Arvind @ Abasaheb Ganesh Kulkarni & Ors vs Anna @ Dhanpal Parisa Chougule & Ors on 22 January, 1980

Equivalent citations: 1980 AIR 645, 1980 SCR (2) 816, AIR 1980 SUPREME COURT 645, 1980 UJ (SC) 344, (1980) 2 SCWR 13, (1980) 3 MAHLR 188, 1980 (2) SCC 387

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, N.L. Untwalia

PETITIONER:
ARVIND @ ABASAHEB GANESH KULKARNI & ORS.

Vs.

RESPONDENT:
ANNA @ DHANPAL PARISA CHOUGULE & ORS.

DATE OF JUDGMENT22/01/1980

BENCH:
REDDY, O. CHINNAPPA (J)
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REDDY, O. CHINNAPPA (J)
UNTWALIA, N.L.

CITATION:
1980 AIR 645 1980 SCR (2) 816
1980 SCC (2) 387

ACT:
Mortgage-Minor brothers alleged that mortgage was not for legal necessity and that the sale was for inadequate consideration-Elder brother discharged family debts-Small part of consideration not accounted for-Sale-Validity of.

HEADNOTE:
A mortgagor executed two deeds of mortgage in favour of the father of the appellants for Rs. 1600 and Rs. 1000 in respect of certain lands. Both the mortgages were possessory mortgages but the land was leased back to the mortgagor for a stipulated rent. The mortgagor died leaving behind him three sons, one adult and two minors. The adult son borrowed a further sum of Rs. 131 by executing a simple mortgage and purporting to act as the Manager of the joint family and the

guardian of his minor brothers, executed a deed of sale in favour of the father of the appellants in respect of four out of ten items of land previously mortgaged. The consideration for the sale was Rs. 3050 which was made up of Rs. 1600. Rs. 1000 and Rs. 131 due under three previous mortgages respectively and Rs. 200 received in cash on the date of sale.

The minor sons on becoming major filed a suit out of which this appeal arises, for a declaration that the sale deed executed was not for legal necessity, nor for the benefit of the estate and, therefore, not binding on them. They also prayed for joint possession of their 2/3rd share. The trial court found that there was legal necessity for the sale to the extent of Rs. 2600 only, the consideration of Rs. 3050 for the sale was inadequate as the lands were worth about Rs. 400 and that there was no compelling pressure on the estate to justify the sale and therefore the sale was not for the benefit of the family and hence not binding on the plaintiffs. A decree was granted in their favour for joint possession of 2/3rd share of the lands subject to certain payment to the second defendant. On appeal by the second defendant, the Assistant Judge held the suit of the first plaintiff to be barred by time and therefore modified the decree in favour of the second plaintiff. On appeal by the first plaintiff and second defendant, the High Court allowed the appeal by the first plaintiff and dismissed the appeal filed by the second defendant.

Accepting the appeal of the legal representatives of the second defendant.

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HELD: Out of the sale consideration of Rs. 3050 there was undoubted legal necessity to the extent of Rs. 2600 the total amount due under the two deeds of mortgage executed by the father of the plaintiffs. Out of the ten items which were mortgaged, only four were sold and the remaining six items were released from the burden of the mortgages. The family was also relieved from one burden of paying rent to the mortgagee under the lease. All this

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was for the benefit of the family. The value of the land sold under the deed of sale was found by the Courts below to be Rs. 4000. Even if that be so it cannot possibly be said that the price of Rs. 3000 was grossly inadequate. Further there were continuous dealings between the family of the plaintiffs and the family of the second defendant over a long course of years. In these circumstances it is impossible to say that the sale was not binding on the plaintiffs. The Courts below appeared to think that notwithstanding the circumstance that there was legal necessity to a large extent it was incumbent on the second defendant to establish that he made enquiry to satisfy himself that there was sufficient pressure on the estate which justified the sale. When the mortgagee was himself the

purchaser and when the greater portion of the consideration went in discharge of the mortgages no question of enquiry regarding pressure on the estate would arise at all. Where ancestral property is sold for the purpose of discharging debts incurred by the father and the bulk of the proceeds of the sale is so accounted, the fact that a small part of the consideration is not accounted for will not invalidate the sale. [819 A-E]

