

PETITIONER:
GANGADHARAN

Vs.

RESPONDENT:
JANARDHANA MALLAN & ORS.

DATE OF JUDGMENT: 10/05/1996

BENCH:
VENKATASWAMI K. (J)
BENCH:
VENKATASWAMI K. (J)
AHMADI A.M. (CJ)
MANOHAR SUJATA V. (J)

CITATION:
JT 1996 (5) 82 1996 SCALE (4)537

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K.VENKATASWAMI, J.

Aggrieved by the judgment of the High Court of Kerala at Ernakulam in Second Appeal No.75/77 dated 19.7.77, this appeal by special leave has been preferred by the first defendant in the said suit, namely O.S. No. 27/67 on the file of Subordinate Court, Irinjalakuda. The said suit was filed by the respondent nos. 1-5 along with one Ramanathan who died pending appeal before the District Court for partition and separate possession of their 6/8 share in the property, namely, 66 cents with building thereon in Kodungallur (Kerala). The appellant (first defendant) was the purchaser of the suit property from the father of the plaintiffs (respondent nos. 1-5) under sale deed dated 2.4.55 (Ex. P2). The property sold under Ex. P2 was one of the items of the joint family property. When the sale took place, the plaintiffs were minors. After the death of the father and after 12 years of the sale in question the present suit was filed attacking the validity and binding nature of the sale on the ground that the sale was for a grossly inadequate consideration; that there was no pressing need to alienate the property; that the income from other properties of the joint family was sufficient to wipe off the debts if any and that most of the debts for the discharge of which Ex. P2 was executed were bogus in nature. The sale consideration was for a sum of Rs.9,000/-.

The first respondent (appellant herein) resisted the suit by contending that the suit was speculative one, the vendors were obliged to alienate comparatively a small fraction of the family property for the purpose of carrying on the business; that the income from other family properties were not sufficient for discharging the liabilities and that the sale was for adequate consideration.

The trial court after elaborate consideration found

that out of sale consideration of Rs. 9,000/- a sum of Rs. 5,750/- factually was utilised to discharge genuine antecedent debts and sale consideration was adequate. Consequently, the trial court upheld the validity of Ex. P2 sale deed and dismissed the suit.

The plaintiffs (respondent nos. 1-5) preferred appeal to the District Court and the learned District Judge also concurred with the findings of the trial court and dismissed the appeal.

The plaintiffs preferred a second appeal to the High Court and the learned Single Judge found that out of sale consideration of Rs. 9,000/-, a sum of Rs. 1,250/-, being part of the sale consideration cannot be treated as a debt as the said amount was left with the vendee to pay the future instalment of 'kuri' subscription. In view of that, the High Court held as follows :

"If as in this case half of the consideration is to discharge a debt which is an antecedent debt and half is not it could not be said that the alienation was to discharge antecedent debt. No doubt the discharge of antecedent debt was also involved in such alienation. Therefore, it cannot be said that in this case the alienation was effected to pay off antecedent debt of the father and as such the alienation is supportable."

On the question whether there was pressing necessity for the sale of an item of the joint family property, the High Court remanded the case.

Aggrieved by the judgment of the High Court, this appeal has been filed. Learned Sr. Counsel appearing for the appellant submitted that the High Court erred in holding that only half of the sale consideration was utilised to discharge antecedent debt and therefore, the alienation cannot be supported. According to the learned Sr. Counsel if the vendee makes genuine enquiry about the necessity for the sale of the property before the purchase and pays adequate consideration thereafter it was not necessary for him to see the application of the money. In this case according to the learned Sr. Counsel, the learned District Judge has found that the vendee (appellant herein) has made genuine enquiries and satisfied himself regarding the necessity for sale of the lands under Ex.P2, and major portion of the sale consideration has been spent for liquidating antecedent debts. In support of this argument, he cited Sri Krishna Das & Ors. vs. Nathu Ram & Anr. (AIR 1927 PC 37); Ram Sunder Lal & Anr. vs. Lachmi Narain & Anr. (AIR 1929 PC 143); Ram Krishna Muraji vs. Ratan Chand & Anr. (AIR 1931 PC 136); Radhakrishnadas vs. Kaluram (1963 (1) SCR 648) and Smt. Rani & Anr. vs. Smt. Santa Bala Debnath & Ors. (1970 (3) SCC 722).

Learned Sr. Counsel appearing for the respondents while supporting the judgment of the High Court and the reasonings thereon also contended that in as much as the High Court has remanded the matter on the question of legal necessity, this Court may not interfere with that judgment.

We have considered the rival submissions.

The trial court after considering each and everyone of the debts in all amounting to 13 items recited in the sale deed, found that except the debts amounting to Rs. 3,750/- out of total consideration of Rs. 9,000/-, the other amount was proved to have gone into the discharge of antecedent

debts binding on the sons. In that view of the matter, the trial court upheld the impugned sale and consequently dismissed the suit.

