

Sunil Kumar and Another

Vs

Ram Parkash and Others

Civil Appeal No. 1576 of 1987

(B.C. Ray, K. Jagannatha Shetty JJ)

13.01.1988

JUDGMENT

RAY. J. -

1. The defendant - respondent 1, Ram Parkash as Karta of Joint Hindu family executed on February 7, 1978 an agreement to sell the suit property bearing M.C.K. No. 238/9, in Mohalla Qanungaon at Kaithal for a consideration for Rs. 21,400 and he received a sum of Rs. 5000 as earnest money. As respondent 1 refused to execute the sale deed, defendant 2, Jai Bhagwan instituted a Suit No. 570 of 1978 in the court of Sub-Judge, First Class, Kaithal for specific performance of the agreement to sell and in the alternative for a decree for recovery of Rs. 10,000. In the said suit appellants 1 and 2 and respondent 11 who are the sons of defendant-respondent 1 made an application for being impleaded. This application, however, was dismissed. Thereafter the three sons of defendant 1 as plaintiffs instituted Civil Suit No. 31 of 1982 in the court of Sub-Judge, Second Class, Kaithal for permanent injunction stating inter alia that the said property was joint Hindu family coparcenary property of the plaintiffs and defendant 1; that there was no legal necessity for sale of the property not it was an act of good management to sell the same to defendant 2 without the consent of the plaintiffs and without any legal necessity. It was, therefore, prayed that a decree for permanent injunction be passed in favour of the plaintiffs and against defendant 1 restraining him from selling or alienating the property to defendant 2 or to any other person and also restraining defendant 2 from proceeding with the suit for specific performance pending in the civil court.

2. Defendant 2, Jai Bhagwan since deceased, filed a written statement stating inter alia that defendant 1 disclosed that the suit property was owned by him and that he was in need of money for meeting the expenses of the family including the education expenses of the children and also for the marriage of his daughters. It has also been pleaded that the house in question fetched a very low income from rent and as such defendant 1 who has been residing in Delhi, did not think it profitable to keep the house. It has also been stated that the suit was not maintainable in law and the injunction as prayed for could not be granted.

3. The trial court after hearing the parties and considering the evidences on record held that the house property in question was the ancestral property of the joint Hindu Mitakshara family and defendant 1 who is the father of the plaintiffs was not competent to sell the same except for legal necessity or for the benefit of the estate. Since the plaintiffs' application for impleading them as party in the suit for specific performance of contract of sale, was dismissed the filing of the present suit was the only remedy available to the plaintiffs. The plaintiffs being coparceners having interest in the property, the suit in the present form is maintainable. The trial court further held that :

It is well settled law that karta of the joint Hindu family cannot alienate the coparcenary property without legal necessity and coparcener has right to restrain the karta from alienating the coparcenary property if the sale is without legal necessity and is not for the benefit of the estate. This view of mine is supported by case title Shiv Kumar v. Mool Chand (1971 Cur LJ 1020 : AIR 1972 P & H 147) thus, the proposed sale is without any legal necessity and is not for the benefit of the estate, therefore the suit of the plaintiff is decreed with no orders as to costs.

4. Against this judgment and decree the defendants, the legal representatives of the deceased defendant 2, preferred an appeal being Civil Appeal No. 199/13 of 1984. The lower appellate court following the decision in Jujhar Singh v. Giani Talok Singh (1986 PLJ 346 : AIR 1987 P & H 34) held that a coparcener has no right to maintain a suit for permanent injunction restraining the Manager or karta from alienating the coparcenary property and the coparcener has the right only to challenge the alienation of the coparcenary property and recover back the property after alienation has come into being. The court of appeal below further held :

That Ram Parkash, father of the plaintiffs and karta of the joint coparcenary property cannot be restrained by way of injunction from alienating the coparcenary property to defendant 2. In consequence, the appeal is accepted and the judgment and decree of the trial court under attack are set aside.

5. Against this judgment and decree, the instant appeal on special leave has been preferred by the appellants i.e. the sons of defendant-respondent 1, the karta of the joint Hindu family.

