

FIRST APPEAL No.823 OF 1977

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Against the judgment and decree dated 27.8.1977 passed by Sri Moti Ram, 1<sup>st</sup> Sub Judge, Muzaffarpur in T.S.No. 48 of 1969.

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SUDAMA DEVI & ANOR. ----- (Appellants)

Versus

SITARAM PD. & ORS----- (Respondents)

For the appellants : Dr. Ravi Ranjan

For the respondents : Mr. Hari Kishore Thakur.

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P R E S E N T

THE HON'BLE JUSTICE SMT. REKHA KUMARI

Rekha Kumari, J., This appeal is directed against the judgment and decree dated 27.8.1977 passed by the 1<sup>st</sup> Addl. Sub Judge, Muzaffarpur in Title Suit No. 48/1969 whereby the learned Sub Judge has decreed the suit. The plaintiffs/ respondents first party had filed the suit against Kedar Nath Sah, original appellant and others for declaration that the sale deeds dated 11.6.1958 and 23.6.1958 executed by Jamuna Sah, their father, in favour of Dukhan Sahu (original appellant no.2/ defendant no.4) and Ram Sewak Sah (appellant no.3/ defendant no.3) were not executed for legal necessity and benefit of the family and the same were null and void and not binding upon the plaintiffs. There was also a prayer for a decree of delivery of possession to the plaintiffs/respondents.

2. The case of the plaintiffs/ respondents 1<sup>st</sup> party is that they are sons of Jamuna Sah ( defendant no.8/ respondent no.5) and Sarsawati Devi (defendant no.5 died during the pendency of the suit). Yamuna Sah was the karta of the family comprising of Yamuna Sah, the plaintiffs and respondents no. 3 and 4 (defendants no.6 and 7 minors at the time of suit). Similarly Kedar Nath Sah was karta of the joint family comprising of himself and his son Basudeo Narain Sah (defendant no.2) and Ramsewak Sah (defendant no.3).

3. The further case of the plaintiffs / respondents is that their father had separated from his brother Yadunandan Prasad in 1947 and since then there was no connection between the brothers in respect of their properties. Their father later on fell in bad company and was addicted to bad habits of wine and woman and began to lead immoral life so much so that he left his wife and children and began to dispose of his property to meet his extravagant habits. The entire burden of his sons, hence fell on the shoulder of his wife who finding that her husband was living an immoral life and disposing of all ancestral property for immoral life, shifted from village home at Mithansarai to Muzaffarpur where she managed to get a service in the Municipality as teacher and since then she is living separate from her husband and began to maintain herself and her sons including the plaintiffs.

4. It is further said that taking advantage of extravagant and immoral life led by Yamuna Sah, defendant no.1, prevailed upon him to dispose of the suit properties which were the only source of livelihood of the family and at the instigation and persuasion of defendant no.1, Yamuna Sah, the father of the plaintiffs, executed a registered sale deed on 11.6.1958 in favour of Dukhan Sahu (defendant no.4), wife of Kedar Nath Sah (defendant no.1) and another registered sale deed on 23.6.1958 in favour of defendant no.3, Ram Sewak Sah, minor son of Basudeo Narain Sah and Dukhani Sah. Both the sale deeds were executed on petty sum of Rs.400/- each which were quite inadequate and the entire joint family properties measuring 18 bighas 13 kathas and 14 dhurs mentioned in the Schedule, including most of the lands covered by the registered deed of gift dated 25.11.1949 executed by Yamuna Sah in favour of their mother Sarsawati Devi and also some plots not belonging to their family, were transferred by the above sale deeds.

5. The case of the plaintiffs is that there was no necessity at all for disposing of the above properties nor the

joint family of the plaintiffs was benefited by the above transfers. It is also said that the plaintiffs were minors at the time of execution of the sale deeds, and on attaining the majority in the year 1966 and 1967, they asked the defendants to give up possession of the lands but they refused. The plaintiffs hence filed the suit for declaration that two sale deeds are null and void being not executed for any legal necessity nor for the benefit of the family. They also prayed for recovery of possession in respect of the properties conveyed through the sale deeds.