Before the Appellate Court, it appears that both the parties proceeded on the ground that Ex. P2 was not supported by antecedent debts to the extent of only Rs. 3,250/-. The First Appellate Court observed in paragraph 7 as follows."

"In fact, the appellants' learned counsel has accepted the finding recorded in paragraph 13 of the judgment that Ex. P2 was not supported by antecedent debts only to the tune of Rs. 3,250/-. The 1st defendant's learned counsel also did not make any serious attempt to show that Ex. P2 is supported in full by antecedent debts. Both the parties, therefore, have proceeded on the ground that Ex. P2 is not supported by antecedent debts to the tune of Rs. 3,250/-. The total consideration is Rs.9,000/-

Again on the aspect of adequacy of consideration, the appellate court has found as follows:-

"Though in the grounds of appeal the appellants attack the correctness of the finding that the consideration shown for Ex. P2 is inadequate. such a contention was not urged during hearing of the appeal. The conclusion reached by the Court that consideration for Ex. P2 is adequate ss on the basis of the Commissioner's Report. Due consideration was given to the income derivable from the property. I am also in entire agreement with the Court below that the consideration for Ex. P2 at the time it was executed was adequate."

On the other important aspect of legal necessity and enquiry by the purchaser, the lower appellate court observed as follows:

"The lower court has found at the bottom of page 9 that the father was a prudent manager and that the family was not in such an affluent circumstances as claimed by the plaintiff. The learned Sub Judge observes the position of the branch of Venkiteswara Mallan was "pitiable". That conclusion is warranted by the request seen in Ex. D-3. It is in the above background we have to view the debts evidenced by the pronotes. They had to be discharged; otherwise interest would mount up. "Legal necessity does not mean according to 1971 Supreme Court 1028, "actual compulsion; it means pressure on the estate which in law may be regarded as serious and sufficient". The alienee says he

made due enquiries about the existence of necessity. The recitals in Ex. P2 corroborates the evidence of the existence of necessity. It is also found that the consideration for Ex.P2 is adequate. There is evidence of the 1st defendant making a bonafide enquiry as to existence of necessity. What was made was such a reasonable enquiry as is sufficient for a prudent man to satisfy himself of the existence of the necessity. Thus it can safely be said that the alienee acted in good faith."

In the light of findings as extracted above, let us now examine the legal contentions advanced before us. As noticed earlier, the contention of the learned Sr.Counsel for the appellant was that if the purchaser acts in good faith after enquiry, it is not obligatory on his part to make further enquiries into the application of surplus. if any, of the sale consideration. This question does not appear to be res integra any more as it is settled by a number of judgments rendered by Privy Council and approved by this Court. In Krishna Das & Ors. Vs. Nathu Ram & Anr (AIR 1927 PC 37) (supra) (supra) after referring to earlier case in Hunooman Persaud Panday vs. Musamat Babooee (6 MIA 393), the Court held that 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. This judgment was referred to with approval in Ram Sunder Lal & Another's case (supra) where the ratio was laid down in more clear terms. It was held that where the sale of family property by the father was effected for adequate consideration after due enquiry made by or on behalf of vendee as to the legal necessity and legal necessity was proved by vendee to the extent of Rs. 1,744/-at least out of a total price of Rs. 10.767/-, then the mere fact that the vendee after a long interval of time (14 years) was not able to prove conclusively how the surplus was applied by the father is not sufficient ground for setting aside the sale. Again the Privy Council in Ram Krishna Muraji vs. Ratan Chand & Anr. AIR 1(931 PC 136) after referring to the earlier pronouncements quoted with approval a passage from 6 MIA 393(supra) and observed as follows :-

"Their Lordships think that the lender is bound to enquire into the necessities for the loan, and to satisfy himself as well as he can, with reference to the parties with whom he is dealing, that the manager is acting in the particular instance for the benefit of the estate. But they think that if he does so enquire, and acts honestly, the real existence of an alleged sufficient and reasonably-credited necessity is not a condition precedent to the validity of his charge, and they do not think that, under such circumstance she is

bound to see to the application of the money. It is obvious that money to be secured on any estate is likely to be obtained on easier terms than a loan which rests on mere personal security, and that therefore the mere creation of charge securing a proper debt cannot be viewed as improvident management the purposes for which a loan is wanted are often future, as respects the actual application, and a lender can rarely have, unless he enters on the management, the means of controlling and rightly directing the actual application. Their Lordships do not think that a bona fide creditor should suffer when he has acted honestly and with due caution, but is himself deceived". (Emphasis supplied)

