Balmukand

Vs

Kamla Wati & Ors

Civil Appeal No. 7 of 1962

(K. Subha Rao, J. R. Mudholkar JJ)

27.01.1964

JUDGMENT

MUDHOLKAR J. –

This is a plaintiff's appeal from the dismissal of his suit for specific performance of a contract for the sale of 3/20th share of land in certain fields situate in Mauza Faizpur in Batala in the State of Punjab. He had instituted the suit in the court of Sub-Judge, First Class, Batala, who dismissed it in its entirety. Upon appeal the High Court of Punjab, while upholding the dismissal of the plaintiff's claim for specific performance, modified the decree of the trial court in regard to one matter. By that modification the High Court ordered the defendants to repay to the plaintiff the earnest money which he had paid when the contract of sale was entered into by him with Pindidas. It may be mentioned that Pindidas died during the pendency of the appeal before the High Court and his legal representatives were, therefore, substituted in his place. Aggrieved by the dismissal of his claim for specific performance the plaintiff has come up to this Court by a certificate granted by the High Court, under Art. 133 of the Constitution.

The relevant facts are these :

The plaintiff owned 79/120th share in Kasra Nos. 494, 495, 496, 497, 1800/501, 1801/501 and 529 shown in the zamabandi of 1943-43, situate at Mauza Faizpur of Batala. On October 1, 1943 he purchased 23/120th share in this land belonging to one Devisahai. He thus became owner of 17/20th share in this land. The remaining 3/20th share belongs to the joint Hindu family of which Pindidas was the Manager and his brother Haveliram, Khemchand and Satyapal were the members. According to the plaintiff he paid Rs. 175 per marla for the land which he purchased from Devisahai. In order to consolidate his holding, the plaintiff desired to acquire the 3/20th share held by the joint family of Pindidas and his brothers. He, therefore, approached Pindidas in the matter and the latter agreed to sell the 3/20th share belonging to the family at the rate of Rs. 250 per marla. The contract in this regard was entered into on October 1, 1945 with Pindidas and Rs. 100 were paid to him as earnest money. As the manager of the family failed to execute the sale deed in his favour, the plaintiff instituted the suit and made Pindidas and his brothers defendants thereto.

The suit was resisted by all the defendants. Pindidas admitted having entered into a contract of sale of some land to the plaintiff on October 1, 1945 and of having received Rs. 100 as earnest money. According to him, however, that contract pertained not to the land in suit but to another piece of land. He further pleaded that he had no right to enter into a contract on behalf of his brothers who are defendants 2 to 4 to the suit and are now respondents 13 to 15 before us. The defendants 2 to 4 denied the existence of any contract and further pleaded that even if Pindidas was proved to be the

Karta of the joint family and had agreed to sell the land in suit the transaction was not binding upon them because the sale was not for the benefit of the family not was there any necessity for that sale. The courts below have found in the plaintiff's favour that Pindidas did enter into a contract with him for the sale of 3/20th share of the family land in suit and received Rs. 100 as earnest money. But they held that the contract was not binding on the family because there was no necessity for the sale and the contract was not for the benefit the family.

It is not disputed before us by Mr. N. C. Chatterjee for the plaintiff that the defendants are persons in affluent circumstances and that there was no necessity for the sale. But according to him, the intended sale was beneficial to the family inasmuch as it was not a practical proposition for the defendants to make any use of their fractional share in the land and, therefore, by converting it into money the family stood to gain. He further pointed out that whereas the value of the land at the date of transaction was Rs. 175 per marla only the plaintiff had agreed under the contract to purchase it at Rs. 250 per marla the family stood to make an additional gain by the transaction. The substance of his argument was that the Manager of a joint Hindu family has power to sell the family property not only for a defensive purpose but also where circumstances are such that a prudent owner of property would alienate it for a consideration which he regards to be adequate.

