

Privy Council Appeal No. 46 of 1928.

Allahabad Appeal No. 24 of 1926.

Ram Sunder Lal and another - - - - - *Appellants*

v.

Lachhmi Narain and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 15TH MARCH, 1929.

Present at the Hearing :

LORD SHAW.

LORD TOMLIN.

SIR LANCELOT SANDERSON.

[*Delivered by* SIR LANCELOT SANDERSON.]

This is an appeal by the defendants in the suit against a decree of the High Court of Judicature at Allahabad, dated the 6th July, 1926, whereby a decree of the Subordinate Judge of Ghazipur, dated the 7th April, 1923, was modified.

The suit was brought on the 2nd March, 1922, by the plaintiffs, the minor sons of one Sat Narain Pande, who died in 1915, by their mother, Musammat Narain Kunwar, their certificated guardian, against the defendants, to recover possession of the property specified in the plaint, viz., Mauza Kanauli and Mauza Sikandra, and for a declaration that a certain sale deed dated the 21st July, 1908, purporting to have been executed by Sat Narain Pande, the father of the plaintiffs, in favour of one Misri Lal, the ancestor of the defendants, was invalid.

It was alleged by the plaintiffs that their father was a notorious debauchee and had squandered the joint family property in meeting the expenses of his debauchery and immoral habits : that the above-mentioned sale deed was executed without any

valid necessity and any legal antecedent debt and without any consideration by inserting wrong and fictitious debts and necessities therein.

The defence was to the effect that the property in suit had been sold for legal necessity for the benefit of the family for payment of antecedent debts, and for full consideration.

The learned Subordinate Judge found that, though the father of the plaintiffs was at one time addicted to immoral habits, he had reformed himself long before the transaction which was impeached in the suit and that the sale of the property was made for valid consideration and for the payment of pre-existing debts, except to the extent of Rs. 2,550.

The learned Judge made a decree that the plaintiffs' claim should be dismissed but that the defendants should pay within two months the sum of Rs. 2,550 to the plaintiffs and the third son of Sat Narain Pande, who was not a party to the suit. The plaintiffs appealed to the High Court, and the defendants filed a cross objection.

The learned Judges, on appeal, agreed with the finding of the learned Subordinate Judge as to the allegations of debauchery on the part of Sat Narain Pande, and held that there was considerable evidence to show that Sat Narain Pande had at one time been addicted to immoral habits, but that he had reformed himself and that about 20 or 22 years before the trial of the suit he had married Musammat Narain Kunwar, the mother of the plaintiffs, with whom he lived amicably until his death in 1915, and by whom he had three sons and a daughter born to him. They further held that there was no satisfactory evidence that at the time the mortgages and the sale, referred to in their judgment, were effected he had applied the moneys taken in respect thereof to immoral purposes. There are therefore concurrent findings of fact on this part of the case which their Lordships see no reason for disturbing.

The learned Judges examined the evidence relating to the issue as to legal necessity and came to the conclusion that it had been proved that Rs. 7,744.8.0. represented debts due by Sat Narain Pande to third persons for which the plaintiffs were legitimately liable; that the plaintiffs were not liable for the remainder of the consideration specified in the sale deed, the total of which was Rs. 10,767.7.0

The learned Judges allowed the appeal, set aside the decree of the learned Subordinate Judge and made a decree in favour of the plaintiffs for possession of the disputed property subject to the payment by the plaintiffs within four months of the sum of Rs. 7,744.8.0. It was further ordered that in case of non-payment of the said money within the time mentioned the suit should stand dismissed. The cross objection which had been filed by the defendants against the order of the learned Subordinate Judge directing them to pay to the plaintiffs and their brother the sum of Rs. 2,500, was disallowed.

The defendants appealed against the said decree of the High Court and they appeared by learned Counsel at the hearing before the Board. The plaintiff respondents however did not file any case, and they were not represented at the hearing of the appeal.

Their Lordships are not able to uphold either of the decrees made by the Courts in India.

Both the decrees, in their Lordships' opinion, are inconsistent with the principles laid down by the Judicial Committee in several cases, *e.g.*, *Hunoomanpersaud Panday v. Munraj Koonweree*, 6 Moo. I.A. 393 and *Masit. Allah v. Damodar Prasad*, 53 I.A. 204, and *Krishn Das v. Nathu Ram*, 54 I.A. 79.

The judgment of the High Court in the present case was delivered on the 6th July, 1926, and in making the decree that the plaintiffs should recover possession of the property upon the payment of Rs. 7,744.8.0 within four months, the learned Judges apparently were following the form of decree which had been adopted by the Allahabad High Court in previous cases, *e.g.*, *Gobind Singh v. Baldeo Singh* (1903), I.L.R. 25 A. 330, *Ram Dei Kumwar v. Abu Jafar* (1905), I.L.R. 27 A. 494, and *Dwarka Ram v. Jhulai Pande* (1923), I.L.R. 45 A. 429.

In the last-mentioned case the ground of the judgment of the High Court was as follows :—

“ If any part of the consideration was invalid and not binding on the plaintiff, the plaintiff would be entitled to have the sale set aside. But if a portion of the consideration was good and binding on the plaintiff he would be entitled to reimburse it to the defendant. The form of the decree in a case of this kind should therefore be a decree for possession in favour of the plaintiff subject to his paying to the purchaser so much of the consideration as was required for the necessities of the family.”

