PRIVY COUNCIL.

P.C.*
1912

Oct. 30;
Nov. 13.

KIRPAL SINGH
v.
BALWANT SINGH.

[ON APPEAL FROM THE CHIEF COURT OF THE PUNJAB, AT LAHORE.]

Hindu Law—Alienation—Custom of agriculturists in the Panjab—Ancestral land—Power of father to alienate—Necessity—"Just debts"—Burden of proof—Debts of proprietor incurred by reckless extravagance and for illegal or immoral purposes.

In a suit by the respondents to have set aside an alienation of part of the family property made by their father in favour of the appellant, alleging that by the custom of agriculturists in the Punjab he was not competent to sell ancestral land without necessity, that there had been no necessity for the sale, that their father was a debauchee and an extravagant person, and that the debts for which the sale was made were incurred for immoral and illegal purposes, the appellant did not deny the custom though he traversed all the other allegations in the plaint, and contended that, the alienation having been made for their father's antecedent debts, it was for the respondents to show that the debts were contracted for illegal or immoral purposes. There were concurrent findings by the Courts below that the respondents' father was recklessly extravagant and did not know how to manage his affairs properly, and that certain specific debts were "just debts," and others were not :—

Held (affirming the decision of the Chief Court of the Punjab), that the custom set up, not being disputed, was applicable to the case ; that the payment of a "just debt" by the male proprietor of lands to which the custom applied was a necessity for which he could validly alienate ancestral property ; and that the respondents were entitled to possession of the property sued for on re-payment to the appellant of such part of the purchase money as both Courts concurrently found to be just debts, the payment of which was a necessity.

* *Present :* Lord Macnaghten, Lord Moulton, Sir John Edge and Mr. Ameer Ali.

The ruling in *Devi Ditta* v. *Sudagar Singh* (1) that a "just debt" means "a debt which is actually due, and is not immoral, illegal or opposed to public policy, and has not been contracted as an act of reckless extravagance or of wanton waste, or with the intention of destroying the interests of the reversioners," was approved of by their Lordships of the Judicial Committee.

APPEAL from a judgment and decree (16th January 1909) of the Chief Court of the Punjab, which varied a judgment and decree (31st July 1907) of the District Judge of Gujranwala.

The defendant was appellant to His Majesty in Council.

The facts shortly stated were, that Gurbakhsh Singh, the father of the plaintiffs (respondents) Balwant Singh and Jaswant Singh, sold to the defendant Kirpal Singh by a registered deed, dated 26th August 1892, 5,374 kanals of land being a moiety of a joint-holding owned by himself and his younger brother Bhagawan Singh, situate in Mananwala Bar, Tahsil Khangah Dogran, in the Gujranwala district of the Punjab, for the sum of Rs. 18,000; that on a subsequent partition of the joint-holding the vendee Kirpal Singh took possession of 2,848 kanals under the said sale; that Gurbakhsh Singh died in 1894, leaving his two sons, the plaintiffs, who in June 1894 brought the suit, out of which the present appeal arose, for possession of the 2,848 kanals of land against Kirpal Singh, alleging in their plaint that the land sold by their father Gurbaksh Singh under the deed of 26th August 1892 was his ancestral property, which he had been induced to sell by the exercise of undue influence; that their father was a man of dissolute and extravagant habits; that by the custom of the agriculturists of the Punjab he was not competent to alienate the said lands, except

(1) (1900) Punjab Rec. No. 65.

1912

KIRPAL SINGH v. BALWANT SINGH.

for legal necessity; and that the sale had been made without valid consideration and necessity, and did not therefore affect their rights of inheritance. They prayed that the sale might be declared null and void, and for a decree for possession of the lands; and that if any portion of the purchase money was found to have been raised for a necessary purpose, the decree for possession might be granted subject to payment of such amount.

The defendant traversed all the principal allegations in the plaint; and on the three main issues raised in the pleadings the District Judge held (i) that the land in suit was the ancestral property of Gurbaksh Singh; (ii) that the sale in question was not induced by the exercise of undue influence; and (iii) that the sale was effected for consideration and necessity, except to the amount of Rs. 4,900 out of the total price of Rs. 18,000.