6. In this appeal we are called upon to decide the only question whether a suit for permanent injunction restraining the karta of the joint Hindu family from alienating the house property belonging to the joint Hindu family in pursuance of the agreement to sell executed already in favour of the predecessor of the appellants, Jai Bhagwan, since deceased, is maintainable. It is well settled that in a joint Hindu Mitakshara family, a son acquires by birth an interest equal to that of the father in ancestral property. The father by reason of his paternal relation and his position as the head of the family is its Manager and he is entitled to alienate joint family property so as to bind the interests of both adult and minor coparceners in the property, provided that the alienation is made for legal necessity or for the benefit of the estate or for meeting an antecedent debt. The power of the Manager of a joint Hindu family to alienate a joint Hindu family property is analogous to that of a Manager for an infant heir as observed by the Judicial Committee in Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree ((1856) 6 Moo IA 393 (PC)) :

The power of a Manager for an infant heir to charge ancestral estate by loan or mortgage, is, by the Hindoo Law, a limited and qualified power, which can only be exercised rightly by the Manager in a case of need, or for the benefit of the estate. But where the charge is one that a prudent owner would make in order to benefit the estate, a bona fide lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred, in the particular instance, or the criteria to be regarded. If that danger arises from any misconduct to which the lender has been a party, he cannot take advantage of his own wrong to support a charge in his favour against the heir, grounded on a necessity which his own wrong has helped to cause.

A lender, however, in such circumstances, is bound to inquire into the necessities of the loan, and to

satisfy himself as well as he can, with reference to the parties with whom he is dealing, that the Manager is acting in the particular instance for the benefit of the estate. If he does inquire, and acts honestly, the real existence of an alleged and reasonably-credited necessity is not a condition precedent to the validity of his charge, which renders him bound to see to the application of the money.

7. At the outset it is to be noticed that in a suit for permanent injunction under Section 38 of the Specific Relief Act by a coparcener against the father or Manager of the joint Hindu family property, an injunction cannot be granted as the coparcener has got equally efficacious remedy to get the sale set aside and recover possession of the property. Sub-section (h) of Section 41 of Specific Relief Act bars the grant of such an injunction in the suit. Secondly, the plaintiff-respondents brought this suit for permanent injunction restraining their father, defendant 1, from selling or alienating the property to defendant 2 or any other person and also restraining defendant 2 from proceeding with the suit for specific performance of the agreement to sell pending in the civil court. Thus the relief sought for is to restrain by permanent injunction the karta of the joint Hindu Mitakshara family, i.e. defendant 1 from selling or alienating the house property in question. Defendant 1 as karta of the joint Hindu family has undoubtedly, the power to alienate the joint family property for legal necessity or for the benefit of the estate as well as for meeting antecedent debts. The grant of such a relief will have the effect of preventing the father permanently from selling or transferring the suit property belonging to the joint Hindu Undivided Family even if there is a genuine legal necessity for such transfer. If such a suit for injunction is held maintainable the effect will be that whenever the father as karta of the joint Hindu coparcenary property will propose to sell such property owing to a bona fide legal necessity, any coparcener may come up with such a suit for permanent injunction and the father will not be able to sell the property for legal necessity until and unless that suit is decided.

8. The judgment is *Shiv Kumar Mool Chand Arora v. Mool Chand Jaswant Ram Arora* (1971 Cur LJ 1020 : AIR 1972 P & H 147) wherein it was held that a suit for permanent injunction against the father to restrain him from alienating the joint Hindu family property was maintainable has been offset by the Division Bench in *Jujhar Singh v. Giani Talok Singh* (1986 PLJ 346 : AIR 1987 P & H 34) wherein it has been held that a suit for permanent injunction by a coparcener against the father for restraining him from alienating the house property belonging to the joint Hindu family for legal necessity was not maintainable because the coparcener had got the remedy of challenging the sale and getting it set aside in a suit subsequent to the completion of the sale. Following this decision the High Court allowed the appeal holding that the suit was not maintainable reversing the judgment and decree of the trial court. We do not find any infirmity in the findings arrived at by the High Court.

9. It has, however, been submitted on behalf of the appellant that the High Court should have held that in appropriate cases where there are acts of waste, a suit for permanent injunction may be brought against the karta of the joint Hindu family to restrain him from alienating the property of the joint Hindu family. This question is not required to be considered as we have already held that the instant suit for injunction as framed is not maintainable. We, of course, make it clear that in case of waste or ouster an injunction may be granted against the Manager of the joint Hindu family at the instance of the coparcener. But nonetheless a blanket injunction restraining permanently from alienating the property of the joint Hindu family even in the case of legal necessity, cannot be granted. It further appears that defendant 1, Ram Parkash entered into the agreement of sale stating that he is the owner of the suit property. The plaintiff-appellants claim the suit property as ancestral property and they as coparceners of joint Hindu Mitakshara family have equal shares with their

father in the suit property. The question whether the suit property is the self-acquired property of the father or it is the ancestral property has to be decided before granting any relief. The suit being one for permanent injunction, this question cannot be gone into and decided. It is also pertinent to note in this connection that the case of specific performance of agreement of sale bearing Suit No. 570 of 1978 had already been decreed on May 11, 1981 by the Sub-Judge, First Class, Kaithal.

