Sheo Dan Singh Vs. Habib Ullah Khan

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Court : Allahabad

Decided On : May-16-1923

Reported in : 75Ind.Cas.872

Judge : Daniels, J.

Appellant : Sheo Dan Singh

Respondent : Habib Ullah Khan

Judgement :

Daniels, J.

1. This was a suit by the plaintiff-appellant to recover possession of property alienated by his father Jeoraj Singh under two sale-deeds in the years 1913 and 1916, respectively, on the ground that these were transfers without legal necessity. The suit has been decreed as regards the property covered by the first sale-deed and this property is not now in dispute. It has been dismissed as regards the property covered by the second sale-deed and as to this the plaintiff appeals. The dispute relates to one single item but this item is by far the largest item out of the sale consideration. The sale-deed in question was for a sum of Rs. 9,565. Out of this Rs. 1,562-14-0 was set off against the amount of a previous bond executed by Jeoraj Singh on 29th July 1913. The principal amount in this bond had been Rs. 930 and with interest it had amounted up to Rs. 1,562-14-0 at the time of sale. The main item in this bond of Rs. 930 was a sum of Rs. 800 which Jeoraj Singh had to pay in satisfaction of a pre-emption decree which he had obtained for certain property. It has been recently held by a Bench of this Court, overruling a previous decision to the contrary, that money payable, by the successful plaintiff in a preemption suit is not antecedent debt for the purpose of supporting an alienation of the family property, Chatarbhuj v. Gobind Rum 74 Ind. 571 : 21 A.L.J. 348 : 45 A. 407]. It does not follow from this that the payment of a pre-emption decree might not be binding on the family on the ground of legal necessity or benefit to the estate. The difficulty in this case is that, both the Courts have found that this particular transaction was not a prudent transaction for Jeoraj Singh to have, entered into; in fact the Trial Court described it as having brought the ruin of the family. The lower Appellate Court says that the transaction was one which could not be financially successful. The learned Judge, however, seems to think that there was a sort of pious duty on Jeoraj Singh to re-acquire this property because it originally belonged to two of his separate brothers. The re-purchase of property sold by a separated brother is not, however, a purpose which constitutes legal necessity under Hindu Law. The decree, therefore, cannot be supported on this ground.

2. The second ground on which the learned Judge has dismissed the suit as regards this sale-deed is, that the transaction was subsequently ratified by the present

plaintiff Sheodan Singh. Mutation was applied for on this sale-deed and Sheodan Singh was examined as a witness. He had objected regarding certain other property as to which mutation was sought. With regard, to the property covered by this sale-deed he said explicitly he had no abjection to mutation being made and further on in his statement he said that he had no objection whatever regarding the and of this sale-deed. 3. It is not denied by the appellant that a transaction by the manager can be ratified by the son so as to estop the latter from afterwards disputing it. Narayana Aiyar v. Ram Aiyar 20 Ind. Cas. 625 : 38 M. 396 : (1913) M.W.N. 588 : 14 M.L.T. 89 : M.L. 219 is a case in point and Trevelyan's Hindu Law, Second Edition, pages 306 and 486, has also been referred to. The appellant's contention is that the plaintiff's representation did not amount to acquiescence in the transaction or create any estoppel against him. The Trial Court took the view that all that the plaintiff did was to consent to mutation of names and that he did not say in terms that he accepted the sale. This is a very narrow view to take. When the plaintiff stated not only that he had no objection to mutation but that he had no objection as regards the property covered by this sale-deed, the purchaser would naturally understand him to mean that he accepted the transaction as binding upon him. In all probability the plaintiff at that time did so accept it. Having regard to the strong feeling which exists in Indian families against losing property which had once belonged to the family, the probability is that the father and son were alike desirous to recover the property for which they had got a pre-emption decree. But, however that may be, I have no doubt that the learned Judge was right in holding that this was a clear representation by the plaintiff that he accepted the sale-deed as a valid transaction binding on him. It is urged that the defendant was not prejudiced by the representation. With this I cannot agree. If the defendant had not been led to believe that the plaintiff accepted the sale as a good sale he might have taken steps to give up the property and get back his purchase-money and so have saved the expenses and worry of the present litigation, which has lasted for over three years. If the person entitled to avoid sale of property leads the purchaser to believe that his title is good, the purchaser is certainly prejudiced if the party making the representation is allowed to resile from it and to attack the purchaser's title after an interval of several years. I, therefore, agree with the Court below that the plaintiff is estopped from disputing the defendant's title under this sale-deed. I accordingly dismiss the appeal with costs including fees in this Court on the higher scale.