
(1973) 09 SHI CK 0005

High Court of Himachal Pradesh

Case No: Letters Patent Appeal No. 12 of 1971

Shri Panjku

APPELLANT

Vs

Shri Amin Chand etc.

RESPONDENT

Date of Decision: Sept. 28, 1973

Citation: (1973) 2 ILR HP 919

Hon'ble Judges: R.S. Pathak, C.J; H.C.P. Tripathi, J

Bench: Division Bench

Advocate: Ramesh Chand, for the Appellant; Chhabil Dass, for the Respondent

Final Decision: Allowed

Judgement

H.C.P. Tripathi, J.

This appeal is directed against the judgment of a learned single Judge of this Court passed in a Regular Second Appeal No. 339 of 1967 affirming the judgment and decree of the lower Appellate Court.

2. The undisputed facts, which are relevant to the questions in controversy, lie in a short compass.

3. On the 28th of March, 1960, Respondent Prabha executed a registered sale-deed in favour of the Appellant in respect of about 8 Bighas of land situate in village Batyal for a consideration of Rs. 1,500. On the same date, Smt. Gurju mother of the Appellant executed another sale-deed transferring 18 Bighas of land in village Gharbasra in favour of Prabha for a consideration of Rs. 4,500. Prabha resides in village Gharbasra and Batyal is the residential village of the Appellant. The scribe and the marginal witnesses of the two sale-deeds are common. Parties are in possession of the land transferred to them under the respective sale-deeds.

4. Respondents 1 to 3 through their mother Smt. Lajya Devi as their next friend, instituted a suit for the possession of the land transferred under the sale-deed executed by their Father Prabha on the assertion that they formed a Joint Hindu family with their father, that the land in suit was a part of ancestral coparcener

property, that there was neither any legal necessity for its transfer nor the transfer has benefited the family and as such the sale was void and they were entitled to the possession of the land. The transferee Appellant resisted the suit inter alia on the grounds that the sale was for legal necessity and on an adequate consideration and the impugned transaction has benefited the Joint Hindu Family. Appellant has averred that on the same date he had persuaded his mother Smt. Gurju to transfer a large parcel of 18 Bighas of land situate in the residential village of the Respondents in favour of Prabha and Prabha had utilized the amount of Rs. 1,500 in part payment of its sale consideration.

5. The trial Judge, dismissed the suit, on the findings that "the sale of ancestral land by the Karta of the joint family in order to purchase lands elsewhere constituted a benefit to the estate so as to bind the joint family" and further that the institution of the suit had been engineered by the vendor in collusion with the Plaintiffs who are his minor sons and the vendor cannot take advantage of his own fraud.

6. On appeal the learned District Judge, Mandi, agreed with the trial Judge that there was collusion between the Plaintiffs and their father in bringing the suit and further that; "it may be that the transaction was for the benefit of the estate". But the learned Judge was of opinion that the ancestral land sold by Prabha has been lost for ever" and thereby "the prudence has not been acted upon or exercised by Prabha". Accordingly the learned Judge allowed the appeal, set aside the judgment and decree of the trial Court on the finding that the land in dispute formed part of a Joint Hindu Family property and the sale effected by the father was without any legal necessity and valid consideration.

7. In second appeal as has been stated above, the learned single Judge has affirmed the judgment and decree of the lower Appellate Court.

8. Learned Counsel for the Appellant has urged that the learned single Judge was not justified in law in disturbing the concurrent finding of fact arrived at by the Courts below that the suit had been instituted as a result of collusion between the vendor and his minor sons, and once it is held that the vendor had engineered the suit through the Plaintiffs, there is no other option but to dismiss it on the ground that a party cannot be allowed in law and equity to derive benefit from its own fraud. Learned Counsel has urged further that the facts and circumstances of the case lead to the irresistible conclusion that it was a prudent act on the part of Prabha as manager of the Joint Hindu family to have disposed of a smaller piece of land situate in a distant village and to have utilized the consideration for acquiring a bigger chunk of land in his residential village and thereby augmenting the estate of the family. It is urged that in this view of the matter the impeached alienation has resulted in conferring benefit to the family and as such was binding on the Respondents.