10. For the reasons aforesaid we affirm the judgment and decree made by the High Court and dismiss the appeal without any order as to costs.

JAGANNATHA SHETTY, J. (concurring)-

I agree that this appeal should be dismissed but I add a few words of my own. The question raised in the appeal is whether interference of the court could be sought by a coparcener to interdict the karta of Hindu undivided family from alienating coparcenary property. The question is of considerable importance and there seems to be but little authority in decided cases.

12. The facts of the case lie in a narrow compass. In February 1978, Ram Parkash entered into an agreement for sale of certain house property in favour of Jai Bhagwan. The property has been described in the agreement as self-acquired property of Ram Parkash. It was agreed to be sold for Rs. 21,400. Jai Bhagwan paid Rs. 5000 as earnest money on the date of agreement. He promised to pay the balance on the date of execution of the sale deed. Ram Parkash, however, did not keep up his promise. He did not execute the sale deed though called upon to do so. Jai Bhagwan instituted a suit for specific performance of the agreement. In that suit, Rakesh Kumar and his brothers who are the sons of Ram Parkash wanted to be impleaded as parties to the suit. They wanted to resist the suit for specific performance. But the court did not permit them. The court said that they were unnecessary parties to the suit. Being unsuccessful in that attempt, they instituted a suit for permanent injunction against their father. They wanted the court to restrain their father from alienating the house property to Jai Bhagwan, or to anybody else. Their case was that the said house was their coparcenary property and the proposed sale was neither for legal necessity nor for the benefit of the joint family estate.

13. The suit for injunction was practically tried as a suit for declaration. A lot of evidence was adduced on various issues. including the nature of the suit property. The trial court ultimately decreed the suit with the following findings : The suit property was coparcenary property of the joint family consisting of Ram Parkash and his sons. Jai Bhagwan has failed to prove that the proposed sale was for legal necessity of the joint family. He has also failed to prove that the intended sale was for benefit of the estate. Ram Parkash being the manager of the family cannot alienate coparcenary property in the absence of those two requirements. The sons could restrain their father from alienating the coparcenary property since the proposed sale was without justification

14. Jai Bhagwan died during the pendency of the suit. His wife and children challenged the decree of the trial court in an appeal before the Additional District Judge, Kurukshetra. By then, the Punjab and Haryana High Court had declared in Jujhar Singh v. Giani Talok Singh (1986 PLJ 346 : AIR 1987 P&H 34) that a suit for injunction to restrain karta from alienating coparcenary property is not maintainable. The learned District Judge following the said decision reversed the decree of the trial court and dismissed the suit. The plaintiff preferred second appeal which was summarily dismissed by the High Court.

15. The plaintiffs, by special leave, have appealed to this Court. The arguments for the appellants appear to be attractive and are as follows :

There is no presumption under law that the alienation of joint family property made by karta is valid. The karta has no arbitrary power to alienate joint family property. He could do so only for legal necessity or for family benefit. When both the requirements are wanting in the case, the coparceners need not vainly wait till the transaction is completed to their detriment. They are entitled to a share in the suit property. They are interested in preserving the property for the family. They could, therefore, legitimately move the court for an action against the karta in the nature of a quia timet.

16. As a preliminary to the consideration of the question urged, it will be necessary to examine the structure of joint Hindu family, its incidents and the power of karta or Manager thereof. The status of the undivided Hindu family or the coparcenary is apparently too familiar to everyone to require discussion. I may, however, refer in laconic details what is just necessary for determining the question urged in this appeal.

Joint Hindu Family

17. Those who are of individualistic attitude and separate ownership may find it hard to understand the significance of a Hindu joint family and joint property. But it is there from the ancient time perhaps, as a social necessity. A Hindu joint family consists of male members descended lineally from a common male ancestor, together with their mothers, wives or widows and unmarried daughters. They are bound together by the fundamental principle of sapindaship or family relationship which is the essential feature of the institution. The cord that kints the members of the family is not property but the relationship of one another.