Gauri Shankar & Ors. v. Jiwan Singh & Ors. A.I.R. 1927 P.C. 246 Niamat Rai & Ors. v. Din Dayal & Ors. 1927 A.I.R. P.C. 121, Ram Sunder Lal & another v. Lacchmi Narain and another A.I.R. 1929 P.C. 143; Hanooman Persaud Pandey v. Mt. Babooee Munrai Koonweree [1955] 6 M.I.A. 393; Radhakrishendas and another v. Kaluram A.I.R. 1967 S.C. 574, referred to. Balmukand v. Kamla Wati & Ors. A.I.R. 1964 S.C. 1385 held inapplicable.

JUDGMENT:

CIVIL APPELATE JURISDICTION: Civil Appeal Nos. 216-217 of 1970.

Appeals by special leave from the Judgment and Order dated 3-12-1968 of the Bombay High Court in Second Appeal Nos. 1232 and 1214/1961.

V. S. Desai, R. B. Datar and Lalit Bhardwaj and Naveen Sinha for the Appellants.

S. V. Tambwaker for the Respondent.

The Judgment of the Court was delivered by CHINNAPPA REDDY, J.-On April 15, 1930 Parisa Chougule, executed Exhibit 93, a deed of mortgage in favour of Ganesh, Dattatraya Kulkarni (father of the appellants) for a sum of Rs. 1600 in respect of single item of land. On August 25, 1933, Parisa Chougule executed Exhibit 92 another deed of mortgage in favour of the same mortgagee for a sum of Rs. 1,000 in respect of ten items of land including the land previously mortgaged under Exhibit 93. Both the mortgages were possessory mortgages but it appears from evidence that the land was leased back to the mortgagor for a stipulated rent. Parisa Chougule died on June 15, 1934 leaving behind him three sons, Bhupal an adult and Anna and Dhanpal, minors. On July 11, 1934, Bhupal borrowed a further sum of Rs. 131 and executed a simple mortgage Exhibit 91 in respect of the very ten items of land covered by Exhibit 92. On May 1, 1935, Bhupal purporting to act as the Manager of the joint family and the guardian of his minor brother executed a deed of sale Exhibit 90 in favour of Ganesh Dattatraya Kulkarni in respect of four out of the ten items of land mortgaged under Exhibits 93, 92 and 91. The consideration for the sale was Rs. 3050 and was made up of the amounts of Rs. 1600 Rs. 1000 and Rs. 131/- due under three mortgages Exhibits 93, 92 and 91 respectively and a sum of Rs. 200 received in cash by Bhupal on the date of sale. Six of the items which were mortgaged were released from the burden of the mortgages. On September 23, 1946, Anna second son of Parisa became a major. On August 31, 1951, Dhanpal third son of Parisa became a major. On August 27, 1953 Anna and Dhanpal filed the suit out of which this appeal arises for a declaration

that the sale deed dated May 1, 1935 was not for legal necessity and not for the benefit of the estate and therefore, not binding on them. They also prayed that joint possession of their two third share may be given to them. The Trial Court found that there was legal necessity for the sale to the extent of Rs. 2600 only, that the consideration of Rs. 3050 for the sale was inadequate as the lands were worth about Rs. 4000, that there was no such compelling pressure on the estate as to justify the sale and therefore, the sale was not for the benefit of the family and hence not binding on the two plaintiffs. A decree was granted in favour of the two plaintiffs for joint possession of two third share of the lands subject to their paying a sum of Rs. 133/5 ans/4 ps. to the second defendant. On appeal by the second defendant the Assistant Judge, Kolhapur affirmed the finding of the Trial Court that there was legal necessity to the extent of Rs. 2600 only, that the value of the land was Rs. 4,000 and that there was no pressure on the estate justifying the sale. The Assistant Judge found that there was no evidence to show that the defendant made any bonafide enquiry to satisfy himself that there was sufficient pressure on the family justifying the sale. He however, held that the suit of the first plaintiff was liable to be dismissed as it was barred by limitation. He, therefore, modified the decree of the Trial Court by granting a decree in favour of the second plaintiff only for possession of a one third share in the lands subject to payment of a sum of Rs. 866.66 ps. to the second defendant. The first plaintiff as well as the second defendant preferred second appeals to the High Court. The High Court allowed the appeal filed by the first plaintiff and dismissed the appeal filed by the second defendant. The legal representatives of the second defendant have preferred these appeals after obtaining special leave from this Court under Article 136 of the Constitution.

