(1942) 04 AHC CK 0009

Allahabad High Court

Case No: F.A. No. 141 of 1936

Allah Diya and another		APPELLANT
	Vs	
Sona Devi		RESPONDENT

Date of Decision: April 9, 1942

Hon'ble Judges: Verma, J; Allsop, J

Bench: Division Bench

Advocate: Damodar Dass, for the Appellant; A. Sanyal for Respondent, for the Respondent

Final Decision: Dismissed

Judgement

Allsop and Verma, JJ.

By a deed of sale dated November 30, 1932, Budh Singh and Mst. Kailashwati purported to transfer the property on suit to the Defendants Appellants Mst. Kailashwati was the widow of Padam Prasad to whom admittedly before his death the whole property belonged. Pad am Prasad was the son of Ajit Prasad and of the Plaintiff Respondent, Mst. Sona Devi. Ajit Prasad had a brother Sumer Chand and Budh Singh was Sumer Chand''s son. It is not now contended that Budh. Singh had any interest in the property in suit and presumably he executed the deed of sale merely as a possible reversioner to prevent his claiming the property after the death of Mst. Kailashwati. The learned Judge of the Court below held that Mst. Kailashwati was not entitled to alienate the property so that the alienation would have effect after her death and consequently he passed a decree for possession in favour of the Plaintiff Respondent, Mst. Sona Devi

Four grounds have been taken in appeal. The first is that the evidence on the record proves that the Respondent consented to the sale of the property in dispute by taking part in the sale transaction and she is, therefore, estooped from bringing the present suit. The learned Judge of the Court below has held that it is not established that Mst. Sonadevi consented to the sale of the property. There is a certain amount of evidence which has been led to prove that Mst. Sona Devi was present at the time

when the sale of the property was arranged, but we must point out that the evidence is in some respects contradictory. One of the witnesses is the patwari of the village, a man called Surajmal. He has stated that the ladies, that is, Musammats Kailashwati and Sonadevi, did not take part in any negotiations in his presence. Another witness who has-been called to prove that they were parties to these negotiations, namely, (sic) Rai, has said that they were both present with Sumer Chand; Budhu Mai, Surjan Patwari and others at the time when the matter was discussed. It is evident that little reliance can be placed upon the evidence of the witnesses. It seems to us also that Mst. Sona Devi would have been asked to sign the deed of sale as a witness if she had in fact consented to the alienation of the property. Budh Singh execute the deed of sale and his father, Sumer Chand, signed as a witness. If the signature of Sumer Chand was taken by way of precaution as alleged by the witnesses for the Defendants-Appellants, then there is no reason why the signature of Mst. Sona Devi should not also have been obtained if she had in fact been consulted and had agreed that the property should be transferred. In these circumstances we have no hesitation in agreeing with the learned Judge of the Court below that it is not established that Mst. Sonadevi consented to the sale of the property.

The second ground of appeal is that, the adult male reversioners having consented to the sale transaction, no question of legal necessity arises and the sale deed in dispute cannot be impeached by the Respondent. The argument involved in this ground of appeal is based upon the fact that Sumer Chand signed the deed of sale as a witness. There is a certain amount of oral evidence led to prove that he took part in the transaction and arranged the terms of the sale. The learned Judge of the Court below has accepted this evidence and has come to the conclusion that Sumer Chand did agree to the alienation of the property We may point out that the learned Judge has relied upon the evidence of witnesses whom he has not believed upon other points to which they have deposed. It seems to us also that it is not very safe to assume that a person who has signed a document as a witness must necessarily know its contents and must be assumed to have approved of the transaction. It is, however, a possible argument that in the circumstances which prevail in the villages of this province Sumerchand was likely to know that the document which he witnessed was a deed of sate and therefore we would hesitate to differ from the learned Judge of the Court below upon his finding of fact. Learned Counsel has put forward the argument that legal necessity must be presumed if the nearest adult male reversioner consents to a transfer of property by a limited owner. We do not think it is necessary for us to discuss the law at any length. We need only refer to the case of Rangaswami Gounden v. Nachiappa Gounden (1918) 42 Mad. 523 : AIR 1919 PC 196, in which their Lordships of the Privy Council have explained the law upon this point. It is doubtless true that the consent of a person who may naturally be supposed to have been likely to object, if there was ground for objection, may lead, in the absence of other evidence, to an inference that the property has been

