Dudh Nath

Vs.

Sat Narain Ram

Special Appeal No. 419 of 1960, from judgment of decree of R.N Gurtu, J.
(Jagdish Sahai, R.S. Pathak and G.C. Mathur, JJ.)

22.08.1960. 30.11.1965

**JUDGMENT**
**Jagdish Sahai, J.**

1. The question referred to this Full Bench is as follows :-

> "Whether an alienation of ancestral joint family property by a Hindu father is not binding on his son if it was made for inadequate consideration, even if there was legal necessity ? In order to answer it correctly, it would be necessary to give in short the facts and the circumstances which have given rise to the question.

2. The appellant, Dudh Nath, filed the suit giving rise to this appeal for possession over the property described at the foot of the plaint (hereinafter referred to as the property in dispute) on the allegations that the plaintiff his brother, Pashupati Nath, defendant No. 3, and their father, Panna Ram. formed a joint Hindu family which was possessed of ancestral property including the property in dispute and that Panna Ram without any legal necessity first executed a mortgage deed in respect of the property in dispute without consideration and later on 25-7-1927 sold it to Antu Ram for a sum of Rs. 500. It is alleged that the market value if the property sold is not less than 2500 and the sale was without legal necessity. The property in dispute consists of some Zamindari property, a house and some fixed rate tenancy. Panna Ram, having been dead on the date of the institution of the suit, was not impleaded as a party. The defendant No. 1, Sat Narain Ram and the defendant No 2. Sri Krishna Ram are the sons of Antu Ram, who is also dead. Defendant No. 3, Pashupati Nath, did not contest the suit. The defendants Nos. 1 and 2, Sat Narain Ram and Sri Krishna Rain, however, contested it, inter alia, on the plea that the sale-deed was for legal necessity and for proper and adequate consideration.

3. The trial Court decreed the suit on 12-1-1948, directing the parties to bear then own costs, subject to the payment of Rs. 500 by the plaintiff, Dudh Nath, within a period of three months from the date of the decree failing which the suit was to stand dismissed with costs. Against the decree of the learned Munsif dated 12-1-1948. Sat Narain Ram filed an appeal which was allowed with costs by the Civil Judge Ghazipur, on 11-3-1950 Against the decree of the learned Civil Judge, dated 11-3-1950 second appeal No. 756 of 1950 was filed in this Court. This appeal came up for hearing before Gurtu, J. who remitted for decision by the first appellate Court the following issue :-

> "Whether the value of the property in sun on the date of sale could be found out on the basis of the valuation of similar property or on the basis of profits of the property in suit, the evidence of which is on the record ? If so what is the value ?"

Answering that issue the learned Civil Judge found that the value of the zamindari property was Rs. 2,400 and that of the house was Rs. 1,333 and odd, but that of the fixed rate tenancy could not be determined. He also held that the property covered by the impugned sale-deed was sold for much below the price than it could have fetched.

4. After the receipt of the findings recorded by the learned Civil Judge the case was again listed before. Gurtu, J. for hearing. The learned counsel for Sat Narain Ram relied on *Kailash Nath v. Tulshi Ram.* [1] for the proposition that an alienation by a Hindu father of joint family property would be valid only if in addition to the legal necessity it was also proved that the property was not alienated for wholly inadequate consideration. On behalf of Dudh Nath, on the other hand reliance was placed upon the judgment of a Bench of tin's Court in an application made for a certificate for appeal to the Supreme Court in the case of *Bechu v. Dhanraj, Supreme Court*[2] arising out of Second Appeal No. 356 of 1950, dated 6-12-1957 (SC). In this case Desai and Chowdhry, JJ. while certifying that the case was a fit one for appeal to the Supreme Court of India, observed that the Judicial Committee in *Ram Charau Lonia and others v. Bhagwan Das Maheshri,* [3] (on which AIR 1946 PC 349 was based) did not intend to lay down that in addition to legal necessity adequacy of price must also be proved to support an alienation of joint family property made by a Hindu father. It has been contended before us that the observations made by Desai and Chowdhry, JJ. in their

order certifying Bechu's case, Supreme Court Appeal No. 52 of 1957 arising out of S. A. No 356 of 1950, dated 6-12-1957 (SC) to be a fit one for appeal to the Supreme Court could not be treated as a decision or a ruling or as a judicial precedent. We will deal with this submission a little later.

5. In Principles of Hindu Law by D.F. Mulla, 12th Edition, in paragraph 245 on p. 372, it has been stated as below :-

> "Although there may be legal necessity justifying alienation, it is not open to a father or other manager to sacrifice family property for an inadequate consideration. A transfer in such cases is liable to be set aside at the instance of other co-parceners."

In support of this statement of law reliance has been placed upon AIR 1946 Allahabad 349 (supra) by Mulla.

