

(1922) 04 BOM CK 0018

Bombay High Court

Case No: None

Tukaram Bhau Dhas and Others

APPELLANT

Vs

Ganpat

RESPONDENT

Date of Decision: April 10, 1922

Citation: 70 Ind. Cas. 767

Hon'ble Judges: Norman Macleod, C.J; Shah, J

Bench: Division Bench

Judgement

Norman Macleod, C.J.

This appeal discloses a very curious state of facts. Gangabai, the widow of one Bapu, sold, on the 28th of January 1908, to her brother, the defendant, the suit land which had previously been mortgaged to one Daulat Ram in 1899. Out of the consideration of Rs. 1000 paid by the defendant Rs. 250 had already been received by Gangabai; Rs. 250 were to be paid to the mortgagee and Rs. 500 were to be paid to her at the time the sale-deed was registered. Events happened which induced Gangabai to evade the defendant and eventually on the 31st March 1918 she passed another sale-deed to one Nana Krishna for Rs. 1,000 and that was consented to by Bhau and Govind, at that time representing the whole body of the next reversioners. Nana, the 2nd vendee, obtained possession of the land and so the defendant filed a suit in 1910 against Gangabai, Nana and the Lessor of the mortgagee and paid Rs. 750 the balance of purchase-money into Court. The result on that suit was that the defendant succeeded. Nana got back Rs. 750 which the defendant had paid into Court since then the defendant remained in possession of the land until on Gangabai's death, Bhau and Govind having previously died, their sons, the plaintiffs, brought this suit.

2. The issues in the Trial Court were whether there was justifying necessity for the suit sale; and whether the ratification deed passed by plaintiff's father in favour of one Nana could anect the merits of the case. These issues were found in the negative by the Trial Judge and a decree was passed in favour of the plaintiffs.

3. In appeal, although the learned Judge found that as the consent of Bhau and Govind did not relate to the defendant's sale-deed such consent could not validate it, ii it was void for want of legal necessity, still he seemed to think that the present, plaintiffs had no title because even if the sale to defendant was without legal necessity, yet the sale to Nana which was consented to by the reversioners would be binding, and he and his heirs would be entitled on the death of Gangabai to the remainder. I do not think we are entitled to go so far as that. The view that I take, as far as this suit is concerned, is that as between the defendant and Gangabai, Nana lost all rights to the suit property by the decree in the suit of 1910, and Nana not being a party to this suit, the present defendant is not entitled to take advantage of the sale-deed so as to suggest in some way that the present reversioners are disputing the consent which was given to it by their father. As between the plaintiffs and the defendant the sole question is, whether the sale by Gangabai to the defendant was for legal necessity. The fact that Bhau and Govind were willing that Gangabai should sell the property to Nana appears to me to be quite irrelevant on the questions now before the Court as between the plaintiffs and the defendant. If it was a question between the plaintiffs and Nana, it might very well be that the plaintiffs would be bound by the consent of their fathers. But it seems to me far too remote to rely upon the consent of Bhau and Govind to the sale by Gangabai to Nana as raising any presumption in favour of the defendant that the prior sale to him was for legal necessity. The decree, therefore, must be set aside and the case must go back to the lower Appellate Court for a decision on the issue whether the sale by Gangabai to the defendant was for legal necessity in the light of the remarks in this judgment. The appellants are entitled to the costs of the appeal.

Shah, J.

4. I agree.