

Gur Prasad vs Ram Sukh And Anr. on 10 March, 1952

Equivalent citations: AIR1952ALL938, AIR 1952 ALLAHABAD 938

JUDGMENT

Wali Ullah, J.

1. This is a defendants' appeal against the judgment passed by a learned single Judge of this Court. It arises out of a suit for declaration. Two sale deeds were executed by Mt. Hubraji, widow of one Munnu Lal--one on 19th May 1939 for a sum of Rs. 100, the property conveyed by this sale deed consisted of certain groves and trees which had belonged to Munnu Lal, and the other on 7th November 1939, for a sum of Rs. 500 and the property conveyed by this sale deed was a residential house which had belonged to Munna Lal and which had come down to Mt. Hubraji as the widow of Munnu Lal. Both of these sale deeds were in favour of the defendants-appellants. The suit was instituted by the plaintiffs, Ram Sukh and Ram Nath, who claimed to be the daughter's sons of Munnu Lal. The claim was only for a declaration that the transactions evidenced by these sale deeds were not binding upon the plaintiffs. The plaintiffs' case was that the sale deeds were without consideration and that further they were not supported by legal necessity. It was also alleged by the plaintiffs that these transactions were vitiated by fraud and misrepresentation.

2. The suit was contested upon the pleas that the plaintiffs were not the next reversioners of Munnu Lal, that the transfers were for consideration and legal necessity, and lastly that they were not vitiated by fraud or misrepresentation. The trial Court as well as the lower appellate Court concurred in the finding that the plaintiffs were the daughter's sons of Munnu Lal and that they were therefore, the next reversioners. It has also been found by both the Courts below that the two sale deeds were not vitiated by fraud or misrepresentation. Lastly, it has been found by them that though the sale deeds in question were for consideration they were not justified by legal necessity.

On appeal to this Court a learned single Judge accepted these findings of fact. He was, however, pressed with the argument that the finding recorded by the Courts below to the effect that the sale deeds were not justified by legal necessity was vitiated in the eye of law by reason of the fact that the Courts below had misunderstood the legal position. The learned single Judge has considered this question of legal necessity at length.

The only question which has been argued before us is the question of legal necessity. The facts found by the Courts below which have a bearing upon the existence of legal necessity are these : With regard to the sale deed of 19th May 1939, it has been found that the defendants-appellants had failed to prove that the widow Mt. Hubraji required money for her maintenance. With reference to this sale deed the learned single Judge has observed that the finding that there was no legal necessity for this sale deed is prima facie a finding of fact and it must be accepted as correct unless it be shown

that it is vitiated by reason of error of law committed by the Courts below. Eventually the learned Judge recorded his own view that the findings of the lower Courts were correct, and that the Courts below had not violated any principles of law which should guide the Courts in cases of this kind.

Learned counsel for the appellants has contended before us that this finding is not correct. His argument was principally based upon the decision of a learned single Judge of Madras High Court in the case of P. Kuthalinga Muddliar v. M.M. Shanmuga, A.I.R. 1926 Mad. 464. It is difficult to see what principle of general application was laid down in that case. It seems to us, as it seemed to the learned single Judge of this Court, that the decision in that case rested entirely upon the peculiar facts of that case. In that case the widow was living on what she could get by begging. The property in her possession was also not capable of yielding any appreciable income. These are the circumstances in which the learned single Judge, Devadass J., came to the conclusion that the alienation of the property by the widow was justified by legal necessity.

The next case referred to by learned counsel for the appellants in this connection is that of Santosh Kumar v. Ganesh Chandra, 31 Cal. W.N. 65. In that case the bench of the Calcutta High Court made it clear that in order to establish a case of legal necessity it was necessary to show that there was a kind of pressure, sufficiently serious, to justify an alienation of property for maintenance. It seems to us, therefore, that there is no force in the contention of the learned counsel that the sale-deed of 19-5-1939, was justified by legal necessity.