It is clear that these appeals have to be allowed. The facts narrated above show that out of the consideration of Rs. 3050 for the sale there was undoubted legal necessity to the extent of Rs. 2600 the total amount due under the two deeds of mortgage executed by the father of the plaintiffs. Out of the ten items of land which were mortgaged, only four were sold and the remaining six items were released from the burden of the mortgages. The family was also relieved from the burden of paying rent to the mortgagee under the lease deed. Surely all this was for the benefit of the family. The value of the land sold under the deed of sale was found by the Courts below to be Rs. 4000. Even if that be so it cannot possibly be said that the price of Rs. 3000 was grossly inadequate. It has further to be remembered that there were continuous dealings between the family of the plaintiffs and the family of the second defendant, over a long course of years. In those circumstances it is impossible to agree with the conclusion of the courts below that the sale was not binding on the plaintiffs. The courts below appeared to think that notwithstanding the circumstance that there was legal necessity to a large extent it was incumbent on the second defendant to establish that he made enquiry to satisfy himself that there was sufficient pressure on the estate which justified the sale. We are unable to see any substance in the view taken by the courts below. When the mortgagee is himself the purchaser and when the greater portion of the consideration went in discharge of the mortgagors, we do not see how any question of enquiry regarding pressure on the estate would arise at all. Where ancestral property is sold for the purpose of discharging debts incurred by the father and the bulk of the proceeds of the sale is so accounted, the fact that a small part of the consideration is not accounted for will not invalidate the sale. In Gauri Shankar & Ors. v. Jiwan Singh Ors.(1) it was found that Rs. 500 out of the price of Rs. 4000 was not fully accounted for and that there was legal necessity for the balance of Rs. 3500. The Privy Council held that if the purchaser had acted honestly, if the existence of a family necessity for a sale was made out and the price was not

unreasonably low, the purchaser was not bound to account for the application of the whole of the price. The sale was upheld. In Niamat Rai and Ors. v. Din Dayal and Ors.(2) the manager of a joint family sold family property for Rs. 34,500 to satisfy pre-existing debts of the extent of Rs. 38,000. It was held that it was sufficient to sustain the sale without showing how the balance had been applied.

In Ram Sunder Lal & Anr. v. Lachhmi Narain and Anr.(1)., the vendee the sale in whose favour was questioned fourteen years after the sale, was able to prove legal necessity to the extent of Rs. 7744 out of a total price of Rs. 10,767. The Privy Council after quoting a passage from the well-known case of Hanoomanpersaud Pandey v. Mt. Babooee Munrai Koonweree,(2) upheld the sale.

The principle of these decisions has been approved by this Court in Radhakrishandas and Anr. v. Kaluram.(3).

The learned counsel for the respondents relied upon the decision of this Court in Balmukand v. Kamla Wati & Ors.(4) That was a suit for specific performance of an agreement of sale executed by the manager of the family without even consulting the other adult members of the family. The object of the sale was not to discharge any antecedent debts of the family nor was it for the purpose of securing any benefit to the family. The only reason for the sale of the land was that the plaintiff wanted to consolidate his own holding. The Court naturally found that there was neither legal necessity nor benefit to the estate by the proposed sale and the agreement therefore, could not be enforced. We do not see what relevance this case has to the facts of the present case. We accordingly allow the appeals and dismiss the suit with cost throughout.

N.K.A. Appeals allowed.