In support of the contention he has placed reliance on three decisions. The first of these is Jagatnarain v. Mathura Das (I.L.R. 50 All. 969). That is a decision of the Full Bench of that High Court in which the meaning and implication of the term "benefit of the estate" is used with reference to transfers made by a Manager of a joint Hindu family was considered. The learned Judges examined a large number of decisions, including that in Hanooman Persaud Pandey v. Babooee Munraj Koonweree ((1856) 6 Moo. I.A. 393); Sahu Ram Chandra v. Bhup Singh (I.L.R. 39 All. 437) and Palaniappa Chetty v. Sreemath Daivasikamony Pandra Sannadhi (44 I.A. 147) and held that transactions justifiable on the principle of benefit to the estate are not limited to those which are of a defensive nature. According to the High Court if the transaction is such as a prudent owner of property would, in the light of circumstances which were within his knowledge at that time, have entered into, though the degree of prudence required from the manager would be a little greater than that expected of a sole owner of property. The facts of that case as found by the High Court were :

> "..... the adult managers of the family found it very inconvenient and to the prejudice of the family's interests to retain property, 18 or 19 miles away from Bijnor, to the management of which neither of them could possibly give proper attention, that they considered it to the advantage of the estate to sell that property and purchase other property more accessible with the proceeds, that they did in fact sell that property on very advantageous terms, that there is nothing to indicate that the transaction would not have reached a profitable conclusion....." (p. 979).

We have no doubt that for a transaction to be regarded as one which is of benefit to the family it need not necessarily be only of a defensive character. But what transaction would be for the benefit of the family must necessarily depend upon the facts of each case. In the case before the Full Bench the two managers of the family found it difficult to manage the property at all with the result, apparently, that the family was incurring losses. To sell such property, and that too on advantageous terms, and to invest the sale proceeds in a profitable way could certainly be regarded as beneficial to the family. In the present case there is unfortunately nothing in the plaint to suggest that Pindidas agreed to sell the property because he found it difficult to manage it or because he found that the family was incurring loss by retaining the property. Nor again is there anything to suggest that the ideal was to invest the sale proceeds in some profitable manner. Indeed there are no allegations in

the plaint to the effect that the sale was being contemplated by any considerations of prudence. All that is said is that the fraction of the family's share of the land owned by the family bore a very small proportion to the land which the plaintiff held at the date of the transaction. But that was indeed the case even before the purchase by the plaintiff of the 23/120th share from Devisahai. There is nothing to indicate that the position of the family vis-a-vis their share in the land in any way been altered by reason of the circumstance that the remaining 17/20th interest in the land came to be owned by the plaintiff alone. Therefore, even upon the view taken in the Allahabad case the plaintiff cannot hope to succeed in this suit.

The next case is Sital Prasad Singh v. Ajablal Mander (I.L.R. 18 Pat. 306). That was a case in which one of the questions which arose for consideration was the power of a manager to alienate part of the joint family property for the acquisition of new property. In that case also the test applied to the transaction entered into by a manager of a joint Hindu family was held to be the same, that is, whether the transaction was one into which a prudent owner would enter in the ordinary course of management in order to benefit the estate. Following the view taken in the Allahabad case the learned Judges also held that the expression "benefit of the estate" has a wider meaning than mere compelling necessity and is not limited to transactions of a purely defensive nature. In the course of his judgment Harries C.J. observed at p. 311 :

> "..... the karta of a joint Hindu family being merely a manager and not an absolute owner, the Hindu law has, like other systems of law, placed certain limitations upon his power to alienate property which is owned by the joint family. The Hindu law-givers, however, could not have intended to impose any such restriction on his power as would virtually disqualify him from doing anything to improve the conditions of the family. The only reasonable limitation which can be imposed on the karta is that he must act with prudence, and prudence implies caution as well as foresight and excludes hasty, reckless and arbitrary conduct."

