Privy Council Appeal No. 22 *of* 1924.

Allahabad Appeal No. 35 *of* 1922.

Jawahir Singh - - - - - - - - *Appellant*

v.

Udai Parkash 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 4TH DECEMBER, 1925.

Present at the Hearing:

LORD SHAW.
LORD PHILLIMORE.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* MR. AMEER ALI.]

This is an *ex parte* appeal from a decree of the High Court at Allahabad dated the 3rd July, 1922, and arises out of a suit brought by the plaintiffs on the 14th September, 1919, for a declaration that a sale effected by their father, Harbans Singh, in 1906, in favour of one Dalip Singh, was not justified by any such necessity as would validate the transaction against the other members of the joint family of which Harbans Singh was the head. Dalip Singh's interests have been acquired by the present appellant, Jawahir Singh. The Trial Judge held that the plaintiffs had not made out a sufficient case to invalidate the sale to Dalip Singh. He was also of opinion that the plaintiffs' claims were barred by the Statute of Limitation (Act IX of 1908) as Fateh Singh, their eldest brother, had attained majority long ago and had not questioned the sale. He accordingly dismissed the plaintiffs' suit.

On appeal to the High Court the learned Judges over-ruled the plea of limitation. They relied on the decisions of their own Court* and differing from the view taken by the Madras High Court on which the Subordinate Judge had rested his judgment, they held that the conduct of Fateh Singh, the eldest brother, did not affect the undoubted rights of the plaintiffs. They also held that, save and except Rupees 1,400, the defendant appellant had failed to establish that the consideration for the transfer of the property to Dalip Singh was for any such necessity as would make the transaction valid against the sons. They accordingly set aside the order of the First Court and made a decree in favour of the plaintiffs for recovery of the property in suit, subject to their paying into Court within three months from the date of their decree, for the benefit of the defendant, Jawahir Singh, the sum of Rs. 1,400. They further directed that if payment should not be made within the prescribed period the suit should stand dismissed with costs throughout.

From this decree Jawahir Singh has appealed to His Majesty in Council. The same contentions that were urged in the High Court have been advanced before the Board. It becomes necessary, therefore, to set out some of the facts which have either been established or admitted in these proceedings.

Harbans Singh, the father, at the time he sold the property to Dalip Singh, owned a moiety of the village of Shikohpur, in the District of Meerut. The property was admittedly ancestral, in which his sons were jointly entitled. The family consisted of himself and three sons, the eldest of whom, Fateh Singh, is defendant No. 3.

Sometime in 1900 Harbans Singh became involved in debt, and he appears to have executed a mortgage of the property in favour of three money-lenders, Girwar Singh and two others. In order to discharge this debt Harbans Singh entered into negotiations with one Udai Singh for the sale of the family property. A sale deed was actually drawn up in his favour for a consideration of Rs. 13,000. Thereupon Dalip Singh put forward a claim of pre-emption in respect of the property that was going to be sold. His right of pre-emption was based on the village custom which, being questioned, came before the Court and was judicially affirmed. The price of Rs. 13,000 was fixed for the joint family's moiety. The pre-emption decree in favour of Dalip Singh bears date the 27th of August, 1906. Dalip Singh, it is admitted, paid Rs. 13,000 to Harbans Singh, which he unquestionably appropriated to his own use. It further appears that whilst the pre-emption suit was proceeding the debt to Girwar Singh and the two other money-lenders was admittedly paid off. At the time of the pre-emption sale Harbans Singh executed a receipt for Rs. 13,000, dated the 19th of December, 1906, in favour of Dalip Singh, stating the particulars of the moneys received by him from Dalip Singh.

* *Vigheswara* v. *Babayya*, I.L.R. 16, Mad. 436; *Doraisami* v. *Salavar*, I.L.R. 38, Mad. 118.

As the learned Judges of the High Court point out, save and except the third item in the receipt relating to a promissory note for Rs. 1,000, dated 30th March, 1904, executed by Harbans in favour of Dalip which, together with interest, amounted to Rs. 1,400, it showed no consideration of an antecedent character so as to make it binding on the sons. With reference to this part of the transaction the learned Judges say as follows :—

> "What we are concerned with is the position of Dalip Singh, who deliberately took it upon himself to thrust himself into this matter by asserting his claim to pre-empt the sale. He, therefore, made himself liable for any legal consequences which might result from the fact that he was intermeddling with a sale contracted by a Hindu father who had minor sons living jointly with him. He handed over Rs. 2,000 to Harbans Singh in cash on December 19th, 1906. He arranged with certain other persons to pay Harbans Singh Rs. 5,000 more in cash and he gave Harbans Singh a mortgage of property of his own for Rs. 4,600, the consideration of which was set down as forming part of the Rs. 13,000 which he was bound to pay under the decree in the pre-emption suit. There remains only a small sum of Rs. 1,400 which was set off against an antecedent debt, that is to say, against money previously advanced by Dalip Singh to Harbans Singh, not on the security of any alienation of joint family property in the hands of the latter, but on a simple promissory note. The date of this promissory note was more than 2½ years prior to the execution of the receipt of December 19th, 1906. There seems no reason to doubt that there was real disassociation in fact as well as in point of time between the two transactions."

It is contended that certain expressions used by their Lordships in the case of *Sahu Ram Chandra* v. *Bhup Singh* (L.R. 44, I.A. 126, *see* p. 133) that debts contracted by the father "in order to raise money to pay off an antecedent debt" support the view that in the present case the sale to Dalip Singh was to pay off an "antecedent debt," viz., the money due to Girwar Singh and his associates. In their Lordships' opinion the contention is wholly untenable; as the High Court point out, the debt to Girwar and others had already been paid off: and no portion of the Rs. 13,000 which Harbans Singh received from Dalip Singh was applied to its discharge.

The doctrine of "antecedent debt" has been carried far enough; if the present contention is acceded to, it would mean that a contract for a loan which never was completed, to pay off a previous debt otherwise discharged, would become "an antecedent debt." The contention is, on the face of it, absurd.

On the question of limitation their Lordships concur with the High Court. They are of opinion that there is no substance in this appeal and that it should be dismissed; but without costs, as there is no appearance on behalf of the respondents, and their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

JAWAHIR SINGH

v.

UDAI PARKASH AND OTHERS.

DELIVERED BY MR. AMEER ALI.

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