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Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan

Hidayatullah J.

We would, therefore, allow the appeals, and quash the demand made upon the appellants.

BY COURT: In accordance with the opinion of the majority, these appeals are dismissed with costs, one hearing fee.

Appeal dismissed.

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April 16.

RADHAKRISHNADAS

v.

KALURAM

(A. K. SARKAR, K. SUBBA RAO and J. R. MUDHOLKAR, JJ.)

Hindu Law—Joint family property—Sale by father and minor son—Whether binding on minor son—Legal necessity for part of sale consideration—If alienation justified—Interpretion of sale deed—If transfers cultivatory rights in Sir also—C. P. Tenancy Act, 1920 (C. P. 1 of 1920), s. 49 (1).

R and his father executed a sale for Rs. 50,000/- transferring 16 annas interest in two villages belonging to the joint family "together with *sir* and *khudkashat* lands.....as well as the cultivated and the uncultivated lands in the village with all the rights and privileges". Subsequently. R filed a suit to set aside the sale on the grounds that actually he was a minor when he executed the sale deed and that the legal necessity was only for Rs. 45,000/-. He further contended that the cultivatory rights in the *sir* lands were not transferred and claimed possession over them.

Held, that the alienation was for legal necessity and was valid and binding. The alience was only required to establish legal necessity for the transaction and it was not necessary for him to show that every bit of the consideration was applied for meeting family necessity. The transaction being for legal necessity the father was competent to execute the sale deed binding on the entire family and the joining of R, even though he was a minor, did not affect its validity or binding character.

Sri Krishan Das v. *Nathu Ram*, I. L. R. 49 All. 149 (P. C.) and *Naimat Rai* v. *Din Dayal*, I. L. R. 8 Lah. 597 (C.) relied on.

Gharib-Ullah v. *Khalak Singh*, I. L. R. 25 All. 407 (C.) *Kanti Chunder Goswami* v. *Bisheswar Goswami*, 25 Cal. 585 *Biraj Nopani Pura Sundary Dasee*, 42 Cal. 56 (P. C.), referred to.

Held, further, that cultivating rights in the *sir* lands had also been expressly transferred to the vendees by the sale deed. The provisions of s. 49 (1) of the C. P. Tenancy Act, 1920, that there must be an express agreement between the transferor and the transferee concerning the transfer of the cultivating rights in *sir* land are satisfied where the sale deed not only transferred *sir* and *Khudkashat* lands, cultivated and uncultivated lands but transferred these properties along with "all rights and privileges", since they would include cultivating rights in *sir* land.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 49 of 1958.

Appeal from the judgment and decree dated April 17, 1954, of the former Nagpur High Court in F. As. Nos. 95 and 103 and 1946.

S. P. Sinha, Yogeshwar Prasad and *M. I. Khowaja*, for the appellants.

Achhru Ram and *Ganpat Rai*, for respondents Nos. 1 (a) to 1 (d), 2 and 4.

1962. April 10. The Judgment of the Court was delivered by

Madholkar J.

MUDHOLKAR, J.—This is an appeal by certificate from the decree of the High Court of Nagpur dismissing the appellants' suit for setting aside sale of two villages *mauza* Amaldihi and *mauza* Gondkhami situate in Mungali, tehsil, district Bilaspur.

It is common ground that the two villages, along with several others, were the joint family property of the appellants and their father the third