6. The appellants only filed written statement and contested the suit. All possible legal objections have been taken by them in their written statement. Their case is that Yamuna Sah never fell in bad company nor became extravagant nor left his wife and children. He was a man of good character and was a reputed Tabla Player and became more famous when he joined A.I.R. service and from the said service he had good income and had been maintaining his family members. The properties of Mithansarai, Jamalbad, Mustafapur and Gosainpur belonging to the family of the plaintiffs were sold by Yamuna Sah as karta of the family to meet the family necessities visualizing the bad prospect of the disputed land, which were in danger zone, being mostly situated by the side of the river Burhi Gandak, which had adopted rapid changing course making the above villages and their surroundings as waste land. The villagers and the land owners had practically left cultivating the lands on account of failure of productivity of the lands and under these circumstances Yamuna Sah alongwith his wife and children decided to shift their residence to town where he had sufficient scope of his engagement and earning as Tabla Player and the family members being fed up with their poor lot in the Country side on account of continuous failure of crops and flood every year, Yamuna Sah and his wife agreed to sell away the entire joint family property and the property that stood in the name of Sarsawati Devi and to shift to the town. The defendant Sarsawati Devi also got her service at the instance of Yamuna Sah.

He never lived separate from his wife and children and sold the properties for the above purpose. The sale was made for valuable consideration and the sale deeds are valid, legal, effective, with consideration and are binding on the plaintiffs and others. The sale deeds were executed for the benefit of the family and also to meet the legal necessities of the family and the family of the plaintiffs was benefited by the same and no amount of consideration money was spent in any immoral act. The appellants have denied that they had prevailed upon Yamuna Sah to sell the lands. Their case also is that the appellant had attained the majority at the time of execution of the sale deeds and they had consented to the sale deeds. The consideration are adequate keeping in view of the prevailing circumstances and the market value.

7. The appellants/defendants hence in their written statement averred that the sale deeds in question are legal, valid and for consideration and for legal necessity and the family members have been benefited by the sale deeds. The plaintiffs thus have no cause of action and they are entitled to no relief.

An additional written statement has also been filed by the defendants/appellants stating, inter alia, that after the deed of gift to his wife, Yamuna Sah was holding possession by the private arrangement with his wife and he executed the sale deeds with respect to the lands possessed by him with the consent and the knowledge of his wife and after the sale deeds the defendants came in possession. As regards plot nos. 185, 111, 973, 974, 1663, 1639, after the execution of the sale deeds some dispute arose with Bhagwan Mahto, Tilak Sah and others and they took forcible possession over the same.

8. On the pleadings of the parties the Sub Judge framed the following issues for consideration:

1. Is the suit as framed maintainable?
2. Have the plaintiffs got cause of action or right to sue?

3. Is the suit barred by limitation?

4. Are the kebalas dated 11.6.1958 and 23.6.1958 not valid, not genuine and without adequate consideration and not binding upon the plaintiffs?

5. Are the plaintiffs entitled to a decree for a declaration as prayed for by them?

9. The learned Sub Judge on the basis of the evidence adduced by the parties decreed the suit and also directed the appellants to put the plaintiffs in possession of the suit properties mentioned in the plaint forthwith, and further observed that in case of failure, the plaintiffs would be entitled to get possession through the process of the court. It was also held that the consideration amount of Rs.800/- would be set off as against the value of the crops appropriated by the appellants.

10. The points that have been urged in this appeal and are to be decided are (i) whether the sale deeds executed by Yamuna Sah in favour of the appellants are valid and binding on the plaintiffs/respondents, (ii) Whether the suit is barred by limitation.

11. It is an admitted position that the lands transferred by the two sale deeds includes joint family property. It is also admitted that the family consisted of Yamuna Sah, the father, the plaintiffs and two other minor sons and that the sale deeds were executed by the father. The position of law is that a father has special power under the Hindu Law to alienate coparcenary property and in the exercise of that power (i) he may make a gift of ancestral movable property and immovable property within reasonable limit, (ii) he may sell or mortgage the ancestral property whether movable or immovable including interest of his sons, grand sons for the payment of his own debts, provided the debt was for the benefit of the family and was not for immoral or illegal purposes.

12. Except as aforesaid, a father has no greater power over coparcenary property than any other manager and he cannot

alienate a coparcenary property except for (i) legal necessity or (ii) for benefit of the estate.

13. It is well settled that in case of sale of coparcenary property by the manager, on the ground of legal necessity, the purchaser has to prove either that there was legal necessity in fact or that he made proper and bonafide enquiry as to the existence of such necessity, but he is not bound to prove whether the money paid has actually been applied to meet the necessity because he can rarely have the means of controlling or directing the actual application.

14. Learned counsel for the appellants submitted that there is sufficient evidence that on account of changing course of river, the condition and value of the suit land and the lands of the other villages which are by the side of the river, had undergone great devaluation as they became sandy, and financial condition of the villagers including the family of the plaintiffs had become bad as they had practically lost their purchasing power and therefore, Yamuna Sah agreed to sell the property to meet the family necessity and sold them. Therefore, there is sufficient evidence that the sale deeds were executed for legal necessity and hence, the sale deeds are valid, legal and binding on the plaintiffs/respondents.

