

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.96 of 2004

Malikram @ Sant Ram S/o. Balaram, aged about 38 years, Village Talalim, Tahsil-Berla, Distt.-Durg (CG)

(Defendant No.2)
---- Appellant

Versus

1. Neelkanth S/o. Kejuram, aged about 10 years, Through Natural mother Tijiya Bai W/o. Kejuram, R/o. Village Taralim, At present Taksinwa, Tahsil Bemetara, Distt. Durg (CG)
2. Tijiya Bai W/o. Kejuram, aged about 35 years, Occupation-Housewife, R/o. Village Taralim, At present Taksinwa, Tahsil Bemetara, AT present Tahsil Berla, Distt. Durg (CG)
3. Ram Sanehi, S/o Santram, aged about 23 years,
4. Chhagan Lal S/o Santram, aged about 21 years,
5. Bhupendra Kumar, S/o. Santram, aged about 19 years,
6. Tohal Kumar S/o. Santram, aged about 18 years,
7. Gouri Bai W/o. Santram, aged about 32 years, Occupation – Housewife, No.3 to 7 are Resident of Village Taralim, At present Bhand, Tahsil Bemetara, At present Tahsil Berla, Distt. Durg (CG)
8. Bhagaiya Bai W/o. Dhaneshram, D/o. Balaram, aged about 50 years,
9. Talsa Bai W/o. Yudhishtir, D/o. Balaram, aged about 40 years,
10. Pekhan Lal S/o. Balaram, aged about 29 years,
All from 8 to 10 are resident of Village Taralim & Gabla Tahsil-Berla, Distt.-Durg (CG)
11. Fullkumwar S/o. Bharat, D/o. Kejuram, aged about 50 years,
12. Hulariya Bai W/o Jevrakhan, D/o. Kejuram, aged about 48 years,
13. Kalvani Bai, W/o. Anandram, D/o. Kejuram, aged about 30 years,
14. Sarokini Bai W/o. Ratikant, D/o. Kejuram, aged about 28 years,
15. Khemin Bai W/o. Sukhram, D/o. Kejuram, aged about 26 years,
All from 11 to 15 are resident of Village Taralim & Tahsil-Berla, Distt.-Durg (CG)
16. State of M.P. (Now Chhattisgarh) through the Collector, Durg, Distt. Durg (CG)

---- Respondents

For Appellant/Defendant No.2	:	Mr.Anoop Mazumdar, Advocate
For Res.No.1, 3, 4, 5 & 6/Plaintiffs	:	Mr.Manoj Paranjape, Advocate
For Res.2 & 7 to 15	:	None present
For Respondent No.16	:	Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

02/09/2019

1. The second appeal preferred by defendant No.2/appellant herein was admitted for hearing by formulating the following substantial question of law:-

“Whether the the lower appellate Court was justified in reversing the finding of the trial Court that sale of the suit land by Kejuram and Santram in favour of Balaram and Manikram on 30-05-1966, 06-07-1967 and 23-06-1969 was for legal necessity ?”

[For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The suit land mentioned in Schedule 'A' and 'B' appended with the plaint was joint Hindu family property of defendant No.3-Kejuram and defendant No.4-Santram, which they sold in favour of defendants No.1 and 2 by three sale deeds dated 23.6.69 (Ex.D-1), 6.7.67 (Ex.D-2) and 30.5.66 (Ex.D-3) respectively and delivered peaceful possession to them (defendants No.1 and 2). Plaintiffs No.1 and 2 are son and wife of defendant No.3-Kejuram, plaintiffs No.3 to 6 are sons of defendant No.4-Santram and plaintiff No.7 is wife of defendant No.4. They brought an action for declaring the aforesaid sale deeds dated 23.6.69 (Ex.D-1), 6.7.67 (Ex.D-2) and 30.5.66 (Ex.D-3) as null and void and for partition and possession including decree for permanent injunction against defendants No.1 and 2, who are purchasers from defendants No.3 and 4 in a Civil Suit No.145A/1987 instituted on 15.7.1977. It is admitted fact on record that one Sonkunwar Bai, wife of Jhumuk Lal and Ramesh Kumar, Son of Jhumuklal had instituted a suit being Civil Suit No.100A/65 for recovery of possession against defendants No.3 and 4, which was decreed on 8.4.1966 by the Civil Judge Class-II, Bemetara directing defendant No.1 therein/defendant No.3 herein to deliver

