

Privy Council Appeal No. 64 of 1926.

Allahabad Appeal No. 14 of 1925.

Gauri Shankar and Others - - - - - *Appellants*

v.

Jiwan Singh and Others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 28TH JULY, 1927.

Present at the Hearing :

LORD SHAW.

LORD SINHA.

SIR JOHN WALLIS.

[*Delivered by* LORD SHAW.]

This appeal concerns property which is undoubtedly family property. It was sold for family necessity, so alleged, at the price of Rs. 4,000. There is no allegation made upon the record, or suggested in any respect, that the property was sold for the payment of any debts for immoral purposes. The only question is as to family necessity.

A certain practice appears to have crept up in the Allahabad High Court of investigating and settling these cases upon the principles of accounting. If, upon a strict accounting, it is found that, although it be completely established that by far the most substantial part of the consideration was for family necessity, yet if a certain balance of the price remains unaccounted for, or insufficiently proved, then by that result the parties' interests are to be judged, and the sale is set aside, conditionally upon the repayment by the vendor or his representatives of the substantial part referred to.

It is manifest that this practice imperils transactions of sale which, in their real essence and substance, are sales made for family necessity.

The present case is interesting as illustrative of the point. It may be that in all cases of family necessity sums have been expended which, after a lapse of years, cannot be verified by entries in books or the like. It is therefore important to notice that in the present case the transaction of sale stood unchallenged for upwards of 11 years. The sale took place on the 26th February, 1910, and it was not until the 11th July, 1921, that this sale was put in challenge and the Court was asked to declare it void as not having been for family necessity.

In the course of the investigation, the case as to family necessity with regard to the major portion of the accounts was completely satisfied. Both Courts held that payment was made to extinguish a prior mortgage bond, and the amount due thereunder was Rs. 3,135. Both Courts further agree in holding that the Rs. 65 was paid to the vendors before the execution of the sale deed.

The Judge who tried the case stated his conclusion upon the largest item thus:—"It is, therefore, clear, that the bond of 17th April, 1906, was executed by Meharban Singh and his sons for family necessity." He also makes the same clear statement with regard to the Rs. 65. As to the third item of Rs. 800, he holds it to be proved by the Auraiya Treasury, and its official who was called in, that sums amounting to a total of Rs. 535 were paid by the vendors into the Treasury before the 15th August, 1910. The small balance of between two and three hundred rupees, the learned Judge says, has not been very well accounted for; but, in view of the fact that a large portion of the consideration for the sale has been proved to have been required for legal necessity, he has no hesitation in holding that the entire consideration for the sale was such necessity. He adds this pregnant remark: "It is also to be considered that the suit has been brought long after the execution of the sale deed, when it is not easy for the vendees to adduce strong and perfectly satisfactory evidence about each item of the sale consideration." These views of the Subordinate Judge have the approval of their Lordships.

The learned Judges of the High Court, however, in accordance with the practice to which allusion has been made, state that on their estimate of the consideration for sale, they do not reach the conclusion that the entire amount of the Rs. 4,000 is proved to have been justified by necessity. They admit the bond and the item of Rs. 3,135 thereunder. They admit the payment of Rs. 65. They further give credit for the payment of certain Government and other dues exigible upon the property; but they consider that there is an unaccounted balance of Rs. 500. Having reached that amount, the learned Judges of the High Court then pronounce the sale invalid, subject to the condition of payment to the appellants of the items proved.

Their Lordships think this practice to be erroneous. It is to be noted that a judgment which finally summed up the entire law on this subject was pronounced by this Board on the 10th December, 1926, in the case of *Krishn Das and Others v. Nathu Ram* (54 I.A. 79). The judgment of the High Court had been given about twenty months sooner, namely, on the 30th March, 1925. In their Lordships' view, had the *Krishn Das* judgment been pronounced prior to the judgment of the High Court, that Court would have, in view of it, reached a different conclusion. In that case a considerable body of authority was considered by the Board ; and the result was in substance that a sale of joint property will not be set aside merely because a part of the proceeds is not proved to have been applied to purposes of necessity. The real question that has to be considered is this : Whether the sale itself was justified by necessity. Their Lordships cannot go back upon that decision. If the purchaser has acted honestly, if the existence of a family necessity for sale is made out, and the price is not unreasonably low, he (the purchaser) is not bound to account for the application of the price. They, however, take the case, even upon the footing, which might well be challenged, that Rs. 500 out of the price of Rs. 4,000 had not been fully accounted for. Granted that it was so, then the balance of Rs. 3,500 out of Rs. 4,000 is surely a justification of sale for a family necessity proved up to that amount.

In those circumstances their Lordships will humbly advise His Majesty that this appeal should be sustained, the decree of the High Court set aside with costs, and that of the Subordinate Court restored. The first respondent (the plaintiff) will pay the costs of the appeal.

In the Privy Council.

GAURI SHANKAR AND OTHERS

vs.

JIWAN SINGH AND OTHERS.

DELIVERED BY LORD SHAW.

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