15. Counsel for the respondents/plaintiffs, on the other hand, submitted that the family had no necessity to dispose of the properties. The produce of the properties under the sale deeds was sufficient to meet the expenses of the family and therefore, the sale deeds were not executed for legal necessity. His submission further is that the evidence would show that Yamuna Sah was a profligate. He was addicted to wine and woman and he sold the lands in order to meet his immoral expenses, and the tainted nature of transaction is also evident from the fact that he not only sold the coparcenary property but also lands already gifted to his wife and the lands not belonging to him. His submission then is that the reason given by the appellants in their written

statement for sale of the lands is in direct conflict with the recitals made in the sale deeds and this alone is sufficient, as has been held by the trial court, to show that the appellants have failed to prove that the sale deeds were executed for legal necessity.

16. The appellants in order to prove legal necessity for sale of the lands have examined D.Ws. 1, 2, 3, 4, 5, 6, 7 (Ram Sewak Sah, defendant no.3) and D.W.8 (appellant Kedar Sah). D.W.8 has stated that Yamuna Sah was related to him as nephew and he (Yamuna Sah) had executed two sale deeds in his favour. The lands of Yamuna Sah were unproductive and sandy. The family of Yamuna Sah was benefited by the sale deeds. He had educated and maintained his children by the sale proceeds. He had sold the lands as karta of the family for legal necessity and that the wife and children had consented in the sale of lands. His evidence further is that after selling the lands Yamuna Sah purchased a house and lands at Muzaffarpur. He lived with his family members there and educated his children. In cross-examination he has stated that he cannot say as to how much he used to spend over the education of the children and that he cannot say from whom he purchased the house at Muzaffarpur and what was the consideration amount and that he had learnt about the purchase.

17. D.W.7 the grand son of D.W.8 has stated that as the lands had become sandy and there was difficulty in cultivation Yamuna Sah sold the lands and constructed a house at Muzaffarpur. He has further stated that he had sold the lands for the education and maintenance of the children. In cross-examination he has stated that he was born in 1954.

18. D.W.1 a resident of village Mithansarai has stated that most of the suit land is in the bed of the river and that considering deteriorating condition of the lands, Yamuna Sah had sold and shifted to town where he constructed the house and started living. D.W.2 has stated that he has land at Mithansarai. Gandak river passed by the side of four villages and on account of

change of course of river the lands of four villagers had become sandy and unproductive. In 1957-58 the suit lands were sandy and that as the suit lands had become unproductive, Yamuna Sah sold them and shifted to Muzaffarpur. D.W.3 a villager of Mithansarai has stated that Gandak river passes by the side of Mithansarai, Mustafapur, Jamalbad and Gulaipur villages and on account of change of course of the river the lands of those villages have become sandy as a result of which the condition of the villages has become bad. He has further stated that the suit lands had also become sandy. Yamuna Sah and his pattidars sold their lands and Yamuna Sah shifted to Muzaffarpur with his family members. D.W.4 a resident of Mithansarai has also stated that the lands of Yamuna Sah were sandy. D.W.5 a resident of Mithansarai has stated that the suit lands are sandy and no crop is grown there. D.W.6 a resident of village Guliapur has stated that the lands of Yamuna Sah were sandy and unproductive and so he sold them and that from the consideration money he maintained his children. He had also purchased a house in Muzaffarpur.

19. Thus, according to the pleadings of the appellants and the above evidence adduced by them, as the lands were inundated and become sandy and unproductive, Yamuna Sah sold the lands and shifted to Muzaffarpur and purchased the land and house there. Where a Manager sells the joint family property which has become unproductive, and migrate to another place and purchase house or lands there, such sales are definitely for the benefit of the family and can be upheld though not for legal necessity, but as for the benefit of the estate. But the sale deeds (Exts. B and B/1) show that in both of them the lands were sold to meet the expenses of food and some other necessities and there is no whisper in either of them that as the lands become unproductive and sandy they were sold. Therefore, it cannot be said that the lands were sold for the above reason.

20. D.Ws. 7, 8 as already mentioned above have also stated that for the education and maintenance of the family i.e. for



legal necessity lands were sold by Yamuna Sah. But there is nothing in their evidence to show that there was no other means to meet the above expenses. The existence of a necessary purpose is not the same as legal necessity, for there may be other source making the sale unnecessary and such sale would not be sale for legal necessity. The above evidence of two D.Ws. is also against the tenor of the pleading of the appellant, as the import of pleading, as already mentioned, is that the father sold the lands, as being inundated by Gandak river, the lands had become unproductive. Therefore, on the basis of the above evidence of D.Ws. 7, 8 it cannot also be held that the lands were sold for the above legal necessity.