3. The sale-deed of 7-11-1939, for Rs. 500 was effected in respect of the residential house--the only property then owned by the widow--and the ostensible purpose for which this sale-deed was executed was, according to the recital in the deed, that the money was required for the purpose of making a pilgrimage to Gaya. As a fact it has been found by both the Courts below that the widow had already gone on a pilgrimage to Gaya once before some twenty years before the institution of the suit in the year 1940. Further, it has been found that the sum of Rs. 500 was out of all proportion to the actual expenses needed for such a pilgrimage and the performance of necessary ceremonies connected therewith. Again, it has been found as a fact that this transfer was made for inadequate consideration. The lower appellate Court has further found that reasonable enquiries had not been made by the transferees. Lastly, a question of law arose in the Courts below. It was in connection with a second pilgrimage to Gaya which was said to have been undertaken by the widow for the purpose of performing the Shradh of her husband.

Both the Courts below have held, and in our judgment rightly, that the making of a second pilgrimage to Gaya for the performance of the Shradh of her husband was not obligatory upon the widow; and that, therefore, the widow could not in law be justified by legal necessity in effecting a sale of the entire property then in her possession as a widow. Such an act on the part of the widow could only be characterised as a pious and religious act which might be conducive to the welfare of the soul of her deceased husband. For carrying out such an act, she is allowed by law to alienate only a small portion of the estate. What portion of the estate can be validly alienated for such a purpose would depend upon the circumstances of the case and due regard will have to be paid to the entire bulk of the estate then in the hands of the widow. In no case, however, will the law permit the alienation of the entire property which is in her possession as a Hindu widow. It seems to us, as it

appeared to the learned single Judge of this Court that the Courts below have taken a correct view of the legal position.

In the case of *Sardar Singh v. Kunj Behari Lal*, 44 ALL. 503 : 49 Ind. App. 383 (P. C.), their Lordships of the Judicial Committee of the Privy Council reviewed the case law on the point. Their Lordships came to the conclusion :

"That the Hindu system recognizes two sets of religious acts. One is in connection with the actual obsequies of the deceased, and the periodical performance of the obsequial rites prescribed in the Hindu religious law, which are considered as essential for the salvation of the soul of the deceased. The other relates to acts which although not essential or obligatory are still pious observances which conduce to the bliss of the deceased's soul. . . With reference to the first class of acts, the powers of the Hindu female who holds the property are wider than in respect of the acts which are simply pious and if performed are meritorious so far as they conduce to the spiritual benefit of the deceased. In one case, if the income of the property, or the property itself, is not sufficient to cover the expenses, she is entitled to sell the whole of it. In the other case she can alienate a small portion of the property for the pious or charitable purpose she may have in view."

According to Hindu law *Mt. Hubraji*, the widow was certainly under an obligation to perform the *sradha* of her husband, for the benefit of his soul, at Gaya once. This duty she had already discharged long before the execution of the sale-deed of 7-11-1939, for it has been found as a fact by both the Courts below on the evidence led in the case that she had gone on a pilgrimage to Gaya some 20 years prior to the suit, i.e. some 19 years prior to the date of the sale-deed. The performance of a second pilgrimage to Gaya for the same purpose is, according to Hindu law, merely a religious act which is believed to be conducive to the spiritual welfare of her husband. This act is not essential or obligatory; for the purpose of such an act the widow is not empowered to dispose of more than a reasonable proportion, a small fraction of the property obtained from her husband.

In the present case, as mentioned above, as a fact *Mt. Hubraji* had transferred the residential house, the only property left with her at that time. It seems that the widow had certain groves and some trees along with the residential house. By means of the first sale-deed of 19-5-1939, she sold the groves and trees for Rs. 100 and within six months of that date she parted with the residential house also for a sum of Rs. 500. According to the findings of the Courts below the consideration of Rs. 500 was inadequate. In view of these facts it is clear that the sale-deed of 7-11-1939, could not be justified by legal necessity according to Hindu law.

4. For the reasons given above in our judgment the learned single Judge of this Court took a correct view when he held that he was satisfied that the findings of fact arrived at by the lower appellate Court were not vitiated by any error of law. The appeal in our judgment fails and is dismissed with costs.