alienated for legal necessity, but it does not necessarily follow that any consent by a reversioner (sic) to a definite presumption that the property must have been alienated for legal necessity. It is asserted in this case that the property was said so that Mst. Kailashwati might obtain sufficient funds to make a pilgrimage and to perform certain religious ceremonies for the good of her husband''s soul. It is alleged that she thought it necessary to make this pilgrimage and to perform these ceremonies because her husband at the time of his death directed her to do so. The story on the face of it is improbable. The property was not sold till twelve years after the death of Padam Prasad. It is difficult to believe that Mst. Kailashwati, if she wished to implement the directions of her husband, should have waited twelve years before doing so. It has also not been established that it was necessary for this lady to obtain a sum of Rs. 5.000 in order to make the pilgrimage or to perform the ceremonies which were necessary for the good of her husband''s soul. On the face of it, it seems to us that there would be no necessity to obtain a sum of Rs. 5,000, which was the consideration for the sale of the property, in order to perform these ceremonies. The whole circumstances suggest that the story put forward by the witnesses for the Defendants Appellant is untrue. There is some evidence that Mst. Kailashwati did in fact go upon a pilgrimage, but the evidence is not reliable. There is the statement of the patwari, Surajmal, but he would not be likely to know where Mst. Kailashwati had gone or whether she had left the village and in fact he admits in cross-examination that his information was based upon what the people of the village said. This is really no evidence that the pilgrimage was made. The other evidence which we have read is also unsatisfactory We do not believe that Mst. Kailashwati sold this property in order to obtain money for the purposes which are alleged. No mention is made in the recitals of the deed itself of the necessity for which the property was transferred. Budh Singh, as we have already said, was one of the executants of the deed of sale and according to the endorsement made by the Sub-Registrar at the time of registration, the consideration for the sale of the property was delivered to him and Mst. Kailashwati at that time. In these circumstances the presumption is that he profited immediately by the sale and it cannot be assumed that he or Sumerchand agreed to the sale of the property merely because there was legal necessity for the transfer and they had no ground for objection. We do not think that it necessarily follows in every case where the reversioner consents to the alienation of the property that there must have been legal necessity. On the facts of this case we think there are circumstances which definitely rebut any presumption which might arise from the consent of Sumer Chand to the transfer of the property. We are satisfied that there was not in fact any legal necessity for the sale and that the consent of Sumer Chand alone is no sufficient reason for holding that such necessity existed. The remarks which we have made also dispose of the fourth ground of appeal which was that the evidence on the record established the existence of legal necessity for the sale in question.

2. We now come to the third ground which was that Mst. Kailashwati, who was a childless Jain widow, had an absolute interest in the property which was given in partition to her husband Padam Prasad, who died without leaving male issue. Learned Counsel has referred us to certain rulings on which he (sic) the argument that a Jain widow according to custom obtains an absolute interest in her husband''s property. We may refer to the following cases, namely, Sheo Singh Rai v. Dakho (1878) 1 All. 688; Shimbhu Nath v. Gayan Chand (1894) 16 All. 379; Nekram Singh v. Sriniwas (1926) 24 ALJ 751; Pahar Singh v. Shamsher Jang Bijai Bahadur Singh 1931 ALJ 314; and Harnabh Pershad v. Mandil Dass (1899) 27 Cal. 379. The cases of this Court and of the Privy Council mentioned above are doubtless authority for the proposition that it is a custom among the Jains of this province that a widow obtains an absolute interest in the self acquired property of her husband. The Calcutta case contains a dictum that there is no distinction between self-acquired and ancestral property, but this was only a dictum and was based upon the nature of the evidence produced in the case with which the learned Judge of the Calcutta High Court were dealing. We do not think that this decision, or the decisions in any of the Allahabad cases, are proof of any wider custom than this that a Jain widow acquires an absolute interest in the self-acquired property of her husband. They do not establish that there is a custom that a Jain widow acquires an absolute interest in the ancestral property of her husband. There is also no evidence in the case before us to establish this proposition. Consequently we must apply the Mitakshara law upon this point. Mst. Kailashwati had only a life interest in the property of Padam Prasad if that property was ancestral. It has been argued that Padam Prasad acquired the property by partition and that it should therefore be treated as selt-acquired. In our judgment, there is no force in this argument. It is admitted that this property was originally the property of Padam Prasad''s grandfather. It is settled law that a Hindu, who obtains possession by partition of a share in property which was ancestral before the partition, holds his j share in that property as ancestral I property.

3. The result is that the property in suit must be regarded as ancestral property in the hands of Padam Prasad and if that was so, Mst. Kailashwati, as we have already explained, acquired only a life interest in it. Learned Counsel has argued that property held by a Hindu alter partition, it he has no son, is his separate property. That is doubtless true in the sense that he may alienate it before such time as a son is born to him, but it cannot be doubted that a son would acquire an interest in that property at birth if it was originally ancestral property. The only effect of the distinction between ancestral and self-acquired property is that a Hindu son acquires an interest in ancestral property at birth and acquires no such interest in self-acquired property. The custom which may be presumed to have been proved in respect of the rights of Jain widows extends only to property in which a son would not acquire an interest at his birth We are satisfied that the property in suit was not the absolute property of Mst. Kailashwati and consequently that she was not entitled to alienate it without legal necessity. We have already held that no legal

necessity is proved or can be presumed. The result is that the appeal must fail and it is hereby dismissed with costs.

4. The learned Judge of the Court below refused to allow the Plaintiff-Respondent her costs in his Court. He gave no reason, saying merely that he thought in the circumstances of the case that costs should not be allowed. We can see no circumstances which could justify the learned Judge in refusing to allow costs to the Plaintiff-Respondent. Learned Counsel on behalf of the Appellants has suggested that she did not issue notice to his clients before she instituted the suit, but we cannot see what difference that makes since the suit was contested and there is nothing to suggest that no costs would have been incurred if notice had been issued. We are satisfied that the Plaintiff-Respondent is entitled to her costs. We, therefore, allow the cross-objection and direct that the Plaintiff-Respondent will get her costs in both Courts including the costs of the cross-objection.