

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sardar Kirpal Singh v. Sardar Balwant Singh and another, from the Chief Court of the Punjab (P.C. Appeal No. 86 of 1911); delivered the 13th November 1912.

PRESENT AT THE HEARING:

LORD MACNAGHTEN.

LORD MOULTON.

SIR JOHN EDGE.

MR. AMEER ALI.

[DELIVERED BY SIR JOHN EDGE.]

This is an Appeal by the Defendant in the suit from a decree, dated the 16th January 1909, of the Chief Court of the Punjab, which varied a decree, dated the 31st July 1907, of the District Judge of Gujranwala.

The Plaintiffs, who are Sikh Jats, and the sons of Sardar Gurbakhsh Singh, deceased, brought their suit in the Court of the District Judge of Gujranwala, to obtain possession of ancestral lands which had been conveyed in their lifetime by their father to the Defendant by a deed dated the 26th August 1892. They alleged in their plaint that, according to the custom of the agriculturists of the Punjab their father was not competent to sell the ancestral lands without necessity, and that their father was a debauchee and an extravagant person, and there was no necessity for the sale, and they prayed for a decree cancelling the sale deed and for possession on condition that they should pay

to the Defendant the money, if any, which might be proved to have been paid by the Defendant to their father for valid necessity. The Defendant, so far as is now material, alleged in his written statement that he purchased the land in good faith on payment of lawful consideration without knowledge that the Plaintiffs' father was a debauchee and an extravagant person, that no debt was contracted by their father without necessity, and that the debt which their father contracted with him was spent for valid necessities. The Defendant did not in his written statement deny that the Plaintiffs and their father were agriculturists to whom the custom alleged by the Plaintiffs would apply.

According to the sale deed of the 26th August 1892 the consideration was Rs. 18,000, the details of which stated in that deed were—

	Rs.
Left with the vendee for payment to Din Muhammad Beg, Muhammad Amin Beg, Bodh Raj and Jagan Nath, the previous mortgagees - - - - -	9,500
Credited to the vendee on account of previous debt, principal, and interest due to him under a bond, dated the 13th February 1891 - - - - -	4,650
Credited to the vendee, on account of the previous debt, principal, and interest due to him under bahi account entered on leaf No. 115 - - - - -	3,350
Now received in cash before the Sub-Registrar - - - - -	500

As it must be taken as admitted on the pleadings that the custom alleged by the Plaintiffs applied, the onus of proving the validity as against the Plaintiffs of the consideration was upon the Defendant, the vendee. On that basis the case was fought in the Courts below.

It was found as a fact by the District Judge, and on appeal by the Chief Court, that the Plaintiff's father, the late Sardar Gurbakhsh

Singh, was recklessly extravagant, and that he did not know how to manage his affairs properly. That concurrent finding has an important bearing on the question of necessity, as the payment of a just debt by the male proprietor of lands to which the custom applies is a necessity for which he can validly as against the reversioners alienate ancestral lands. It was held in this connection by a Full Bench of the Chief Court of the Punjab, and as their Lordships consider correctly, in *Devi Datta and others, v. Saudagur Singh and others*, No. 65, Punjab Record, Civil Judgments, that a "just debt" means a debt which is actually due and is not immoral, illegal, or opposed to public policy, and has not been contracted as an act of reckless extravagance, or of wanton waste, or with the intention of destroying the interests of the reversioners.

The District Judge and on Appeal the Chief Court dealt with the items composing the Rs. 18,000 as set out in detail in the sale deed of the 26th August 1892. It appears that the lands or some of them which were included in the sale deed of the 26th August 1892 had been previously mortgaged to Din Muhammad Beg and others by the Plaintiffs' father on the 10th October 1891 for Rs. 6,100 for a period of 20 years with liberty to those mortgagees to make improvements, the cost of which, with interest thereon, the mortgagor undertook to pay at the time of redemption. The District Judge found that the Rs. 6,100 part of the item of Rs. 9,500, was a just antecedent debt, the payment of which was a necessity and that it was not proved to his satisfaction that the balance of the first item, namely Rs. 3,400, was due from Gurbakhsh Singh to Din Muhammad and the other mortgagees or constituted a just debt for the payment of which to Din Muhammad Beg and

those other mortgagees of 1891 there was a necessity within the meaning of the custom. With those findings of the District Judge the Chief Court on Appeal concurred. Their Lordships consider that these concurrent findings should be accepted as conclusive so far as the sums of Rs. 6,100 and Rs. 3,400 are concerned.

As to the second item Rs. 4,650 of the detail of the consideration the District Judge, although he was not satisfied that there had been any necessity for the borrowing by Gurbakhsh Singh of some of the amounts which are included in that item and as to others assumed from the recitals in some of the bonds which were produced by the Defendant and without further proof that there had been necessity, allowed the whole item of Rs. 4,650 as a charge which the Plaintiff should pay to the Defendant. The Chief Court on a careful consideration of the evidence disallowed the whole of the item Rs. 4,650.

The Judges of the Chief Court considered that the District Judge had not rightly appreciated the rule as to the onus of proof, and they were unable to find that any necessity had been established for the incurring by Gurbakhsh Singh of any of the debts which composed the item of Rs. 4,650. From that conclusion of the Chief Court their Lordships see no reason to dissent.

The District Judge disallowed Rs. 1,000 of the item of Rs. 3,350 of the detailed consideration, and the whole of the item of Rs. 500, finding that the Rs. 1,000 and the Rs. 500 were debts which Gurbakhsh Singh had incurred as acts of reckless extravagance. The Chief Court found that the District Judge had rightly disallowed the Rs. 1,000 and the Rs. 500, and pointing out that no mention of the Rs. 3,350 account was made in a consolidating bond which Gurbakhsh Singh executed on 13th February

1891, found that no necessity had been proved for any portion of the item Rs. 3,350. With that conclusion of the Chief Court their Lordships agree.

The result is that their Lordships will humbly advise His Majesty that the Appeal should be dismissed and the decree of the Chief Court be affirmed. The Appellant must pay the costs of this Appeal.

In the Privy Council.

SARDAR KIRPAL SINGH

v.

SARDAR BALWANT SINGH AND
ANOTHER.

DELIVERED BY SIR JOHN EDGE.

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