21. As against the above evidence, the plaintiffs/respondents have adduced oral evidence to prove their case that there was no legal necessity to sell the lands.

22. P.W.5 Sitaram Prasad (plaintiff no.1) has stated that Yamuna Sah was his father. After separation from his brother, Yadunandan Sah, in 1947, his father fell in bad company. He left maintaining them. The mother, hence, left the village and went to Muzaffarpur. She started doing job of a teacher and maintained them. He has further stated that his father needed money for wine and prostitution and the appellants taking advantage of those, got the sale deeds executed including the lands already gifted to his mother and some plots belonging to others. He has denied that the sale deeds were executed with the consent of his mother. He has stated that there was no necessity for his father to sell the lands. He has denied that the suit lands were on the bank of Gandak river and became unproductive and so his father sold the lands. He has denied that his father was a good Tabla player and so he left the village and went to Muzaffarpur town.

23. P.W.4, a resident of Mithansarai, has stated that his father used to work for Yamuna Sah and he also used to visit Yamuna Sah. He has further stated that Yamuna Sah had sufficient land and the lands were productive and there was saving from the

income after making necessary expenses. He has also stated that he had seen Yamuna Sah taking toddy, wine, ganja and indulging in prostitution. In cross-examination he has stated that he has seen the suit lands. He has further stated that he cannot say whether the disputed lands are in between Bandh and river. He has at one place, however, has stated that the disputed lands are in riverbed but in the next breath he has stated that they are not in riverbed.

24. P.W.3, a resident of Gosaipur, adjacent to the village Mithansarai, has stated that Yamuna Sah was a man of immoral character. He had more than 100 bighas of land and out of income of usufruct he used to maintain the family and other expenses. He had no necessity to sell the land. In cross-examination he has stated that he has seen the disputed lands and they were not in riverbed but were on the bandh.

25. Thus, according to the evidence of these witnesses who appear to be the competent witnesses, the disputed lands were not unproductive and from the income of the lands, the family was being maintained and there was no necessity to sell the lands. Though P.W.4 is not consistent in his evidence that the lands are in riverbed and P.W.3 has stated that they are on the bandh of the river, in the sale deeds there is nothing to show that on any boundary of the suit lands, the river was situated. It has also already been shown that in the recitals of the sale deeds there is no mention of the fact that on account of unproductive condition of the lands, they are sold. So, even if the lands were near the bank of river and had become sandy, the appellants cannot take benefit out of it and say that the sale deeds were executed for these reasons. Therefore, it is quite probable that though there was no immediate legal necessity to sell the lands, on account of bad habits of Yamuna Sah, as stated by the above P.Ws. in order to meet the immoral existence, he sold the lands.

26. P.Ws. 1, 2, who are residents of Muzaffarpur town, have also stated that they had seen Yamuna Sah taking wine, ganja.

But even if the evidence of these witnesses are excluded, as the appellants had to prove the legal necessity, and as already shown they have failed to prove the same, the appeal cannot be allowed.

27. In view of the above discussions, I agree with the learned trial court that the appellants have failed to prove that the sale deeds were executed by Yamuna Sah, the father of the plaintiffs for legal necessity. Admittedly the properties sold were coparcenary property. It would also be shown while discussing the point of limitation that the plaintiffs were minors at the time of execution of the sale deeds and as such, they were incapable of giving valid consent in the transfer of the lands. So, the learned court was also justified in holding that in view of section 269 of 16<sup>th</sup> Edition of Mulla's Hindu Law the alienation are liable to be set aside wholly. The sale deeds would not pass even the share of the alienee in the property.

28. As regards the points as to whether the suit is barred by limitation, the Admit card of Bihar School Examination Board (Ext.1) shows that the plaintiff Sitaram Sah (P.W.5) was born on 19.1.1946. He thus attained majority on 18.1.1964 after the execution of the sale deeds. His evidence also shows that his brother, the other plaintiff is younger than him. Naturally he was also minor at the time of execution of the sale deeds.

29. The period of limitation to set aside the father's alienation of ancestral property by a Hindu governed by Mitakshra Law is provided under Article 109 of the Limitation Act and according to the provision the period is 12 years from the date alienee takes possession of the property. The suit was filed in June, 1968, the sale deeds were executed on 11.6.1958 and 23.6.1958. Hence, the suit filed was well within 12 years. Therefore, even if it be assumed that the plaintiffs were not minors on the date of execution of sale deeds, the suit is not barred by limitation.

30. Considering the above point, I do not find merit in the appeal. The same is accordingly dismissed with costs.

PATNA HIGH COURT  
Dated: 24th April, 2008  
Surendra/ N.A.F.R.

( Rekha Kumari, J.)