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defendant, Gorelal. On April 8, 1944, Gorelal, acting for himself and as guardian of his minor son Balramdas, appellant No. 2 and Radhakrishnadas, appellant No. 1 describing himself as a major executed a sale deed in favour of two persons, Pandit Ramlal, son of Motiram, defendant No. 2 and Kaluram the first defendant for a consideration of Rs. 50,000/-. It was stated in the sale deed that the executants were transferring full 16 annas interest in the village Amaldihi and Gondkhami "together with *sir* and *khudkast* lands, grass, *kothar padia gochar* rivers, brooks, wells, tanks, *bandkies*, orchards and gardens and houses and the like, as well as the cultivated and the uncultivated lands in the village with all the rights and privileges." The entire sixteen annas share in *mauza* Gondkhami and twelve annas share in *mauza* Amaldihi was sold to Kaluram for Rs. 37,500/- and the remaining four annas share of Amaldihi to Pandit Ramlal for Rs. 12,500/-. Out of the consideration of Rs. 50,000/- a sum of Rs. 30,491/8/- was kept with Kaluram for satisfying a mortgage decree obtained against the family by one Gayaram in respect of these two villages as well as two other villages. Similarly a further amount of Rs. 2,000/- was allowed to be retained by Kaluram for paying the land revenue due in respect of these villages. The balance of the amount was received in cash. It was further stated in the sale deed that this amount was required for performing the marriages of the appellant No. 1 Radhakrishnadas and Gorelal's daughter Ramjibai, who were both stated to be majors. The possession of the property sold was handed over to the defendant 1 and 2 who are respondents 1 and 2 to the appeal.

On May 5, 1945, the two appellants instituted a suit out of which this appeal arises. It was contended in the suit that since the income of the

family was Rs. 7,000/- per year, considerable savings could be made out of it after defraying the expenses of the family. There was, therefore, no necessity for executing the sale deed. It was further stated that the consideration for the sale was extremely low, bearing in mind the value of the two villages. It was further stated that the appellant No. 1 who was one of the executants of the sale deed was in fact a minor on the date of its execution and, therefore, the document is void in so far as his interest in the property sold is concerned. It was then stated that the sale deed did not purport to transfer the cultivating rights in the *sir* lands in the two villages and, therefore, in any case only the proprietary interest in the *sir* land could pass to the respondents 1 and 2 under the sale.

The trial court negatived the appellants' contention about the want of legal necessity for the sale and found as a fact that Rs. 10,000 were required for the marriages of the appellant No. 1 and his sister Ramjibai, Rs. 7, 508-8-0 for paying various creditors, Rs. 1,655-2-0 for the payment of land revenue and the balance to satisfy the mortgage decree of Gayaram Sao. It, however, found that the appellant No. 1 was a minor at the date of the execution of the sale deed and that its execution by him was void and ineffective. But it held that he is bound by the sale deed as his father Gorelal, who is respondent No. 3 to the appeal, is to be deemed to have executed the sale deed as Manager of the family. It, however, upon a construction of the sale deed, came to the conclusion that cultivating rights in *sir* were not transferred thereunder and, therefore, passed a decree in favour of the appellants for possession of the *sir* lands in the suit as these lands had become their ex-proprietary occupancy lands by virtue of s. 49 (1) of the C. P. Tenancy Act, 1920 (C. P. I of 1920). The appellants preferred an appeal before the High Court against that part of the decree which dismissed their claim

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for the possession of their share in the villages. The respondents 1 and 2 preferred a cross-appeal. These appeals were heard together and while the appellants' appeal was dismissed, that of the respondents was allowed.

Before us Mr. S. P. Sinha accepts the position that Rs. 45,000/- out of the consideration of Rs. 50,000/- was in fact for debts binding on the family, but contends that even so it cannot be said that there was legal necessity for the sale. His argument is that a sum of Rs. 5,000 or so for which, according to him, legal necessity had not been established was not a negligible part of the consideration of Rs. 50,000/-. This argument is based upon a misapprehension of the true legal position. It is well established by the decisions of the Courts in India and the Privy Council that what the alience is required to establish is legal necessity for the transaction and that it is not necessary for him to show that every bit of the consideration which he advanced was actually applied for meeting family necessity. In this connection we may refer to two decisions of the Privy Council. One is *Sri Krishan Das* v. *Nathu Ram* (1). In that case the consideration for the alienation was Rs. 35,000/-. The alience was able to prove that there was legal necessity only to the extent of Rs. 3,000/- and not for the balance. The High Court held that the alienation could be set aside upon the plaintiff's paying Rs. 3,000/- to the alience. But the Privy Council reversed the decision of the High Court observing that the High Court had completely misapprehended the principle of law applicable to a case of this kind. What the alience has to establish is the necessity for the transaction. If he establishes that then he cannot be expected to establish how the consideration furnished by him was applied by the alienor. The reason for this, as has been stated by the Privy Council in some other cases, is that the

