Subbakkal Vs. Subba Gounder and anr.

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Court : Chennai

Decided On : Jul-09-1964

Reported in : AIR1965Mad371; (1965)1MLJ159

Judge : Srinivasan, J.

Appeal No. : Second Appeal No. 1674 of 1961 and Memo of Cross Objections

Appellant : Subbakkal

Respondent : Subba Gounder and anr.

Judgement :

(1) The plaintiff's suit was to recover possession of certain property after a declaration that the sale deed dated 25-6-1941 (it must be the sale deed dated 25-6-1941) executed by her grandmother Karuppayee as her guardian was null and void and not binding on the plaintiff. She has failed in both the courts below. She appeals.

(2) The property originally belonged to the plaintiff's paternal grandfather. It appears that the father of the plaintiff had himself executed a mortgage for a sum of Rs. 75 on 24-8-1936. After her father's death, the plaintiff, who had also lost her mother, came under the guardianship of her grandmother Karupayee. Karupayee is said to have been looking after her and maintaining her. Karupayee sold the property for a sum of Rs. 240 under the impugned sale deed. Out of the sale price, a sum of Rs. 100 went towards the discharge of the earlier mortgage executed by the plaintiff's father. A sum of Rs. 40 was taken in cash by Karupayee for the maintenance expenses of the plaintiff. With regard to the balance of consideration, the purchaser executed a mortgage on the property. Upon the contentions of the parties the courts below had to consider whether Karupayee had the power to sell the property, whether there was necessity for the sale or any benefit tot he minor's estate and whether the purchaser was a bona fide purchaser for consideration. Both the courts have concurrently found all these questions against the plaintiff.

(3) Learned counsel for the plaintiff-appellant does not dispute the position that in so far as Karupayee's authority to sell the property is concerned, there has been a concurrent finding of fact by the courts below that Karupayee was in the circumstances of the case the de facto guardian of the minor plaintiff. That question no longer survives. It is however contended that though legal necessity has been established in so far as the sum of Rs. 140 is concerned, there was no necessity at all for alienating the property to the extent of the balance. It is stated to be a case of only a partial necessity. It is also urged that the vendee made no enquiries whatsoever and his claim to be the bona fide transferee could not, therefore, be sustained.

(4) That this was the only item of property is not denied. That it was also under a mortgagee is also established. There was oral evidence to show that the earlier mortgagee did in fact demand payment of the amount. An examination of that mortgagee document Ex. B. 2 shows that the period fixed for the payment of the mortgagee amount was one year, so that by the date when the mortgage was actually discharged, nearly five years had passed by. I de not understand the position in law to be that the property should be actually in danger of being sequestered by the action of any creditor before a person in the position of a guardian of a minor could alienate the property. What is pressure upon the estate is one which will take different forms in different circumstance. Here admittedly the property in 1936 could be mortgaged only for a sum of Rs. 75 and the evidence clearly shows that the mortgagee did demand payment. The minor had also to be maintained. In these circumstances, that there was legal necessity to sell the property must be accepted. Learned counsel referred to Palaniappa Chetty v. Deivasikamoni Pandara Sannadhi, 44 Ind App 147: AIR 1917 PC 33. The principles laid down in this case have not, in any way, been departed from in entering into this alienation.

(5) There was thus undoubtedly a necessity for the sale in so far as part of the consideration of Rs. 140 was concerned. Learned counsel for the appellant argues that it was wholly unnecessary for the guardian to make an investment as it were in a mortgage on the property for the balance. It is true that if a mortgage for Rs. 100 executed by the vendee as being part of the consideration of the sale is looked upon in the light of investment. It would be necessary to establish that benefit to the estate was derived thereby. But in the peculiar circumstances of this case, where the property had necessarily to be sold, the guardian took the precaution of leaving a part of the consideration in the hands of the vendee himself in trust as it were for the minor. It is not a separate act of investment of any portion of the minor's estate in which event the benefit to the estate would be in question calling for an examination. But here the mortgage was really a part and parcel of the sale transaction itself, and if the sale could be sustained on the ground of legal necessity, the other question of benefit does not arise. I am accordingly satisfied that the sale cannot be attacked as devoid of necessity.

(6) Reference has been made to Karuppa Goundan v. Sellammal, : AIR1959Mad279 . In that case, the legal necessity was established only in part. It was also found that there was no evidence to show that the alienee had made bona fide enquiries and had satisfied himself that the sale was justified by necessity in its entirety. In those circumstances, the learned Judges held that the sale should be set aside though in enquiry the alienee would be entitled to be paid that part of the consideration which was established to be binding upon the estate. The principle of this decisions invoked in aid of the appellant and it is stated that because legal necessity such has been established only to the extent of Rs. 140 and not on full, a similar direction would be justified in the case also namely, that the sale should be set aside with the condition that the plaintiff-appellant should pay that part of the consideration which was formed to be binding. The question however is whether the vendee made bona fide enquiries and satisfied himself as to the legal necessity for the sale transaction. It is fond that the vendee did not make any such enquiries (though under the law he need not concern himself to the application of the money raised by the alienor), he cannot be regarded as a bona fide transferee.

In this case it is pointed out that the sale was in favour of Karupayee's nephew who was the father of the defendants. The alienee was the mortgagee, a person who knew

the incidents of the plaintiff's family very well and his relation to Karupayee far from operating as an incident against the bona fide nature of the transaction, seems to me, to be in favour of it. The courts below have also found that there is evidence to show that he vendee did make enquiries besides being well aware of the circumstances of the case. This is not a case where I can hold on the authority of : AIR1959Mad279 that the absence of bona fide enquiries on the part of the alienee would justify the setting aside of the sale. Factually the bona fides have been found by the courts bellow; I fully agree with that view and no question of setting aside the sale can possibly arise.

(7) The appeal fails and is dismissed with costs. The Memorandum of cross-objections has been filed by the second defendant with regard to costs. This is not pressed and it is dismissed. There will be no order as to costs therein.

(8) Appeal dismissed.

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