
(1870) 12 CAL CK 0003

Calcutta High Court

Case No: Regular Appeal No. 261 of 1869

Baboo Kishen Kishor
Narayan Sing

APPELLANT

Vs

Haunman Dutt Roy and
Another

RESPONDENT

Date of Decision: Dec. 14, 1870

Judgement

Norman, Officiating C.J., Bayley, Kemp, L.S. Jackson and Mitter, JJ.

In this case the question referred for the decision of the Full Bench was this:--(reads)

It appears to us that this question has been decided in the Full Bench decision to which reference is made in the order of the referring Judges.--Sadabart Prasad Sahu v. Foolbash Kooer adopts the rule laid down in the Mitakshara that the sale or mortgage of joint undivided property is invalid if made without the consent of all the co-sharers, and not valid even for the seller's own share when undivided. The argument which has been addressed to us would tend to show that, if an alienation is made by a father of joint ancestral property in a case in which no legal necessity exists, it might be treated as an alienation of the father's separate share. But the case of Sadabart Prasad Sahu v. Foolbash Kooer 3 B.L.R., F.B., 31 shows that, even if so construed, that alienation is invalid as against the joint family. A son, therefore, suing to set aside such alienation, is entitled not only to a declaration that the alienation is void as an alienation of the entire estate, but void altogether even to the extent of the share as to which the alienation is considered to be established. As a consequence of that declaration the son suing on behalf of the family may be entitled to a decree for possession. Upon what terms that decree shall be made, will according to the decision in Modhoo Dyal Singh v. Golbar Singh Case No. 1198 of 1867; 29th April 1868, depend on the equity which the purchaser may have to a refund of the purchase-money, or to be placed in the position of an incumbrancer as against the joint family in the particular case.

It appears to me that there is no question raised in this reference which has not substantially been disposed of in the two cases already decided.

Loch, J.

2. I accept the conclusion come to by the majority of the Judges who compose the Full Bench that the question asked in the reference has already been disposed of in the Full Bench judgments mentioned in the judgment now delivered by the Full Bench.