The District Judge therefore granted the plaintiffs a decree for possession of the land sued for, conditional on payment to the defendant of Rs. 13,100.

From that decision two appeals were preferred to the Chief Court, the plaintiffs urging that the sale was wholly void, and the defendant asking that it should be held to be valid as against the plaintiff.

The Chief Court (RATTIGAN and SHAH DIN JJ.) affirmed the findings of the District Judge on the three issues as above stated, except that they were of opinion that a sum of Rs. 6,100 was the only amount borrowed for necessity, and that in payment of that sum the plaintiffs were entitled to a decree for possession. The Chief Court therefore varied the decree of the District Judge in favour of the plaintiffs, and dismissed the defendant's appeal. The details of the decisions appear in the judgment of their Lordships of the Judicial Committee.

1912

KIRPAL SINGH v. BALWANT SINGH.

On this appeal,

De Gruyther, K. C., and *B. Dube*, for the appellant, contended that the onus was on the respondents to show the existence of circumstances under which they were entitled to question the validity of the sale by their father to the appellant. There was no sufficient evidence on the record to show that Gurbakhsh Singh was a person of immoral habits and lived in a dissolute and extravagant manner; and it was submitted that the debts in dispute were properly incurred for lawful purposes, and were binding upon the respondents. The ordinary Hindu law was that by which the parties were governed, and not the customary law of the Punjab. The principle governing such a case as this was laid down in *Bhagbut Pershad Singh* v. *Girja Koer* (1) to the effect that (except for debts contracted for immoral or illegal purposes) the whole of the undivided family estate would be, in the hands of the sons, liable to the debts of the father, and that it was for the sons to show affirmatively that the debts were contracted for an illegal or immoral purpose, and evidence of general extravagance of the father was insufficient to establish that.

As to similar cases decided in the Punjab Courts, reference was made to Sir W. Rattigan's Customary Law of the Punjab (7th ed.), page 97; *Jagannath* v. *Tulsi Das* (2); *Bahadur Singh* v. *Desraj* (3); *Devi Ditta* v. *Saudagar Singh* (4); and *Sardari Mal* v. *Khan Bahadur Khan* (5). There was no obligation on the appellant to show that the loan was borrowed for necessity.

(1) (1888) I. L. R. 15 Calc. 717, 719, 724; L. R. 15 I. A. 99, 100, 103.
(2) (1898) Punjab Rec. No. 72.
(3) (1901) Punjab Rec. No. 53.
(4) (1900) Punjab Rec. No. 65.
(5) (1899) Punjab Rec. No. 11.

1912

KIRPAL SINGH v. BALWANT SINGH.

Sir H. Erle Richards, *K.C.*, and *Abdul Majid*, for the respondents, contended that they being Sikh Jats and agriculturists were governed not by the ordinary Hindu law, but by the customary law of the Punjab. Just as there was the Common Law in England, so in the Punjab there was a customary law for all, and all were bound by it. Reference was made to Sir W. Rattigan's Customary Law of the Punjab, pages 1 and 93, and the authorities there cited. The custom pleaded in this case was that agricultural land was inalienable, except for necessity. The custom set up in the plaint was not denied, and the case was not treated in the Courts below, as it is now suggested it should be treated here. The land being ancestral, it was necessary to show that the sale was made for legal necessity, and the burden of proving that was on the appellant, the alienee: see Sir W. Rattigan's Customary Law of the Punjab, page 110, article 61(*b*) [SIR JOHN EDGE referred to a passage at page 111 which, he remarked, seemed to suggest that the onus was on the party who wished to prove the existence of the custom: and LORD MOULTON referred to page 113]. The appellant had not discharged the onus, and there was nothing to show that the sale took place for any necessity. The authorities cited from the Punjab Record were not applicable. *Jagannath* v. *Tulsi Das*(1) was not a case of agricultural land, and therefore no authority for saying that the ordinary Hindu law applied to agriculturists. In *Lachman Das* v. *Pahla Mal*(2) the parties were not agriculturists. In the present case the alienee (the appellant) knew all the circumstances of the loans, as in the case of *Devi Ditta* v. *Saudagar Singh*(3) which made the case stronger against him. In that case at page

(1) (1898) Punjab Rec. No. 72. (2) (1908) Punjab Rec. No. 59.
(3) (1900) Punjab Rec. No. 65.