6. In AIR 1926 PC 68 (supra) the Judicial Committee observed as follows :-

> "In these circumstances, a transaction even involving the disposal by Gopal Das of this entire immovable family property might well be justifiable and be binding on the whole family provided the property was not sacrificed for an inadequate price and provided the consideration was calculated to relieve the necessity the existence of which called for the disposition. On the basis of these observations, AIR 1946 Allahabad 349 (supra) was decided by this Court and it was observed :-

It is, therefore, obvious that the adequacy of the price was a factor emphasized by their Lordships and that if was not merely enough that the consideration was calculated to relieve the necessity. Both conditions were to co-exist. It is, therefore, open to us to take into consideration the market value of the property and to see whether Ram Narain agreed to sell it for its proper value or sacrificed it for an inadequate consideration."

7. So far as this Court is concerned the only other case which throws some light on the question referred to us in *Bankey Lal v. Nattha Rani,* [4] In this case Sulaiman, J. observed as follows :

> "The next question is whether the son can challenge the sale on the ground that the consideration was grossly inadequate. I am not prepared to say that once necessity has arisen for the transfer of ancestral property the sale by the father is always binding on the minor members no matter whether the consideration is grossly inadequate or not. In cases of mortgages their Lordships of the Privy Council have frequently laid down that there may be necessity for the transfer at a certain rate of interest but there may not be necessity for the high rate charged. I am, therefore, not prepared to hold that the plaintiffs' suit would fail automatically as soon as it is found that there was necessity for putting a stop to the business."

The other learned Judge, Ashworth, J. expressing some doubt observed :-

> "I consider it open to doubt whether when once it is shown that a sale by a Hindu father and manage is necessary, any suit will lie against the vendee on the ground of insufficiency of price inasmuch as the father is empowered to make arrangements for the sale and the vendee can scarcely be expected to see that the price is inadequate. At any rate it is clear to me that no such suit would lie against the vendee in the absence of fraud or collusion being proved against the vendee. No such fraud or collusion has been proved in this case."

It is true that the sale in the case before the Privy Council was set aside on the ground of want of legal necessity and, therefore, the question with regard to the adequacy or inadequacy of consideration did not directly arise, but it is equally true that the Privy Council was considering the law in respect of the powers of a father to alienate joint Hindu family property and in doing so it held that a joint family property cannot be sacrificed for inadequate price even though there was legal necessity. The Privy Council decision was binding on this Court in 1946 when Kailash Nath's case, AIR 1946 Allahabad 349, was decided and is entitled to the highest respect even today. We are unable to treat the order of Desai and Chowdhry, JJ. certifying Bechu's case. Supreme Court Appeal No. 52 of 1957 arising out of S. A. No. 356 of 1950 dated 6-12-1957 (SC), as a fit one for appeal to the Supreme Court either as a decision or as a judicial precedent. The learned Judges only held that the question as to whether or not inadequacy of consideration could be a ground to invalidate a sale made by a father of joint family property was an important one and needed determination by the Supreme

Court.

8. In *D. Nagaratnamba v. K. Ramayya,* [5] the Andhra Pradesh High Court held :-

> "'When there are minors, the father cannot, at any rate, neglect his duty to act as a prudent guardian or trustee of the property Needless further to say that even in cases of necessity not only the sale should be for value but also the consideration should be adequate."

9. In *Soshil Kumar v. Madan Gopal,* [6] the Punjab High Court had to consider a question similar to the one raised before us and took the view that adequacy of consideration in addition to legal necessity was a question to be considered, but held that on the facts it had not been proved that the consideration was inadequate. The relevant words in the judgment are :-

> "On the second question, as admittedly the consideration of the sale-deed was devoted to payment of a pre-existing debt it cannot be disputed that the sale was for legal necessity. The only question which is open to the plaintiffs is that the sale was made for a totally inadequate consideration, was not a provident act and, therefore, should be set aside upon payment by the plaintiffs to the vendee of the consideration paid by him together with such interest, if any which should be allowed to him. I think, therefore, there is no sufficient material on the record to justify a conclusion that at the time the sale now challenged was made, the value of the property exceeded so substantially the consideration obtained that the sale must be held not binding upon the minors as a totally improvident act on the part of their father Biri Mal."

10. In *Helava v. Sesigowda,* [7] a Division Bench of the Mysore High Court observed :-

> "It is equally clear that while making such alienation of property of which he is not the sole owner, he should exercise a measure of prudence higher, as in the case of a trustee. than if he were its sole owner even if he was making the alienation for family necessity n benefit. If however the alienation is unreasonably excessive in the sense that more property has been sold than was necessary to relieve the existing necessity or for a grossly inadequate price, it could hardly be suggested that he exercised the required degree of prudence or

did not unnecessarily sacrifice family property.

