Privy Council Appeals Nos. 127 & 128 *of* 1936

Rai Sahib Lala Atma Ram - - - - - *Appellant*

v.

Thakur Sadhu Singh and another - - - - *Respondents*

Rai Sahib Lala Atma Ram - - - - - *Appellant*

v.

Kanwar Kishen Singh and others - - - - *Respondents*

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH DECEMBER, 1937

Present at the Hearing:

LORD THANKERTON.
SIR SHADI LAL.
SIR GEORGE RANKIN.

[*Delivered by* SIR SHADI LAL.]

On the 12th May, 1931, two brothers, Agar Singh and Nandlal Singh, who were proprietors of a one-third share in the village Bajika, situated in Tahsil Sirsa of the Hissar district, entered into an agreement with the appellant, Rai Sahib Lala Atma Ram, to sell the whole of their estate in that village to him for Rs.52,000. In the deed of agreement they set out the reasons for selling the land in these terms:—

> "We are unable to manage the cultivation work of the estate. Besides we owe debts, interest whereupon is swelling day by day. The revenue of the estate is also due from us. There is no other alternative but to sell the estate for payment of the debts and the revenue."

As they were members of an agricultural tribe notified under a special statute called the Punjab Alienation of Land Act, XIII of 1900, and the proposed vendee Rai Sahib Lala Atma Ram was not a member of an agricultural tribe, they could not sell the land to him without obtaining the sanction of the Deputy Commissioner of the District to the sale. They accordingly recited in the agreement that they had applied to the Deputy Commissioner for permission to sell the land, and that after obtaining the required sanction they would execute a sale deed in favour of the vendee.

Sub-section (3) of section 3 of the statute imposes upon the Deputy Commissioner, dealing with such an application for sanction to sell land, the duty of making an enquiry into the circumstances of the proposed alienation; and it was only after considering the result of the enquiry required under the law that the Deputy Commissioner made an order on the 1st September, 1931, sanctioning the sale. After obtaining the requisite sanction, both the brothers jointly executed in favour of Rai Sahib Lala Atma Ram on the 22nd September, 1931, a deed of sale in respect of the land, and received Rs.48,812, annas 10 and pies 9, in the presence of the Sub-Registrar who registered the deed, and also admitted to have received the balance of the price as set out in the document. The balance, which amounted to only Rs.3,187/5/3 included Rs.800 received by them as earnest money, and Rs.1,500 deposited with the vendee for the redemption of a part of the land from a mortgagee, and about Rs.800 for payment by him to Government on account of the arrears of land revenue and water rate due from them.

On the 28th November, 1932, two suits were brought by the sons of the vendors to impeach the sale, one suit by the sons of Agar Singh claiming possession of a moiety of the land as their father had died in April, 1932, and the other by the sons of Nandlal Singh asking for a declaration that the alienation should not affect their right to recover possession of the other half of the land on the death of their father. The Trial Judge, after a careful consideration of the issues raised between the parties, dismissed both the suits. On appeal by the sons of the alienors the High Court at Lahore set aside the decrees dismissing the suits and allowed the claim in each case subject to the payment of Rs.3,700 by the plaintiffs to the vendee.

From the decrees of the High Court the vendee has brought, to His Majesty in Council, these two appeals which have been consolidated.

The Courts below have concurred in holding that the whole of the price for the land was paid by the vendee as detailed in the sale deed. They are also agreed that the plaintiffs' attempt to depict their fathers as men of immoral character and extravagant habits has wholly failed.

As regards the validity of the transaction the Trial Judge decided that the sale was an act of good management and should be upheld. But this view was not accepted by the Judges of the High Court, Addison and Abdul Rashid JJ., whose judgment on this point is neither clear nor convincing.