18. The coparcenary consists of only those persons who have taken by birth an interest in the property of the holder and who can enforce a partition whenever they like. It is a narrower body than joint family. It commences with a common ancestor and includes a holder of joint property and only those males in his male line who are not removed from him by more than three degrees. The reason why coparcenership is so limited is to be found in the tenet of the Hindu religion that only male descendants up to three degrees can offer spiritual ministrations to an ancestor. Only males can be coparceners. [See : Hindu Law by N. R. Raghavachariar, 8th edn., p. 202]

19. In an early case of the Madras High Court in *Sudarsanam Maistri v. Narasimhulu Maistri* ((1902) ILR 25 Mad 149 : 11 MLJ 353) Bhashyam Ayyangar, J. made the following pregnant observations about the nature of the institution and its incidents at p. 154 :

The Mitakshara doctrine of joint family property is founded upon the existence of an undivided family, as a corporate body (*Gan Savant Bal Savant v. Narayan Dhond Savant* ((1883) ILR 7 Bom 457, 471) and *Mayne's Hindu Law and Usage*, 6th edn., para 270) and the possession of property by such corporate body. The first requisite therefore is the family unit; and the possession by it of property is the second requisite. For the present purpose female members of the family may be left out for consideration and the conception of a Hindu family is a common male ancestor with his lineal descendants in the male line, and so long as that family is in its normal condition viz. the undivided state - it forms a corporate body. Such corporate body,

with its heritage, is purely a creature of law and cannot be created by act of parties, save insofar that, by adoption, a stranger may be affiliated as a member of that corporate family.

20. Adverting to the nature of the property owned by such a family, learned Judge proceeded to state at p. 155 :

As regards the property of such family, the 'unobstructed heritage' devolving on such family, with its accretions, is owned by the family as a corporate body, and one or more branches of that family, each forming a corporate body within a larger corporate body, may possess separate 'unobstructed heritage' which, with its accretions, may be exclusively owned by such branch as a corporate body.

21. This statement of law has been approved by the Supreme Court in *Bhagwan Dayal v. Mst. Reoti Devi* ((1962) 3 SCR 440, 476 : AIR 1962 SC 287).

Managing Member and his Powers

22. In a Hindu family, the karta or Manager occupies a unique position. It is not as if anybody could become Manager of a joint Hindu family. "As a general rule, the father of a family, if alive, and in his absence the senior member of the family, is alone entitled to manage the joint family property. " The Manager occupies a position superior to other members. He has greater rights and duties. He must look after the family interests. He is entitled to possession of the entire joint estate. He is also entitled to manage the family properties. In other words, the actual possession and management of the joint family property must vest in him. He may consult the members of the family and if necessary take their consent to his action but he is not answerable to every one of them.

23. The legal position of karta or Manager has been succinctly summarised in the *Mayne's Hindu Law* (12th edn., para 318) thus :

318. Manager's legal position. - The position of a karta or manager is sui generis; the relation between him and the other members of the family is not that of principal and agent, or of partners. It is more like that of a trustee and cestui que trust. But the fiduciary relationship does not involve all the duties which are imposed upon trustees.

24. The managing member or karta has not only the power to manage but also power to alienate joint family property. The alienation may be either for family necessity or for the benefit of the estate. Such alienation would bind the interests of all the undivided members of the family whether they are adults or minors. The oft-quoted decision in this aspect, is that of the Privy Council in *Hunoomanpersaud v. Mst. Babooee* ((1856) 6 Moo IA 393 (PC)). There it was observed at p. 423 : "That power of the manager for an infant heir to charge an estate not his own is, under the Hindu law, a limited and qualified power. It can only be exercised rightly in case of need, or for the benefit of the estate." This case was that of a mother, managing as guardian for an infant heir. A father who happens to be the manager of an undivided Hindu family certainly has greater powers to which I will refer a little later. Any other manager however, is not having anything less than those stated in the said case. Therefore, it has been repeatedly held that the principles laid down in that case apply equally to a father or other coparcener who manages the joint family estate.

Remedies against Alienations

25. Although the power of disposition of joint family property has been conceded to the Manager of joint Hindu family for the reasons aforesaid, the law raises no presumption as to the validity of his transactions. His acts could be questioned in the court of law. The other members of the family have a right to have the transaction declared void, if not justified. When an alienation is challenged as being unjustified or illegal it would be for the alienee to prove that there was legal necessity in fact or that he made proper and bona fide enquiry as to the existence of such necessity. It would be for the alienee to prove that he did all that was reasonable to satisfy himself as to the existence of such necessity. If the alienation is found to be unjustified, then it would be declared void. Such alienations would be void except to the extent of Manager's share in Madras, Bombay and Central Provinces. The purchaser could get only the Manager's share. But in other provinces, the purchaser would not get even that much. The entire alienation would be void. [Mayne's Hindu Law, 11th edn., para 396]

26. In the light of these principles, I may now examine the correctness of the contentions urged in this appeal. The submissions of Mr. H. N. Salve, as I understand, proceeded firstly on the premise that a coparcener has as much interest as that of karta in the coparcenary property. Second, the right of coparcener in respect of his share in the ancestral property would remain unimpaired, if the alienation is not for legal necessity or for the benefit of the estate. When these two rights are preserved to a coparcener, why should he not prevent the karta from dissipating the ancestral property by moving the court? Why should he vainly wait till the purchaser gets title to the property? This appears to be the line of reasoning adopted by the learned counsel.