(1) I L.R. 49 All. 149 (P.C.)

alience can rarely have the means of controlling and directing the actual application of the money paid or advanced by him unless he enters into the management himself. This decision was followed by the Privy Council in *Niamat Rai* v. *Din Dayal* (1) where at p. 602 and 603 it has observed :

> "It appears from the judgment of the learned Judges of the High Court that if they had been satisfied that the whole of the Rs. 38,400 paid out of the sale proceeds was paid in discharge of debts incurred before the negotiation of sale, they would have been of opinion that the sale ought to have been upheld. With this conclusion their Lordships agree, but they are of opinion that undue importance was attached by the learned Judges to the question whether some of the payments where made in discharge of debts incurred in the interval between the negotiation of the sale and the execution of the sale deed. Even if there had been no joint family business, proof that the property had been sold for Rs. 43,500 to satisfy pre-existing debts to the amount of Rs. 38,000 would have been enough to support the sale without showing how the balance had been applied, as held by their Lordships in the recent case of *Krishan Das* v. *Nathu Ram.* (2)"

Both these decisions state the correct legal position, Mr. Sinha's argument must, therefore, be rejected.

His next argument is that the appellant No. 1 Radhakrishnadas having been found to be a minor on the date of the transaction, that transaction cannot bind his interests. If the appellants' father, Gorelal, who was admittedly the manager of the family, had not joined in the sale deed, the appellant No. 1 could have contended with profit that the transaction does not bind him. As it is, his joining

(1) I.L.R 8 Lah. 597 (P.C.) (2) I L. R. 49. All. 149 (P.C.)

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as an executant in the sale deed does not make any difference. The fact that that sale deed had been executed also by his father who was the manager of the family makes the transaction binding upon him just as it is admittedly binding upon his brother, the second appellant, who was then a minor. Mr. Sinha, however, contended that the fact that the appellant No. 1 was required by the alience, respondents 1 and 2. to join in the transaction clearly shows that Gorelal in executing the sale deed did not and could not act for him. We cannot accept the argument. For ascertaining whether in a particular transaction the manager purports to act on behalf of the family or in his individual capacity one has to see the nature of the transaction and the purpose for which the transaction has been entered into. A manager does not cease to be a manager merely because in the transaction entered into by him a junior member of the family, who was a major, or believed to be a major, also joined. It is not unusual for alienees to require major members of the family to join in transactions entered into by managers for ensuring that later on no objections to the transaction are raised by such persons. Further, such circumstance is relevant for being considered by the court while determining the existence of legal necessity for such a transaction. But that is all. Here we find that Gorelal acted not merely for himself but also expressly for his minor son appellant No. 2. The money was required partly for paying antecedent debts, partly for paying public demands, partly for paying other creditors and partly for performing the marriages of appellant No. 1 and the latter's sister Ramjibai. It is thus clear that Rs. 45,000/- out of the consideration of Rs. 50,000/- were required for the purposes of the family. Even where such a transaction has been entered into solely by a manager it would be deemed to be on behalf of the family and binding on it. The position is not worsened by the fact that

a junior member joins in the transaction and certainly not so when the joining in by such junior member proves abortive by reason of the fact that that member has no capacity to enter into the transaction because of his minority. In this connection we may make a mention of three decisions *Gharib-Ullah* v. *Khalak Singh* (1); *Kanti Chunder Goswami* v. *Bisheswar Goswami* (2); *Bijrai Nopani* v. *Pura Sundary Dasee* (3) each of which preceeds upon the principle that if one of the executants to a sale deed or mortgage deed has the capacity to bind the whole estate, the transaction will bind the interest of all persons who have interest in that estate.