possession of the property mentioned in Schedule 'A' and 'B' annexed with the plaint and also directed to bear the cost of the defendant also. In the present suit instituted by the plaintiffs, who are successor-in-interest of defendants No.3 and 4 as noticed above have pleaded that the suit property is the property held by joint Hindu family and defendants No.3 and 4 did not have any right, title and authority to alienate the same in favour of defendants No.1 and 2 and alienation made vide Exs.D-1 to D-3 was without legal necessity as they had joint share. It was further pleaded that they came to know about execution of sale deeds by defendants No.3 and 4 in favour of defendants No.1 and 2 on 20.11.76 necessitating for institution of the suit for declaring sale deeds dated 23.6.69 (Ex.D-1), 6.7.67 (Ex.D-2) and 30.5.66 (Ex.D-3) as null and void and for partition and possession including decree for permanent injunction against defendants No.1 and 2.

3. Defendants No.1 and 2 (purchasers of suit property) filed their written statement pleading inter-alia that defendants No.3 and 4 needed money for satisfying the decree passed in favour of Sonkunwar Bai and Ramesh Kumar in Civil Suit No.100A/65 on 8.4.1966 and for that legal necessity, they sold the suit property in their favour being karta of the family, as such, the suit deserves to be dismissed.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 19.2.91, dismissed the suit holding that the suit property was originally ancestral property of defendants No.3 and 4, which was alienated in favour of defendants No.1 and 2 for legal necessity and they had authority being karta of the family, defendants No.1 and 2 are bonafide purchasers and

sale deeds dated 23.6.69 (Ex.D-1), 6.7.67 (Ex.D-2) and 30.5.66 (Ex.D-3) are not mortgage deeds, but they are outright sale and the plaintiffs are not entitled for any relief as claimed in the plaint. Feeling aggrieved against the judgment and decree of the trial Court dismissing the suit, the plaintiffs preferred first appeal under Section 96 of the CPC before the first appellate Court. The first appellate Court reversed the judgment and decree of the trial Court and decreed the suit. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the Code of Civil Procedure has been preferred by the appellant/defendant No.2, in which substantial question of law has been formulated, which has been set-out in the opening paragraph of this judgment.

5. Mr.Anoop Mazumdar, learned counsel for the appellant/defendant No.2, would submit that the first appellate Court is absolutely unjustified in reversing the well merited judgment and decree of the trial Court. He would further submit that defendant No.2/appellant, who is an alinee, had discharged his burden that alienation was made by defendants No.3 and 4 for legal necessity and that is to satisfy the decree granted by the jurisdictional Civil Court in Civil Suit No.100A/65 against defendants No.3 and 4 on 8.6.1966 and in order to prove the said fact, Sonkunwar Bai was examined as PW-2. He would also submit that Kejuram and Santram have been examined as DW-3 and DW-6, they have clearly stated that alienation was made and consideration was paid to them, but it was a mortgage deed and not an outright sale, but the trial Court has clearly held that it was not mortgage deed, but it was an outright sale, which the first appellate Court did not consider in its proper perspective

and reversed the judgment and decree of the trial Court without meeting with the reasonings assigned and recorded by the trial Court, which warrants interference by this court in jurisdiction under Section 100 of the CPC by granting the appeal and restoring the decree of the trial Court.