After observing that the transaction entered into by a manager should not be of a speculative nature the learned Chief Justice observed :

> "In exceptional circumstances, however, the court will uphold the alienation of a part of the joint family property by a karta for the acquisition of new property as, for example, where all the adult members of the joint family with the knowledge available to them and possessing all the necessary information about the means and requirements of the family are convinced that the proposed purchase of the new property is for the benefit of the estate."

These observations make it clear that where adult members are in existence the judgment is to be not that of the manager of the family alone but that of all the adult members of the family, including the manager. In the case before us all the brothers of Pindidas were adults when the contract was entered into. There is no suggestion that they agreed to the transaction or were consulted about it or even knew of the transaction. Even, therefore, if we hold that the view expressed by the learned Chief Justice is right it does not help the plaintiff because the facts here are different from those contemplated by the learned Chief Justice. The other Judge who was a party to that decision, Manoharlal J., took more or less the same view.

The third case relied on is In the matter of A. T. Vasudevan & Ors., minors (A.I.R. 1949 Mad. 260). There is single Judge of the High Court held that the manager of joint Hindu family is competent to

alienate joint family property if it is clearly beneficial to the estate even though there is no legal necessity justifying the transaction. This view was expressed while dealing with an application under cl. 17 of Letters Patent by one Thiruvengada Mudaliar for being appointed guardian of the joint family property belonging to, inter alia, to his five minor sons and for sanction of the sale of that property as being beneficial to the interests of the minor sons. The petitioner who was Karta of the family had, besides the five minor sons, two adult sons, his wife and unmarried daughter who had rights of maintenance. It was thus in connection with his application that the learned Judge considered the matter and from that point of view the decision is distinguishable. However, it is a fact that the learned Judge has clearly expressed the opinion that the manager has power to sell joint family property if he is satisfied that the transaction would be for the benefit of the family. In coming to this conclusion he has based himself mainly upon the view taken by Venkata Subba Rao J., in Sellappa v. Suppan (A.I.R. 1937 Mad. 496). That was a case in which the question which arose for consideration was whether borrowing money on the mortgage of joint family property for the purchase of a house could be held to be binding on the family because the transaction was of benefit to the family. While holding that a transaction to be for the benefit of the family need not be of a defensive character the learned Judges, upon the evidence before them, held that this particular transaction was not established by evidence to be one for the benefit of the family.

Thus, as we have already stated, that for a transaction to be regarded as of benefit to the family it need not be of defensive character so as to be binding on the family. In each case the court must be satisfied from the material before it that it was in fact such as conferred or was reasonably expected to confer benefit on the family at the time it was entered into. We have pointed out that there is not even an allegation in the plaint that the transaction was such as was regarded as beneficial to the family when it was entered into by Pindidas. Apart from that we have the fact that here the adult members of the family have stoutly resisted the plaintiff's claim for specific performance and we have no doubt that they would not have done so if they were satisfied that the transaction was of benefit to the family. It may be possible that the land which was intended to be sold had risen in value by the time the present suit was instituted and that is why the other members of the family are contesting the plaintiff's claim. Apart from that the adult members of the family are well within their rights in saying that no part of the family property could be parted with or agreed to be parted with by the manager on the ground of alleged benefit to the family without consulting them. Here, as already stated, there is no allegation of any such consultation.

In these circumstances we must hold that the courts below were right in dismissing the suit for specific performance. We may add that granting specific performance is always in the discretion of the court and in our view in a case of this kind the court would be exercising its discretion right by refusing specific performance.

No doubt Pindidas himself was bound by the contract which he has entered into and the plaintiff would have been entitled to the benefit of s. 15 of the Specific Relief Act which runs thus :

> "Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant."

However, in the case before us there is no claim no behalf of the plaintiff that he is willing to play the entire consideration for obtaining a decree against the interest of Pindidas alone in the property. In the result the appeal fails and is dismissed with costs.

Appeal dismissed.

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