27. I do not think that these submissions are sound. It is true that a coparcener takes by birth an interest in the ancestral property, but he is not entitled to separate possession of the coparcenary estate. His rights are not independent of the control of the karta. It would be for the karta to consider the actual pressure on the joint family estate. It would be for him to foresee the danger to be averted. And it would be for him to examine as to how best the joint family estate could be beneficially put into use to subserve the interests of the family. A coparcener cannot interfere in these acts of management. Apart from that, a father-karta in addition to the aforesaid powers of alienation has also the special power to sell or mortgage ancestral property to discharge his antecedent debt which is not tainted with immorality. If there is no such need or benefit, the purchaser takes risk and the right and interest of coparcener will remain unimpaired in the alienated property. No doubt the law confers a right on the coparcener to challenge the alienation made by karta, but that right is not inclusive of the right to obstruct alienation. For the right to obstruct alienation could be considered as incidental to the right to challenge the alienation. These are two distinct rights. One is the right to claim a share in the joint family estate free from unnecessary and unwanted encumbrance. The other is a right to interfere with the act of management of the joint family affairs. The coparcener cannot claim the latter right and indeed, he is not entitled to it. Therefore, he cannot move the court to grant relief by injunction restraining the karta from alienating the coparcenary property.

28. There is one more difficulty for the sustainability of the suit for injunction with which we are concerned. Temporary injunction can be granted under sub-section (1) of Section 37 of the Specific Relief Act, 1963. It is regulated by the Code of Civil Procedure, 1908. A decree for perpetual injunction is made under sub-section (2) of Section 37. Such an injunction can be granted upon the merits of the suit. The injunction would be to restrain the defendant perpetually from the commission of an act, which would be contrary to the rights of the plaintiff. Section 38 of the Specific Relief Act governs the grant of perpetual injunction and sub-section (3) thereof, reads :

When the defendant invades or threatens to invade the plaintiff's right to, or

enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely :

- (a) Where the defendant is trustee of the property for the plaintiff;
- (b) Where there exists no standard for ascertaining the actual damage caused or likely to be caused, by the invasion;
- (c) Where the invasion is such that compensation in money would not afford adequate relief;
- (d) Where the injunction is necessary to prevent a multiplicity of judicial proceedings.

29. The provisions of Section 38 to be read along with Section 41. Section 41 provides that an injunction cannot be granted in the cases falling under clauses (a) to (j). Clause (h) thereunder provides that an injunction cannot be granted when a party could obtain an efficacious relief by any other usual mode of proceeding (except in case of breach of trust). The coparcener has adequate remedy to impeach the alienation made by the karta. He cannot, therefore, move the court for an injunction restraining the karta from alienating the coparcenary property. It seems to me that the decision of the Punjab and Haryana High Court in Jujhar Singh v. Giani Talok Singh (1986 PLJ 346 : AIR 1987 P&H 34) has correctly laid down the law. There it was observed at p. 348 :

If it is held that such a suit would be competent the result would be that each time the manager or the karta wants to sell property, the coparcener would file a suit which may take number of years for its disposal. The legal necessity or the purpose of the proposed sale which may be of pressing and urgent nature, would in most cases be frustrated by the time the suit is disposed of. Legally speaking unless the alienation in fact is completed there would be no cause of action for any coparcener to maintain a suit because the right is only to challenge the alienation made and there is no right recognised in law to maintain a suit to prevent the proposed sale. The principle that an injunction can be granted for preventing waste by a manager or karta obviously would not be applicable to such a suit because the proposed alienation for an alleged need of the benefit of the estate cannot be said to be an act of waste by any stretch of reasoning. We are, therefore, of the considered view that a coparcener has no right to maintain a suit for permanent injunction restraining the manager or the karta from alienating the coparcenary property and his right is only to challenge the same and to recover the property after it has come into being.

30. From the above discussion of the principles of Hindu Law and in the light of the provisions of the Specific Relief Act, I think, therefore, there ought to be no hesitation on my part to dismiss this appeal and I dismiss the same with cost.

</html