6. Mr.Manoj Paranjape, learned counsel for respondents No.1, 3, 4, 5 & 6/plaintiffs, would submit that the first appellate Court has rightly reversed the judgment and decree of the trial Court by taking into consideration the material evidence available on record, which was not considered by the trial Court and rightly reversed the decree of the trial Court and granted decree in favour of the plaintiffs, as such, the substantial question of law deserves to be answered in favour of the plaintiffs and against defendant No.2/appellant herein.
7. I have heard learned counsel for the parties, considered their rival submissions thoughtfully and also went through the records with utmost circumspection.
8. It is not in dispute that civil suit filed by Sonkunwar Bai and Ramesh Kumar being Civil Suit No.100A/65 against defendants No.3 and 4 was decreed by the jurisdictional Civil Court and decree for possession and for litigation cost was ordered against defendants No.3 and 4 and it is the case of the plaintiffs that in order to bear litigation expenses and for paying cost of that suit, the suit land was sold by defendants No.3 and 4 in favour of defendants No.1 and 2 vide Exs.D-1 to D-3.
9. The question for consideration would be, whether the suit land, which was held by defendants No.3 and 4, was alienated by them in favour of defendants No.1 and 2 for legal necessity and whether defendants No.1

and 2 have pleaded and established that alienation was made for legal necessity ?

10. In the matter of Radhakrishnadas and another v. Kaluram (dead) and after him his heirs and legal representatives and others¹ the Supreme Court has held that the alienee has to prove that transaction was for legal necessity if alienation was made by father as karta of the family and observed as under:-

“Where an alienation, by way of sale, of the family property made by a Hindu father is challenged by his sons on the ground of want of legal necessity then it is now well established 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. The reason 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.”

11. Paragraph 241 of Mulla's Hindu Law defines the legal necessity as under:-

“241. What is legal necessity The following have been held to be family necessities within the meaning of Article 240:

- (a) payment of government revenue and of debts which are payable out of the family property;
- (b) maintenance of coparceners and of the members of their families;
- (c) marriage expenses of male coparceners, and of the daughters of coparceners;
- (d) performance of the necessary funeral or family ceremonies;
- (e) costs of necessary litigation in recovering or preserving the estate;
- (f) costs of defending the head of the joint family or any other member against a serious criminal charge;
- (g) payment of debts incurred for family business or other necessary purpose. In the case of a manager other than a

¹ AIR 1967 SC 574

father, it is not enough to show merely that the debt is a pre-existing debt;

The above are not the only indices for concluding as to whether the alienation was indeed for legal necessity, nor can the enumeration of criterion for establishing legal necessity be copious or even predictable. It must therefore depend on the facts of each case. When, therefore, property is sold in order to fulfil tax obligations incurred by a family business, such alienation can be classified as constituting legal necessity.”

(see Hindu Law by Mulla “22nd Edition”) ”

12. Paragraph 254 deals with alienation by father as explained by Mulla's Hindu law (22nd Edition), which states as under:-

“254. Alienation by father.-A Hindu father as such has special powers of alienating coparcenary property, which no other coparcener has. In the exercise of these powers he may:

(1) make a gift of ancestral movable property to the extent mentioned in Article 223, and even of ancestral immovable property to the extent mentioned in Article 224;

(2) sell or mortgage ancestral property, whether movable or immovable, including the interest of his sons, grandsons and great-grandsons therein, for the payment of his own debt, provided the debt was an antecedent debt, and was not incurred for immoral or illegal purposes (Article 294).”

13. Paragraphs 254 and 241 of the Mulla's Hindu Law have been quoted with approval by Their Lordships of the Supreme Court in **Kehar Singh (Dead) Through Legal Representatives and others v. Nachittar Kaur and others**².

14. Now, the question for consideration would be, whether on facts defendants No.3 and 4 have been able to establish the fact of existence of legal necessity for alienation of the suit property in favour of defendants No.1 and 2 ?