Now coming to the decision of this Court in Radhakrishna Das and Anr. vs. Kaluram (1963 (1) SCR 648), this Court after referring to the Privy Council decision observed as follows:

"It is well established by the decisions of the Courts in India and the Privy Council that what the alienee is required to establish is legal necessity for the transaction and that it is not necessary for him to show that every bit of the consideration which he advanced was actually applied for meeting family necessity. In this connection, we may refer to two decisions of the Privy Council. One is Sri Krishan Das Vs. Nathu Ram. In that case the consideration for the alienation was Rs. 35,000/-. The alienee was able to prove that there was legal necessity only to the extent of Rs. 3,000/- and not for the balance. The High Court held that the alienation could be set aside upon the plaintiff's paying Rs. 3,000/- to the alienee. But the Privy Council reversed the decision of the High Court observing that the High Court had completely misapprehended the principle of law applicable to a case of this kind. What the alienee has to establish is the necessity for the transaction. If he establishes that then he cannot be expected to establish how the consideration furnished by him was applied by the alienor. The reason for this, as has been stated by the Privy Council in some other cases, is that the alienee can rarely have the means of controlling and directing the actual application of

the money paid or advanced by him unless he enters into the management himself. This decision was followed by the Privy Council in Niamat Rai vs. Din Dayal where at p. 602 and 603 it has observed:

"It appears from the judgment of the learned Judges of the High Court that if they had been satisfied that the whole of the Rs. 38,400 Paid out of the sale proceeds was paid in discharge of debts incurred before the negotiation of sale, they would have been of opinion that the sale ought to have been upheld. With this conclusion their Lordships agree, but they are of opinion that undue importance was attached by the learned Judges to the question whether some of the payments made in discharge of debts incurred in the interval between the negotiation of the sale and the execution of the sale deed. Even if there had been no joint family business, proof that the property had been sold for Rs. 43,500 to satisfy pre-existing debts to the amount of Rs. 38,000 would have been enough to support the sale without showing how the balance had been applied, as held by their Lordships in the recent case of Krishan Das vs. Nathu Ram."

Both these decisions state the correct legal position, Mr. Sinha's argument must, therefore, be rejected."

Again in Smt. Rani & Anr. vs. Mrs. Shanti Bala Dev Nath & Ors. (1970 (3) SCC 722), it is observed as follows:

"The onus of proving legal necessity may be discharged by the alienee by proof of actual necessity or by proof that he made proper and bona fide enquiries about the existence of the necessity and that he did that was reasonable to satisfy himself as to the existence of necessity".

The Court further observed regarding legal necessity as follows :

"Recitals in a deed of legal necessity do not by themselves prove legal necessity. The recitals are, however, admissible in evidence, their value varying according to the circumstances in which the transaction was entered into. The recitals may be used to corroborate other evidence of the existence of legal necessity. The weight to be attached to the recitals varies according to the

circumstances. Where the evidence which could be brought before the Court and is within the special knowledge of the person who seeks to set aside the sale is withheld, such evidence being normally not available to the alienee; the recitals go to his aid with greater force and the Court may be justified in appropriate cases in raising an inference against the party seeking to set aside the sale on the ground of absence of legal necessity wholly or partially, when he withholds evidence in his possession.

In view of the findings which, we have already extracted regarding adequacy of sale consideration, substantial portion having gone into the discharge of antecedent debts and enquiries made by the purchaser regarding legal necessity coupled with the, fact that the alienation was challenged after 12 years from the date of alienation, we find no difficulty in coming to the conclusion that the High Court went wrong in upsetting the judgments of the Trial Court as well as the First Appellate Court. Even though the judgments of the Privy Council and of this Court were brought to the notice of High Court, it unfortunately, failed to give due consideration to the ratio laid down in those cases. The High Court simply observed as follows:

"It may not be possible to lay down any strait-jacketed rule as to what proportion of the consideration should be shown to have been antecedent debt in order to sustain an alienation by a Hindu father."

We also do not agree with the contention of the learned Sr. Counsel for the respondents that the High Court was justified in remanding the matter on the question of legal necessity. The purchasers have done their best to prove the legal necessity and substantial portion of the sale consideration went into the discharge of the antecedent debts. The First Appellate Court has given a clear finding on this. Having regard to the long lapse of time when the suit was instituted, challenging the alienation, nothing more could be expected from the purchasers to prove the legal necessity and the application of sale consideration.

In the view we have taken on the facts of this case, it is not necessary in this case for us to consider the correctness of the view expressed by the High Court that the amount reserved for the discharge/payment of future instalments of 'kuri' subscription would not amount to antecedent debt to bind the minor.

In the circumstances, we allow the appeal, set aside the judgement and decree of the High Court and restore the judgment and decree of the First Appellate Court, dismissing the suit. However, there will be no order as to costs.