296 of the report, where the Judges sum up the law, they say "a number of small debts incurred within a short space of time amounts to extravagance," and that applied to the present case: see *Sobha Singh* v. *Kishore Chand* (1). There are concurrent rulings in the present case as to the reckless extravagance and ignorance of management of his affairs by Gurbakhsh Singh; and as to which were or were not just debts incurred for necessity, and on these concurrent findings of fact by the Courts below the respondents were entitled to rely. The whole circumstances of any case must be considered in coming to a decision as to whether the land has been alienated for necessity.

De Gruyther, *K. C.*, replied.

The judgment of their Lordships was delivered by

SIR JOHN EDGE. This is an appeal by the defendant in the suit from a decree, dated the 16th January 1909, of the Chief Court of the Punjab, which varied a decree, dated the 31st July 1907, of the District Judge of Gujranwala. *Nov.* 13.

The plaintiffs, who are Sikh Jats, and the sons of Sardar Gurbakhsh Singh, deceased, brought their suit in the Court of the District Judge of Gujranwala to obtain possession of ancestral lands which had been conveyed in their lifetime by their father to the defendant by a deed, dated the 26th August 1892. They alleged in their plaint that, according to the custom of the agriculturists of the Punjab, their father was not competent to sell the ancestral lands without necessity, and that their father was a debauchee and an extravagant person, and there was no necessity for the sale, and they prayed for a decree cancelling the sale deed and for possession on condition that they should pay to the defendant the money, if any,

(1) (1907) Punjab Rec. No. 65.

1912

KIRPAL SINGH v. BALWANT SINGH.

which might be proved to have been paid by the defendant to their father for valid necessity. The defendant, so far as is now material, alleged in his written statement that he purchased the land in good faith on payment of lawful consideration without knowledge that the plaintiffs' father was a debauchee and an extravagant person, that no debt was contracted by their father without necessity, and that the debt which their father contracted with him was spent for valid necessities. The defendant did not in his written statement deny that the plaintiffs and their father were agriculturists to whom the custom alleged by the plaintiffs would apply.

According to the sale deed of the 26th August 1892 the consideration was Rs. 18,000, the details of which stated in that deed were—

	Rs.
Left with the vendee for payment to Din Muhammad Beg, Muhammad Amin Beg, Bodh Raj and Jagan Nath, the previous mortgagees	9,500
Credited to the vendee, on account of previous debt, principal and interest due to him under a bond, dated the 13th February 1891	4,650
Credited to the vendee, on account of the previous debt, principal and interest due to him under *bahi* account entered on leaf No. 115	3,350
Now received in cash before the Sub-Registrar	500

As it must be taken as admitted on the pleadings that the custom alleged by the plaintiffs applied, the onus of proving the validity as against the plaintiffs of the consideration was upon the defendant, the vendee. On that basis the case was fought in the Courts below.

It was found as a fact by the District Judge, and on appeal by the Chief Court, that the plaintiff's father, the late Sardar Gurbakhsh Singh, was recklessly extravagant, and that he did not know how

to manage his affairs properly. That concurrent finding has an important bearing on the question of necessity, as the payment of a just debt by the male proprietor of lands to which the custom applies is a necessity for which he can validly as against the reversioners alienate ancestral lands. It was held in this connection by a Full Bench of the Chief Court of the Punjab, and as their Lordships consider correctly, in *Devi Ditta* v. *Sandagar Singh* (1) No. 65, Punjab Record, Civil Judgments, that a "just debt" means a debt which is actually due and is not immoral, illegal or opposed to public policy, and has not been contracted as an act of reckless extravagance or of wanton waste, or with the intention of destroying the interests of the reversioners.