15. Defendants No.3-Kejoram has been examined as DW-3. He has

² (2018) 14 SCC 445

clearly stated that his aunt Sonkunwar Bai had filed a suit and during the course of litigation, he and his family needed money to contest the litigation and for which they took loan in the year 1969 and in lieu of loan, he and his brother have executed mortgage deeds in favour of defendant No.1. Mortgage deeds were executed thrice in favour of defendant No.1, the suit land is ancestral property and money was needed for paying damages of ₹15000/- to Sonkunwar Bai. In his cross-examination, he has clearly stated that three sale deeds were executed in favour of Balaram. Likewise, defendant No.4-Santram has been examined as DW-6. He has clearly stated that they needed money in order to bear the litigation expenses, which was filed by Sonkunwar Bai and in lieu of that, sale deeds were executed vide Exs.D-1 to D-3 and he has signed on sale deeds (Exs.D-1 to D-3), but these documents are not outright sale but they are mortgage deeds. Sonkunwar Bai has also been examined as PW-2. She has clearly admitted the fact of litigation with defendants No.3 and 4 and has further stated that she got her property back and in order to avoid attachment, compromise was entered into with defendants No.3 and 4. Defendants No.3 and 4 have admitted the fact of sale deeds having been executed in favour of defendants No.1 and 2, but they are to be mortgage deeds, which the trial Court did not accept and recorded a finding that it was real and outright sale made by defendants No.3 and 4 in favour of defendants No.1 and 2. Even otherwise, plea of defendants No.3 and 4 that documents (Exs.D-1 to D-3) are not outright sale, but they are mortgage deeds runs contrary to proviso to Section 58(c) of the Transfer of Property Act, 1882 as no such condition of it being mortgage is embodied in the sale deeds (Exs.D-1 to D-3) that they are mortgage

deeds and in view of the matter, the trial Court has rightly concluded that Exs.D-1 to D-3 are real and outright sale and they are not mortgage deeds, as such, defendants No.1 and 2 have clearly discharged their burden that alienation was made by defendants No.3 and 4 being karta of the family in order to bear the litigation expenses and for paying decretal amount to Sonkunwar Bai, which is apparent from the statement of Sonkunwar Bai, who is plaintiff in earlier Civil Suit No.100A/65 and also from the statements of defendants No.3 and 4 made before the trial Court, but they have pleaded it to be mortgage deeds, which the trial Court has rightly refuted. In view of finding recorded, it cannot be held that alienation made by defendants No.3 and 4 in favour of defendants No.1 and 2 was not for legal necessity, it is outright sale for legal necessity particularly for the purpose of meeting out the litigation expenses as well as for paying decretal amount in order to preserve the property held by them, which is one of the legal necessity as provided in paragraphs 248 and 241 (e) of the Hindu Law authored by Shri Mulla.

16. Therefore, in my considered opinion, a case for legal necessity for alienation of ancestral property by defendants No.3 and 4 being karta of the family was made out on facts, which the trial Court has rightly noticed and dismissed the suit holding that defendants No.3 and 4 have discharged their burden lay on them to prove the existence of legal necessity for alienation of suit land in favour of defendants No.1 and 2.
17. Their Lordships in the matter of Kehar Singh (supra) have held that once the factum of existence of legal necessity stood proved, then, no co-coparcener (son) has a right to challenge the sale made by the

karta of the family. Para 26 of the report states as under:-

“26. Once the factum of existence of legal necessity stood proved, then, in our view, no cocoparcener (son) has a right to challenge the sale made by the karta of his family. The plaintiff being a son was one of the co-coparceners along with his father-Pritam Singh. He had no right to challenge such sale in the light of findings of legal necessity being recorded against him. It was more so when the plaintiff failed to prove by any evidence that there was no legal necessity for sale of the suit land or that the evidence adduced by the defendants to prove the factum of existence of legal necessity was either insufficient or irrelevant or no evidence at all. ”

18. In view of the aforesaid discussion, I am of the considered opinion that the first appellate Court is absolutely unjustified in setting aside the judgment and decree of the trial Court and granting decree in favour of the plaintiffs. The substantial question of law is answered in favour of defendant No.2 and against the plaintiffs.
19. Accordingly, the impugned judgment and decree of the first appellate Court is hereby set aside and that of the trial Court is restored to the extent of share of the appellant/defendant No.2 only, as defendant No.1 has preferred not to file any appeal against decree of the first appellate Court and it is directed that the plaintiffs will bear their own cost and cost of defendant No.2 as well.
20. A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-