9. On the other hand, learned Counsel for the Respondents has argued that admittedly there was no legal necessity for transferring the coparcener land and there being no obvious connection between the two sale-deeds executed on the same date, it cannot be held affirmatively that: the Joint Hindu Family has derived any benefit on account of the impugned transaction. Learned Counsel contends that the sale-deed executed by the mother of the Appellant is in favour of Prabha alone and it cannot be urged that it was not only for his personal benefit but also for the benefit of his minor sons as well.

10. Admittedly the Plaintiffs and their father Prabha form a Joint Hindu Family and the land in question was a part of the coparcenary property. It is not seriously urged that the family was faced with any compelling necessity to transfer the land for payment of any antecedent debt or Government revenue or for performing the marriage of coparceners or their daughters. The only question which requires consideration, therefore, is as to whether the alienation of the coparcenary property by Prabha in his capacity as manager of the joint family was for the benefit of the estate and, if so, is it binding on the Plaintiff-Respondents.

11. In the leading case of Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree 6 Moores Indian Appeals page 393 it was held that the power of a manager of the Joint Hindu Family to alienate joint family property is analogous to that of a manager for an infant heir. The question in Hunoomanpersaud's case (supra) was as to the extent of the power of a mother as manager of the estate of her minor sons to alienate the estate. Their Lordships of the Privy Council observed that:

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 a 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 case related to a mortgage created by a mother but the same principles have been held to apply to a sale. (Mulla: Hindu Law, Thirteenth Edition, page 275).

12. Flowing from certain observations of the Judicial Committee in Hunoomanpersaud Pandays case (supra) and in Palaniappa v. Deivasikamony 44 Indian Appeals page 147 there was a conflict of judicial opinion as to the meaning of the words "for the benefit of the estate". One view was that transaction cannot be said to be for the benefit of the estate, unless it is of a defensive character calculated to protect the estate from some threatened danger or destruction. Another view was that for a transaction to be for the benefit of the estate it is sufficient if it is such as a prudent owner or rather a trustee would have carried out with the knowledge that was available to him at the time of the transaction. In three Allahabad cases (47

Allahabad 381, 45 Allahabad 390 and 1928 Allahabad 403) the view taken was that a transaction to be for the benefit of the estate must be of a defensive nature. This view was dissented from in the case of [Jagat Narain and Another Vs. Mathura Das and Others](#) by a Full Bench of the Allahabad High Court which, after a review of the various decisions of the Privy Council and the High Courts, held that there is no justification whatever for the suggestion that the transaction entered into by the manager must necessarily be of a "defensive nature" in order to be binding on the estate. If the transaction was to the benefit of the state and was such as a prudent owner would have carried out with the knowledge that was available to him at the time, it cannot be set aside. "The degree of prudence would be the prudence which an ordinary man would exercise with the knowledge available to him...."

13. The principle of law enunciated in the aforesaid case by the Full Bench was approved by the Supreme Court in the case of [Balmukand Vs. Kamla Wati and Others](#), wherein their Lordships after referring to the Full Bench decision observed:

We have no doubt that for a transaction to be regarded as one which is of benefit to the family it need not necessarily be only of a defensive character. But what transaction would be for the benefit of the family must necessarily depend upon the facts of such case.

The question which emerges for consideration is whether the impeached transaction can be said to have resulted in a benefit to the estate although it is not of a defensive character.

