

(1917) 04 AHC CK 0018

Allahabad High Court

Case No: None

Madan Gopal and Another

APPELLANT

Vs

Sati Prasad and Another

RESPONDENT

Date of Decision: April 12, 1917

Citation: AIR 1917 All 326 : (1917) ILR (All) 485 : 40 Ind. Cas. 451

Hon'ble Judges: Pramada Charan Banerji, J; Piggott, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Pramada Charan Banerji and Piggott, JJ.

The suit out of which this appeal has arisen was brought by the plaintiffs for setting aside a sale-deed executed by their father, defendant No. 2, on the 14th of May, 1913, in favour of the first defendant and for possession of the property comprised in the sale. The ground upon which they brought the suit was that the sale was not for an antecedent debt or for family necessity. They also alleged that the defendant No. 2, the father of the plaintiffs, had been duped by the guardian of the first defendant and had been induced to execute the sale-deed without receiving any part of the consideration for the sale. The court of first instance dismissed the claim on the ground that it had not been proved that the sale had been made for immoral or illegal purposes. This judgement of the court of first instance was set aside by the lower appellate court. That court held that there was no legal necessity for selling joint family property and that part of the Consideration, viz., Rs. 262-7-0, which had been withheld by the vendee for payment of two prior mortgage debts, had not been paid. As to the remainder of the consideration, the learned Subordinate Judge was of opinion that it had not been proved that the vendor, the father of the plaintiffs, had not received it, and he held that the plaintiffs could only recover the property comprised in the sale on condition of paying to the vendee Rs. 537-9-0, the balance of the consideration. The plaintiffs have preferred this appeal, and it is contended on their behalf that the court below was wrong in attaching to its decree

a condition that the plaintiffs should pay to the vendee the balance of the consideration which purported to have been paid in cash to their father. In our opinion this point is concluded by authority in this Court. It has been held in a number of cases that a sale for an antecedent debt or for the payment of an antecedent debt is binding on the sons, and that if the consideration for a sale made by the father was not for any of the purposes mentioned above, the sons are entitled, to recover the property. It is urged, however, that the amount of consideration paid in cash to the father must be deemed to be the father's debt and the sons cannot recover the property sold by the father unless they refund to the vendee the amount so paid. This view is no doubt supported by the decision of the Calcutta High Court in *Koer Hasmat Rai v. Sundar Das* ILR (1885) Cal. 396. That case was dissented from by a Bench of this Court in *Ram Bayed v. Suraj Mal* (1914) 23 Ind cas 891 In *Manhahal v. Gopal Misra* Weekly Notes. 1901 p. 57, to which one of us was a party, it was stated in the judgement that the consideration paid in cash to the father could not be regarded as an antecedent debt or as a debt of the father, and the same view was repeated in the case of *Chandradeo Singh v. Mata Prasad* ILR (1909) All. 173. In the case of *Ram Dayal v. Suraj Mal* (1914) 23 Ind Cas 891, it was clearly ruled that, the sons were not liable to refund to the purchaser the portion of the consideration which had been paid in cash to the father at the time of the sale but which was not required for the necessity of the family. The reason why we feel ourselves unable to agree with the decision of the Calcutta High Court, to which we have already referred, is that money paid to the father as consideration for the sale at the time of the sale cannot be regarded as a debt of the father until the sale has been set aside and the right of the vendee to get back the sale consideration from the father has accrued. The amount so paid may at some subsequent time become a debt of the father, but until this event arises it cannot be deemed to be a debt for which the sons at the time when they got the sale set aside can be held liable. There are other cases decided by this Court in which the same view was practically held, but we deem it unnecessary to refer to them in detail. The result is that we allow the appeal, and vary the decree of the court below by striking out from it the provision that the plaintiff should refund to the purchaser Rs. 537-9-0 as a condition precedent to their obtaining possession. The plaintiffs' claim is therefore deuced in full. The appellants will get their costs in all courts. The objections preferred under Order XLI, Rule 22, of the CPC fail and are dismissed with costs. We may note that a preliminary objection was taken by the respondents to the effect that the appeal was beyond, time. We overruled the objection as the appeal had been admitted u/s 5 of the Limitation Act.