The decision of the Judicial Committee in the above-mentioned case of *Krishn Das v. Nathu Ram* (*supra*) was given in December, 1926, some five months after the judgment of the Allahabad High Court which is now under consideration. In the last cited case their Lordships of the Judicial Committee disapproved of the above-mentioned decisions of the Allahabad High Court reported in I.L.R. 25 A. 330, I.L.R. 27 A. 494, and I.L.R. 45 A. 429, and of another decision of the same Court in *Daulat v. Sankatha Prasad* (1924), I.L.R. 47. A. 355.

Their Lordships pointed out that the decisions, of which they disapproved, were inconsistent with the principles which had been laid down in a series of cases by the Judicial Committee and which had been followed by the Courts in India, except in Allahabad.

Their Lordships referred to the judgment in the well-known case of *Hunoomanpersaud Panday v. Musummat Babroje Munraj Koonweree* (*supra*) for the purpose of stating the principle on which cases such as this should be decided, and then proceeded as follows :—

“ Where the purchaser acts in good faith and after due enquiry and is able to show that the sale itself was justified by legal necessity he is

under no obligation to enquire into the application of any surplus and is therefore not bound to make repayment of such surplus to the members of the family challenging the sale."

It appears clear therefore that in view of the above-mentioned decisions of the Judicial Committee neither of the two decrees made in this case in India can stand.

It remains to be considered whether the defendants are entitled, as they contend, to succeed in their appeal and to have the plaintiffs' suit dismissed.

The material question is whether the sale itself was one which was justified by legal necessity. The property in dispute, viz., the villages of Sikandra and Kanauli, was sold by the deed of 21st July, 1908, by Sat Narain Pande, acting for himself and his minor sons, to Misri Lal, the ancestor of the defendants, for Rs. 10,767.7. The property in suit and certain lands in Basupur had been mortgaged to Misri Lal, and by reason of the sale the entire debts were discharged, and a sum of Rs. 885 was paid in cash to Sat Narain Pande. By reason of the sale the lands in Basupur were released from mortgage and were saved to the estate.

The learned Subordinate Judge, as already stated, held that the major portion of the consideration went to discharge old debts in respect of money borrowed for legal necessity. He held that the defendants had failed to prove that the sum of Rs. 2,498, part of the consideration for the sale, was paid to the plaintiffs' father for legal necessity, but that the rest of the sale "consideration has been proved to have been advanced for satisfaction of debts borrowed for legal necessities."

The learned Judges of the High Court agreed that there were debts due by Sat Narain Pande which were properly credited in the account of the consideration specified in the sale deed to the extent of Rs. 7,744.8.0. The learned Judges, however, held that the defendants had not proved legal necessity in respect of the balance, though one of the learned Judges expressed a doubt as to two items, viz., Rs. 113 and Rs. 418.

The above-mentioned balance of the consideration money disallowed by the learned Judges of the High Court, was in respect of sums alleged to have been advanced at various times for the purpose of paying Government revenue and meeting other expenses. Some of the items were specifically mentioned in mortgages effected in 1904, 1905 and 1907, and one item was in respect of cash alleged to have been paid at the time the sale was effected in July, 1908, for the purpose of paying Government revenue and meeting other family necessities. This suit was brought by the plaintiffs in March, 1922, nearly 14 years after the sale was effected, and when even a longer period had elapsed since some of the advances now questioned were made.

Although there was some evidence, in addition to the recitals in the various documents, that the sums were required for the

above-mentioned purposes, it may have been and probably was difficult for the defendants to prove conclusively the manner in which the sums making up the balance, which was disallowed by the Court in India, were utilised.

The material question, however, is whether the sale itself was one which was justified by legal necessity. There is no doubt that out of the total price, viz., Rs. 10,767, the sum of Rs. 7,744 at least was used for paying debts incurred by Sat Narain Pande for legal necessity. Their Lordships further are satisfied that due enquiries as to the necessity were made by or on behalf of Misri Lal, the purchaser, before the advances were made and the sale was effected.

There remains the question whether the consideration was adequate. There is but little evidence as to the value of the property at the time of the sale. The learned Subordinate Judge, acting on the evidence of a man who had been patwari of the villages since 1916 found the property to be worth Rs. 16,000 which their Lordships understand to be his estimate of the value of the property at the time of the trial in 1923. The learned Judge stated that the patwari admitted that the income had increased since the sale to the ancestor of the defendants in 1908. To what extent the property had increased in value is not evident.

In view of the facts of this case and the finding of the learned Subordinate Judge, their Lordships are unable to hold that the price obtained for the property in 1908 was inadequate.

Their Lordships therefore are of opinion that it must be taken on the facts of this case that the sale of the 21st July, 1908, was effected after due enquiry made by or on behalf of the vendee as to the legal necessity, that the sale was for adequate consideration, that legal necessity was proved by the defendants to the extent of Rs. 7,744 at least out of a total price of Rs. 10,767, and that even assuming that the defendants after a long interval of time were not able to prove conclusively how the surplus was applied by Misri Lal, that fact alone is not sufficient ground for setting aside the sale.

For these reasons their Lordships are of opinion that the appeal should be allowed, that the decrees of the High Court and of the Subordinate Judge should be set aside, that the plaintiffs' suit should be dismissed and that the plaintiffs should pay the defendants' costs of this appeal and of the proceedings in both Courts in India, and they will humbly advise His Majesty accordingly.

In the Privy Council.

RAM SUNDER LAL AND ANOTHER

v.

LACHHMI NARAIN AND ANOTHER.

DELIVERED BY SIR LANCELOT SANDERSON.

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