We have, therefore, no doubt that the second contention of Mr. Sinha is equally devoid of substance.

Lastly, Mr. Sinha contended that the High Court was in error in reversing the decree of the trail court in so far as the *sir* land is concerned. He has laid particular stress on the fact that the sale deed at no place says in express terms that cultivating rights in *sir* land have also been transferred and said that the absence of such a recital in the sale deed clearly entitles the alienors to retain possession of the *sir* land, under the exception set out in cl. (a) of s. 49 (1) of the C. P. Tenancy Act. The relevant portion of s. 49(1) of the Act runs thus:

> "A proprietor who.....loses.....under..... a transfer ..... his right to occupy his *sir* land ..... as a proprietor, shall, at the date of such loss, become an occupancy tenant of such *sir* land except in the following cases,
>
> (a) when a transfer of such *sir* land is made

(1) I.L.R. 25 All. 407, 415 (P.C.) (2) 25 Cal. 585 F.B.
(3) 42 Cal. 56 (P.C.)

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by him expressly agreeing to transfer his right to cultivate such *sir* land,....."

What this provision no doubt requires is an express agreement between the transferor and the transferee concerning the transfer of the cultivating rights in *sir* land. We have already quoted the precise language used in the document describing the interest which has been transferred under the sale deed. The recital shows that the executant of the sale deed not only transferred *sir* and *khudkast* lands, cultivated and uncultivated lands, but transferred these properties along with "all rights and privileges". If the intention was not to transfer the cultivating rights in *sir* lands the concluding words were not necessary. Each interest which has been specified in the recital is governed by the concluding words "all the rights and privileges" contained in that recital. In the absence of these words what would have passed under the sale deed, in so far as the *sir* land is concerned, would have been only the proprietary interest in that land. The question is, what is the effect of the addition of those words? According to Mr. Sinha they only emphasise the fact that the entire propreitary in the *sir* land is transferred. If we accept the interpretation then those words would be rendered otiose. That would not be the right way of interpreting a formal document. To look at it in another way, where a person transfers *sir* lands together with "all rights and privileges" therein he transfers everything that he has in that land which must necessarily include the cultivating right. It would follow from this that where there is a transfer of this kind no kind of interest in *sir* land is left in that person thereafter. Mr. Sinha further said that when the statute requires that cultivating rights in *sir* land must be expressly transferred it makes it obligatory on the parties to say clearly in the documents that cultivating rights in the *sir* land have also been transferred. We see no reason for placing

such an interpretation on the provisions of cl. (a) of s. 49(1) of the C. P. Tenancy Act. When it says that the transfer of cultivating rights in *sir* land has to be made expressly all that it means is that a transfer by implication will not be enough. Finally Mr. Sinha's point is that the words "all the rights and privileges" in the recital do not govern the interests specified in the clause just preceding these words but they govern following words "sixteen anna in *mauza* Gondkhami and twelve anna in *mauza* Amaldihi to Seth Kaluram etc...." Apart from such a construction rendering the expression meaningless it would be ungrammatical to read the expression as applying to "sixteen anna in *mauza* Gondkhami and twelve anna in *mauza* Amaldihi etc."

Therefore, there is no substance in the appeal and accordingly we dismiss it with costs.

Appeal dismissed.

AMAR NATH DOGRA

v.

UNION OF INDIA

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR and T. L. VENKATARAMA AIYAR, JJ.)

Suit against Government—Notice—Plaint not conforming to Civil Procedure—Maintainability—Punjab Excise Act (Punjab Act I of 1914), S. 40—Code of Civil Procedure (Act v. of 1908), s. 80.

The appellant who obtained a monoply vend-licence for the retail sale of country—liquor, served during the subsistance of the license a notice under S. 80 of the Civil Procedure Code on the Government claiming damages for the alleged breach of certain stipulations. Thereafter the Excise Authorities