Jagmohan Agrahri and anr. Vs. Prag Ahir and ors.

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Court : Allahabad

Decided On : Jan-14-1925

Reported in : AIR1925All618; 87Ind.Cas.27

Appellant : Jagmohan Agrahri and anr.

Respondent : Prag Ahir and ors.

Judgement :

1. The plaintiffs are the sons of Narain, and seek to set aside a sale of certain ancestral property situated in the village Buzurgwar, which was effected by the latter in favour of Madho and others, now represented by the defendants-respondents, on the 2nd of April, 1910. The sale was effected for a consideration of Rs. 3,200, the whole of which was paid in cash to the vendor at the time of registration. The allegation of the plaintiffs was that they were not bound by the sale inasmuch as it was effected for no legal necessity. The defendants-vendees, however, contended that the property sold was situated at a considerable distance from the place where Narain was residing, that it yielded a very small profit to the family, and that the sale in question was effected in order to benefit the family, by applying the proceeds to business which was likely to yield greater profit. The plaintiffs also asserted that the sale was effected without consideration and that the property sold was of greater value than that paid by the defendants-vendees. These facts wore, however, controverted by the defendants vendees. The Court below found that the property in question was not of a larger value than that represented by the sale consideration paid by the defendants vendees, that the sale was effected for consideration and for the benefit of the family and that the plaintiffs were consequently bound by it. We have examined the evidence adduced in the case and are satisfied that the property sold yielded a very small profit to the family, and that owing to the distance at which it was situated, the famil found some difficulty in managing it. The property sold comprised a 5 annas 5 pies share in one of the mahals of mauza Buzurgwar, which was situate at a distance of about 16 miles from Bardand where the family resided. The sale-deed mentioned that the village was situated at a great distance from the family residence, that the vendor was unable to make suitable arrangements for its management, and there was also a need for money to carry on business, which could not have been obtained except by the transfer of the said property. The khewat for 1320 P. filed shows that the mahal in which the property sold was situated yielded a gross rental of Rs. 345-14-6 per year, out of which Rs. 139 were payable as land revenue. It is not clear whether the latter amount included the cesses payable on account of the estate. But even if it did include, the share sold yielded, roughly speaking, about Rs. 69 per year, which would, in ordinary circumstances, be barely enough for a family consisting of a father and two sons, with such other members as may have bean dependent on them for their support. It is not clear whether the family possessed at the time any other landed property. The evidence, however, goes to

show that they had a cloth business which was carried on in, the name of Narain and his son Jagmohan, one of the present plaintiffs. Ram Deo states that in Sambat 1965 Baijnath and Nageshar had dealings with his shop in connection with the purchase of cloth, and that in Sambat 1965, which would correspond with the year 1908, there was a balance of Rs. 183 due by them under the previous account. Baijnath was the father of Narain. He had two sons, Nageshar and Narain. Gauri Dat states that in Sambat 1966 Narain and Jagmohan took cloth from his shop and that there was an account in their names in his books. He further states that there were similar dealings in Sambat 1966-67 and that cloth worth EP. 847-8-0 was purchased by them from him out of which Rs. 671 were paid to biro, and that in The following year, Sambat 1867-68, they again purchased cloth worth Rs. 1,125 from his shop, out of which Rs. 1,101-14-0 were paid by them. Gauri Dat is a whole sale dealer paying an income-tax assessed on an income of Rs. 18,400 per year, and his evidence, supported by the account books to which be refers and read with the statement of Ram Deo, loaves no doubt in our minds that there was a family business in cloth carried, on at the time when the sale transaction in question was effected, and that Jagmohan was concerned in or jointly carried on that business with his father. Bandhu Lal, patwari of Buzurgwar, states that he was patwari of the village for the last 17 or 18 years and knew the plaintiffs to whose place of residence he used to go, and that the sale in question was effected by Narain for carrying on business in cloth which existed from before. The Court below evidently thought that the business for which the sale was effected was a new business started by Narain. But that is not the effect of the evidence which has been adduced in the case. The business was evidently a profitable business, for the income-tax register for 1918 goes to show that Narain was assessed at an income of Rs. 1400 per year on his business besides house rent. It does not appear when Narain died and whether that business was continued after his death by his sons namely the present plaintiffs. But even if the business eventually failed, that would not affect the validity of the transaction which was entered into in 1910 for the purpose of disposing of property which yielded a small profit and was difficult to manage, and to apply the sale consideration to the extension of the existing family business. The business was not of a speculative nature and the subsequent failure of that business if it did fail, affords no criterion for determining whether the transaction was originally a prudent transaction, which the manager of a Hindu family, and especially a father, was entitled to make for the family benefit.

2. Under the Hindu law a transfer can be made by the manager of a family either for legal necessity or for the family benefit. In Hanoomon Persaud Panday v. Mt. Babooee Munraj Kuonwaree (1954-57) 6 M.I.A. 378 , their Lordships of the Privy Council said:

The 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. But where, in the particular instance the charge is one that a prudent owner would make in order to benefit the estate, the 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 upon it in the particular instance, is the thing to be regarded.

3. In Girdharee Lal Muddim Thakoor v. Kantoo Lal (1873) 1 I.A. 321 and Mohommad Mondul v. Nafur Mondul (1899) 26 Cal. 820, the same principle was extended to the case of sales. The decision in Krishna Chandra Choudhury v. Ratan Rampal (1916) 20 C.W.N. 645 does not apply, because no speculative development of the family estate or business was hereby intended. What was intended was to get rid of an estate which

was inconveniently situated, which had no sir land attached to it and was not sufficiently profitable, and to substitute for it something that was likely to yield a larger income by an extension of the family business then being carried on. The decisions in Ganga Prasad v. Ramsarup 60 I.C. 68 and Krishnadhan Banerji v. Sanyasi Charan Mandal (1919) 23 C.W.N. 500 are also inapplicable.

4. The appeal, therefore, fails and is hereby dismissed with costs including fees in this Court on the higher scale.