

Arvind @ Abasaheb Ganesh Kulkarni and Others

Vs

Anna @ Dhanpal Parisa Chougule and Others

Civil Appeals Nos. 216-217 of 1970

(N. L. Untwalia, O. Chinnappa Reddy JJ)

22.01.1980

JUDGMENT

CHINNAPPA REDDY, J. -

1. On April 15, 1930 Parisa Chougule, executed Ex. 93, a deed of mortgage in favour of Ganesh Dattatraya Kulkarni (father of the appellants) for a sum of Rs. 1600 in respect of a single item of land. On August 25, 1953, Parisa Chougule executed Ex. 92 another deed of mortgage in favour of the same mortgagee for a sum of Rs. 1000 in respect of ten items of land including the land previously mortgaged under Ex. 93. Both the mortgages were possessory mortgages but it appears from the evidence that the land was leased back to the mortgagor for a stipulated rent. Parisa Chougule died on June 15, 1934 leaving behind him three sons Bhupal, an adult, and Anna and Dhanpal, minors. On July 11, 1934, Bhupal borrowed a further sum of Rs. 131 and executed a simple mortgage Ex. 91 in respect of the very ten items of land covered by Ex. 92. On May 1, 1935, Bhupal purporting to act as the Manager of the joint family and the guardian of his minor brothers executed a deed of sale Ex. 90 in favour of Ganesh Dattatraya Kulkarni in respect of four out of the ten items of land mortgaged under Exs. 93, 92 and 91. The consideration for the sale was Rs. 3050 and was made up of the amounts of Rs. 1600, Rs. 1000 and 131 due under the three mortgages Exs. 93, 92 and 91 respectively and a sum of Rs. 200 received in cash by Bhupal on the date of sale. Six of the items which were mortgaged were released from the burden of the mortgages. On September 23, 1946, Anna second son of Parisa became a major. On August 31, 1951, Dhanpal third son of Parisa became a major. On August 27, 1953 Anna and Dhanpal filed the suit out of which this appeal arises for a declaration that the sale deed dated May 1, 1935 was not for legal necessity and not for the benefit of the estate and therefore, not binding on them. They also prayed that joint possession of their two-third share may be given to them. The trial Court found that there was legal necessity for the sale to the extent of Rs. 2600 only, that the consideration of Rs. 3050 for the sale was inadequate as the lands were worth about Rs. 4000, that there was no such compelling pressure on the estate as to justify the sale and therefore, the sale was not for the benefit of the family and hence not binding on the two plaintiffs. A decree was granted in favour of the two plaintiffs for joint possession of two-third share of the lands subject to their paying a sum of Rs. 1733/5 ans./4 ps., to the second defendant. On appeal by the second defendant the Assistant Judge, Kolhapur affirmed the finding of the trial Court that there was legal necessity to the extent of Rs. 2000 only, that the value of the land was Rs. 4000 and that there was no pressure on the estate justifying the sale. The Assistant Judge found that there was no evidence to show that the defendant made any bona fide enquiry to satisfy himself that there was sufficient pressure on the family justifying the sale. He however, held that the suit of the first plaintiff was liable to be dismissed as it was barred by limitation. He, therefore, modified the decree of the trial Court by granting a decree in favour of the second plaintiff only for possession of a one-third share in the lands subject to payment of a sum of

Rs. 866.66 ps. to the second defendant. The first plaintiff as well as the second defendant preferred second appeals to the High Court. The High Court allowed the appeal filed by the first plaintiff and dismissed the appeal filed by the second defendant. The legal representatives of the second defendant have preferred these appeals after obtaining special leave from this Court under Article 136 of the Constitution.

2. It is clear that these appeals have to be allowed. The facts narrated above show that out of the consideration of Rs. 3050 for the sale there was undoubted legal necessity to the extent of Rs. 2600, the total amount due under the two deeds of mortgage executed by the father of the plaintiffs. Out of the ten items of land which were mortgaged, only four were sold and the remaining six items were released from the burden of the mortgages. The family was also relieved from the burden of paying rent to the mortgagee under the lease back. Surely all this was for the benefit of the family. The value of the land sold under the deed of sale was found by the courts below to be Rs. 4000. Even if that be so, it cannot possibly be said that the price of Rs. 3000 was grossly inadequate. It has further to be remembered that there were continuous dealings between the family of the plaintiffs and the family of the second defendant, over a long course of years. In these circumstances it is impossible to agree with the conclusion of the courts below that the sale was not binding on the plaintiffs. The courts below appeared to think that notwithstanding the circumstance that there was legal necessity to a large extent it was incumbent on the second defendant to establish that he made enquiry to satisfy himself that there was sufficient pressure on the estate which justified the sale. We are unable to see any substance in the view taken by the courts below. When the mortgagee is himself the purchaser and when the greater portion of the consideration went in discharge of the mortgages, we do not see how any question of enquiry regarding pressure on the estate would arise at all. Where ancestral property is sold for the purpose of discharging debts incurred by the father and the bulk of the proceeds of the sale is so accounted, the fact that a small part of the consideration is not accounted for will not invalidate the sale. In *Gauri Shankar v. Jiwan Singh* (AIR 1927 PC 246 : 25 ALJ 967 : 53 MLJ 786), it was found that Rs. 500 out of the price of Rs. 4000 was not fully accounted for and that there was legal necessity for the balance of Rs. 3500. The Privy Council held that if the purchaser had acted honestly, if the existence of a family necessity for a sale was made out and the price was not unreasonably low, the purchaser was not bound to account for the application of the whole of the price. The sale was upheld. In *Niamat Rai v. Din Dayal* (AIR 1927 PC 121 : 25 ALJ 599 : 54 IA 211), the manager of a joint family sold family property for Rs. 34,500 to satisfy pre-existing debts of the extent of Rs. 38,000. It was held that it was sufficient to sustain the sale without showing how the balance had been applied.

3. In *Ram Sundar Lal v. Lachhmi Narain* (AIR 1929 PC 143 : 1929 ALJ 561 : 57 MLJ 7) the vendee the sale in whose favour was questioned fourteen years after the sale, was able to prove legal necessity to the extent of Rs. 7744 out of a total price of Rs. 10767. The Privy Council after quoting a passage from the well-known case of *Hunoomanpersaud Panday v. Babooee Munraj Koonweree* ((1855) 6 MIA 393 : 2 Suther 29 : 1 Sar 552) upheld the sale.

4. The principle of these decisions has been approved by this Court in *Radhakrishnadas v. Kaluram* (AIR 1967 SC 574 : (1963) 1 SCR 648).

5. The learned counsel for the respondent relied upon the decision of this Court in *Balmukand v. Kamla Wati* (AIR 1964 SC 3185 : (1964) 6 SCR 321 : (1965) 1 SCJ 212). That was a suit for specific performance of an agreement of sale executed by the manager of the family without even consulting the other adult members of the family. The object of the sale was not to discharge any antecedent debts of the family nor was it for the purpose of securing any benefit to the family. The

only reason for the sale of the land was that the plaintiff wanted to consolidate his own holding. The court naturally found that there was neither legal necessity nor benefit to the estate by the proposed sale and the agreement therefore, could not be enforced. We do not see what relevance this case has to the facts of the present case. We accordingly allow the appeals and dismiss the suit with costs throughout.

</html