The District Judge, and on appeal the Chief Court, dealt with the items composing the Rs. 18,000 as set out in detail in the sale deed of the 26th August 1892. It appears that the lands or some of them which were included in the sale deed of the 26th August 1892 had been previously mortgaged to Din Muhammad Beg and others by the plaintiff's father on the 10th October 1891 for Rs. 6,100 for a period of 20 years with liberty to those mortgagees to make improvements, the cost of which, with interest thereon, the mortgagor undertook to pay at the time of redemption. The District Judge found that the Rs. 6,100, part of the item of Rs. 9,500, was a just antecedent debt, the payment of which was a necessity, and that it was not proved to his satisfaction that the balance of the first item, namely, Rs. 3,400, was due from Gurbakhsh Singh to Din Muhammad and the other mortgagees, or constituted a just debt for the payment of which to Din Muhammad Beg and those other mortgagees of 1891 there was a necessity within the meaning

(1) (1907) Punjab Rec. No. 65.

1912

KIRPAL SINGH v. BALWANT SINGH.

of the custom. With those findings of the District Judge the Chief Court on appeal concurred. Their Lordships consider that these concurrent findings should be accepted as conclusive so far as the sums of Rs. 6,100 and Rs. 3,400 are concerned.

As to the second item Rs. 4,650 of the detail of the consideration, the District Judge, although he was not satisfied that there had been any necessity for the borrowing by Gurbakhsh Singh of some of the amounts which are included in that item and as to others assumed from the recitals in some of the bonds which were produced by the defendant and without further proof that there had been necessity, allowed the whole item of Rs. 4,650 as a charge which the plaintiff should pay to the defendant. The Chief Court on a careful consideration of the evidence disallowed the whole of the item Rs. 4,650.

The Judges of the Chief Court considered that the District Judge had not rightly appreciated the rule as to the onus of proof, and they were unable to find that any necessity had been established for the incurring by Gurbakhsh Singh of any of the debts which composed the item of Rs. 4,650. From that conclusion of the Chief Court their Lordships see no reason to dissent.

The District Judge disallowed Rs. 1,000 of the item of Rs. 3,350 of the detailed consideration, and the whole of the item of Rs. 500, finding that the Rs. 1,000 and the Rs. 500 were debts which Gurbakhsh Singh had incurred as acts of reckless extravagance. The Chief Court found that the District Judge had rightly disallowed the Rs. 1,000 and the Rs. 500, and pointing out that no mention of the Rs. 3,350 account was made in a consolidating bond which Gurbakhsh Singh executed on 13th February 1891, found that no necessity had been proved for any portion of the item

Rs. 3,350. With that conclusion of the Chief Court their Lordships agree.

1912

KIRPAL SINGH v. BALWANT SINGH.

The result that their Lordships will humbly advise His Majesty that the appeal should be dismissed and the decree of the Chief Court be affirmed. The appellant must pay the costs of this appeal.

J. V. W. *Appeal dismissed.*

Solicitors for the appellant: *Barrow, Rogers & Nevill.*
Solicitor for the respondents: *Edward Dalgado.*

PRIVY COUNCIL.

COURT OF WARDS

v.

ILAHI BAKHSH.

*P.C.**

1912
Oct. 31;
Nov. 26.

[ON APPEAL FROM THE CHIEF COURT OF THE PANJAB, AT LAHORE.]

Mahomedan law—Endowment—Creation of endowment—Wakf by dedication or user—Graveyard, land used as—Presumption of ancient origin of shrine and burial place—Panjab Land Revenue Act (XVII of 1887), s. 44—Entry of ownership in record-of-rights at settlement.

In this case the Judicial Committee (affirming the decision of the Chief Court of the Panjab) *held*, on the evidence, that the land in suit (known as the Mai Pak Daman graveyard) which had been used from time immemorial by the Mahomedan community of Multan for the purpose of burying their dead, formed part of a graveyard set apart for the Mahomedan community, and that by user, if not by dedication, the land was *wakf*.

In the record-of-rights of the last settlement an area of land, which comprised the land in suit, was entered as "in the possession of Mahomedans," and was described as *kabristan* or *ghair-mumkin kabristan* (graveyard or unculturable land forming portion of a graveyard); and in the ownership column the name of the defendant (now represented by the Court of Wards) was entered as owner. Their Lordships said: "It

* *Present*: LORD MACNAGHTEN, LORD MOULTON, SIR JOHN EDGE AND MR. AMEER ALI.