for defraying the cost of executing the mortgage deed and for other expenses.

The proposition of law is firmly established that the payment of antecedent debts constitutes necessity for an alienation, and the plaintiff cannot, therefore, offer any serious opposition to the validity of the transaction. He has, however, made an attempt to show that the mortgagor was profligate and drunkard and was also addicted to gambling. The witnesses produced by the plaintiff have indulged in exaggerations, and the only thing which has been established is that he drank moderately and also entertained his friends. Considering his status and the society to which he belonged, it can hardly be said that he did anything which was considered to be improper by the members of his brotherhood.

In the circumstances described above, the trial Judge was justified in holding that the mortgage in question was a valid transaction. And if the mortgage cannot be impeached, the sale, which was probably the only reasonable method of discharging the

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debts incurred by Ranjodh Singh, may be regarded as a necessary consequence. Ranjodh Singh died in April, 1922, and his widow was confronted with the task of satisfying the claims of her husband's creditors and struggled for some time until she found that the only mode, in which she could avoid the payment of interest on the debts and also litigation, was to effect a sale of the mortgaged property. It is to be observed that the income from the property was a small sum of money realised as rent, and it could fetch a large income only if the widow could find a considerable sum of money for building houses thereon. The creditors were pressing for payment, and the pressure on the estate could be avoided only by effecting a sale of the land. There can be little doubt that the sale was less prejudicial to the estate than the mortgage, and it should, therefore, be held to be an act of good management on the part of the widow.

The price realised was Rs. 46,000, out of which Rs. 33,500 were paid to the mortgagee Jiwan Kaur or her representatives on account of principal and interest due upon her mortgage. The balance, Rs. 12,500, which was paid to the widow, was utilised by her for discharging the debts due to other creditors of her husband and for performing the marriage of her only daughter. It appears that Rs. 2,897-9-6 were paid to the Zamindara Bank, Rs. 1,250 to Chandi Mal, Rs. 800 to Mula Mal, Rs. 500 to *Mussammatt* Bhagwanti, Rs. 1,975 to Kehr Singh and the two sums of Rs. 2,000 and Rs. 1,500 to Narain Singh; and these were all debts which were due by the last male holder of the estate. Rs. 450 were paid to the broker Ram Singh who brought

about the transaction, and some money was spent in celebrating the marriage of the daughter.

It may be that necessity for a small fraction of the consideration has not been established. but as observed by their Lordships of the Privy Council in *Sri Krishan Das v. Nathu Ram* (1), the real question to be considered is whether the sale itself was justified by necessity. If the purchaser has paid a fair price for the property sold, and made due enquiry as to the necessity for the sale, the mere fact that a part of the price is not proved to have been applied to necessary purposes would not invalidate the sale.

It was contended that the widow received some income from the other property left by her husband, but she was not bound to apply the whole of the income to the payment of his debts. Nor was the income sufficient to meet the pressure on the estate. It is clear that an alienation of some immoveable property belonging to the estate was necessary in order to discharge the debts. It seems that the sale of the land in question, which yielded hardly any income but fetched a good price, was probably the best arrangement which could be made to satisfy the creditors.

Having regard to all the circumstances of the case, including the peculiar feature of the property alienated, I have reached the conclusion that there is no adequate ground for dissenting from the judgment of the trial Court. I would accordingly affirm the decision of the lower Court and dismiss both the appeals with costs.

ABDUL RASHID J.—I agree.

A. N. C

Appeal dismissed.

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