14. It is significant that there is no allegation that Prabha the father of the Plaintiffs is either a spend thrift or a person of immoral habits. There is no suggestion that consideration of Rs. 1,500 which was shown in the disputed sale-deed was a fictitious consideration or that it had been squandered away by Prabha in the prosecution of immoral activities. The allegation that he is a vagrant has not impressed us as true. In all probability it was made for lending colour to the case. Admittedly Prabha transferred about 8 Bighas of land of village Batyal in favour of the Appellant who is a resident of that village and purchased 18 Bighas of land lying in his own village from his mother for a consideration of Rs. 4,500. Admittedly the two sale-deeds were scribed by the same person and had common marginal witnesses.

15. Appellant Panjku has stated that Rs. 1,500 which Prabha had obtained from him as a consideration for the sale of 8 Bighas of land was paid by him to his mother Smt. Gurju as a part of consideration for the sale-deed executed by her in his favour and the respective sale-deeds were executed in pursuance of a mutual arrangement.

16. Chet Ram who is marginal witness to both the sale-deeds has stated that the sale-deeds were executed in his presence for their respective consideration.

17. Kundan (DW-3) has testified that there was an arrangement between Prabha and Panjku that if Panjku gets the land in village Gharbasra transferred by his mother to Prabha, then Prabha will transfer 8 Bighas of land of village Batyal in his favour and in pursuance of this arrangement the two sale-deeds (Exs. DA and DB) were executed on the same date for their respective consideration.

18. The fact that the two sale-deeds are contemporaneous documents having common marginal witnesses is a significant circumstance which lends powerful corroboration to the Appellant's case that apart from the consideration shown in the respective sale-deeds, each sale-deed itself was a consideration for the other.

19. We are, therefore, satisfied that the two sale-deeds were affected in pursuance of an arrangement between the parties who were eager to obtain land in their residential village at the expense of the land held by them at a distant and inconvenient place. It is obvious that by selling a smaller piece of land situate in a distant village Prabha has obtained a bigger piece of land in his own village for himself and his family and a part of the consideration for the purchase of the land was raised by executing the impugned sale-deed. It was, in our opinion, a prudent act of management on his part to have entered into the respective transactions which has resulted in a benefit to the estate of the family.

20. We have not been impressed by the argument that as the sale-deed executed by Mst. Gurju stands in the name of Prabha alone, it must be held that he acquired the land in his personal capacity and not for the family. Admittedly Prabha had transferred the land in favour of the Appellant as manager of a joint Hindu family. It will, therefore, be reasonable to presume that he entered into the transaction of purchase also in the same capacity. This presumption is reinforced by the fact that a part of the consideration was paid by the sale of co-parcenary land, and as he is not shown to have possessed any separate source of income, the rest of the consideration too must have come from joint family funds. The admission made by Smt. Lajya Devi, the next friend of the minors, that Prabha is still living and messing jointly with her and their minor sons indicates that he continues to be the manager of the joint family.

21. On similar facts in Jagat Narain's case (supra) the Full Bench of the Allahabad High Court observed:

The adult managers of the family found it very inconvenient and to the prejudice of the family's interests to retain property, 18 or 19 miles away from Bijnor, to the management of which neither of them could possibly give proper attention, that they considered it to the advantage of the estate to sell that property and purchase other property more accessible with the proceeds, that they did in fact sell that property on every advantageous terms, that there is nothing to indicate that the transaction would not have reached a profitable conclusion but for the unfortunate accident that a bank closed its doors.... We find ample reason for holding that the

transaction was such a one as a prudent owner and even a prudent trustee might rightly have considered to be for the benefit of the estate.

22. In [Medikenduri and Others Vs. Kata Venkatayya and Another](#), it was held on the facts of that case that the sale of ancestral land by a manager of joint family in order to purchase lands elsewhere constitutes a benefit to the estate so as to be binding on the joint Hindu family.

23. In this view of the matter we are of opinion that the impugned transaction of sale by Prabha in favour of the Appellant is for the benefit of the joint family estate and as such is legal and binding on the Plaintiff-Respondents.

24. In the result this appeal is allowed, the judgment and decree passed by the learned single Judge and the lower Appellate Court are set aside and the Plaintiff's suit is dismissed with costs throughout.