If we believe the evidence of this witness as we do believe, then the price paid for the sale of the suit land is an inadequate price, and if so it cannot be said that the sale would be justified on that ground." Except for the solitary doubting voice of Ashworth, J. in AIR 1929 Allahabad 199 (supra) there is no judicial pronoun cement under the Hindu Law which militates against the view taken by this Court in AIR 1946 Allahabad 349 (supra) that in addition to legal necessity justifying alienation, it must further be proved that the family property was not sacrificed for inadequate consideration. In view of the authoritative pronouncement by the Judicial Committee in AIR 1926 PC 68 (supra) and the other cases referred to above, I am of the opinion that the view taken in the case of, AIR 1946 Allahabad 349, is correct.

11. In *Hanoomanpersaud Pandey v. Mt. Babooee Munraj Koonweree,* [8] Lord Justice Knight Bruce stated the powers of the manager thus :-

> "The power of the manager for an infant heir to charge an estate not his own, under the Hindu Law a limited and qualified power it can only be exercised rightly in a case of need, or for the benefit of the estate. The actual pressure on the estate, the danger to be averted or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded."

Though the decision in Hanoomanpersaud's case, (1856) 6 Moo Ind App 393 (PC), is on a slightly different point, but it is clear there from that the Judicial Committee used the terms 'necessity land 'benefit to the estate' side by side. Several decided cases under the Hindu Law show a Hindu father or a manager of joint Hindu family is expected to act prudently. However great the necessity may be, if the joint family property is sacrificed for inadequate consideration, it would be a highly imprudent transaction and it would be a case where, though for necessity, the father or the guardian has not acted for the benefit of the estate or the members of the joint Hindu family. The lather or the manager is not the sole owner of the property. In fact until the partition takes place even his share does stand demarcated. The ownership vests in all the coparceners taken together as a unit. The father and the manager, therefore, only represent the co-parceners. Consequently the co-parceners stand bound by the act of the father or the manager of the family only to the extent the act is prudent or for the benefit of the coparceners or the estate. For the reasons mentioned above I am of the

opinion that in order to uphold in alienation of a joint Hindu family property in the father or the manager, it is not only necessary to prove that there was legal necessity. But also that the father or the manager acted like a prudent man and did not sacrifice the property for inadequate consideration.

12. Mr. Bhargava did not cite any judicial precedent before us, but placed reliance upon verse 28 of the text of Vrahaspati, which translated in English reads :-

> "28. An exception to it follows : 'Even a single individual may conclude a donation, mortgage or sale, of immovable property during a season of distress, for the sake of the family, and especially for pious purposes. Vijnaneswara comments on this in verse 29 thus :
> "29. The meaning of that text is this : While the sons and grandsons are minors, and incapable of giving their consent to a gift and the like, or while brothers are so and continue unseparated; even one person, who is capable, may conclude a gift, hypothecation, of sale of immovable property, if a calamity affecting the-whole family require it, or the support of the family render it necessary, or indispensable duties, such as the obsequies of the father of the like, make it unavoidable."

Mr. Bhargava contends that the text of Vrahaspati extracted above places no restriction on the powers of a Manager to alienate family property in the case of distress or for the sake of the family or for pious purposes and consequently the question of adequacy of consideration is not a relevant question. I am unable to agree. In the first place, it is well settled that the Hindu Law as administered in this country is not as given in the original text, but as declared by Courts of law. In *Luhar Amrit Lal Nagji v. Doshi Jayantilal Jethalal,* [9] it was observed as follows :-

> 'It is a remarkable feature of the growth of Hindu Law that, by a skilful adoption of rules of construction, commentators successfully attempted to bridge the distance between the letter of the Smriti texts and the existing customs and usages in different areas and at different times. This process was arrested under the British Rule; but if we were to decide today what the true position under Hindu Law texts is on the point with which we are concerned it would be very difficult to reconcile the different texts and come to a definite conclusion. In this branch of the law several considerations have been introduced by judicial

> decision which have substantially now become a part and parcel of Hindu Law as it is administered; it would, therefore, not be easy to disengage the said considerations and seek to ascertain the true effect of the relevant provisions contained in ancient texts considered by themselves."

Secondly, the quotation from Vrahaspati extracted above does not deal with the question of adequacy or inadequacy of the consideration nor does it strictly speaking deal with the powers of the father or manager of a joint Hindu family in centra-distinction of the powers of any other member of the family. In my opinion, therefore, the text of Vrahaspati cited by Mr. Bhargava does not advance his case to am extent.

13. For the reasons mentioned above I would answer the question referred to us by saying that an alienation of ancestral joint family property by a Hindu father is not binding on his son if it was made for inadequate consideration, even though there was legal necessity and direct that the record of the case be returned to the Bench concerned with the answer given above for deciding special appeal No. 419 of 1960 on merits. In the circumstances of the case I would direct that the costs would abide the result.

Question answered.

Cases Referred.

1. AIR 1946 All 349
2. Appeal No. 52 of 1957
3. AIR 1926 PC 68
4. AIR 1929 AIR 199
5. AIR 1963 And Pra 177
6. AIR 1953 Pun 292
7. AIR 1960 Mys 231
8. (1856) 6 Moo Ind App 39B (PC)
9. AIR 1960 SC 964