Their Lordships have examined the circumstances which led the vendors to make the sale and induced the Deputy Commissioner to give sanction to the transaction, and have reached the conclusion that the view taken by the Trial Judge is fully justified. It must be remembered that the vendors resided in a village called Dhingsara, which is at a

distance of more than 15 miles from Bajika where the land in dispute is situate. They were, therefore, unable to cultivate the land themselves; and had to employ tenants to cultivate it. In their application to the Deputy Commissioner for the grant of sanction to sell the land they made it clear that owing to their residence in Dhingsara they could not carry on satisfactorily "the reclamation and cultivation work" of the land in question, and that the tenants in occupation of the land "do not pay rent" to them, nor do they pay water rate for water used by them for irrigating the land. The applicants also point out that "the estate yields a very small income", and that they have not been able to pay even the land revenue to Government for two years, with the result that they had incurred debts, the interest on which was "swelling day by day". On these grounds they asked for permission to sell the land to the appellant for Rs.52,000, a price which, they said, no member of an agricultural tribe was prepared to pay.

Now, the sanction, if granted, would involve the permanent transfer of land belonging to a member of an agricultural tribe to a person who was not a member of an agricultural tribe; and the Deputy Commissioner had to satisfy himself whether there were adequate grounds for giving sanction which would justify a departure from the policy of the Government as indicated in the statute and emphasised in the instructions issued to Deputy Commissioners by superior revenue authorities. The application was, therefore, referred to the Tahsildar in charge of the Tahsil in which the land was situated for an enquiry and a report. Chaudhri Lajja Ram, the Tahsildar, who made the enquiry into the circumstances of the proposed sale, in his deposition before the Court, describes Bajika, the village in question, as a very unsatisfactory village from the standpoint of the landlord. The major portion of the agricultural land in the village depends for irrigation upon rain water which is precarious. As to the tenants in the village he says that they "are thieves by profession. They do not pay their debts, rents and dues". The Tahsildar still advised the vendors not to sell their land, as it was their ancestral property, but they expressed their inability to follow his advice and complained of the non-payment of rent by the tenants. In their statements the vendors, not only confirmed the allegations made by them in their application for sanction, but also added that they owed large sums to various creditors, to whom they had to pay interest. They also explained that if they failed to discharge their debts soon, the result would be that their entire property would be sold.

The Tahsildar issued notice inviting members of agricultural tribes to purchase the land, but in spite of various steps taken by him and a subordinate revenue officer to inform the proprietors and occupancy tenants belonging to agricultural tribes of the proposal to sell the land, no person came forward to buy it. The Tahsildar, after making the

enquiry, submitted his report recording reasons for his recommendation that the applicants should be granted permission to sell the land. This report was forwarded by him to the Sub-Divisional Officer, Sirsa, who in turn despatched it to the Deputy Commissioner with a strong recommendation that the sanction should be granted. Upon a consideration of the report and other relevant documents the Deputy Commissioner recorded an order granting permission to the vendors to sell the land to the appellant. It was only after obtaining this sanction that the vendors executed the sale deed in question.

This survey of the circumstances, which induced the Deputy Commissioner to grant his sanction in compliance with the requirements of the statute, makes it clear that the vendors, for various reasons, found the property to be an encumbrance, and realised that, if they did not sell the land in order to find money to discharge their debts, they would run the risk of losing even the land which was situated in the village where they resided. They were, therefore, naturally anxious to save that land, which they could satisfactorily manage and which was a source of profit to them.

On these facts the conclusion is irresistible that the sale was an act of good management on the part of the vendors, and this was the view expressed by the Trial Judge. Their Lordships think that his decision has been set aside by the High Court on erroneous grounds; and there can be no doubt that, if the sale was an act of good management, it cannot be challenged by the plaintiffs.

But this is not the only reason for upholding the sale. It is satisfactorily established that the appellant, before purchasing the property, made proper and bona fide enquiry as to the indebtedness of the vendors, and satisfied himself about the existence of necessity for the sale. The evidence on this point is furnished by the testimony of the vendee himself and of the persons who were deputed by him to make the enquiry. It is to be observed that this evidence, which was believed by the Trial Judge, receives corroboration from the official enquiry which was conducted by the revenue officers for the purpose of determining the question whether sanction for the sale should be granted or refused.

Now, it is a well established rule that the onus lies on the alienee to prove either that there was legal necessity in fact which would justify the alienation, or that he made a proper and bona fide enquiry into the alleged necessity and satisfied himself as to the existence of such necessity. If he fails to prove that there was a necessity in fact, alienation may still be upheld if he proves that he made enquiry as to the existence of the alleged necessity, and that the facts represented to him were such as, if true, would have justified the transaction. If he discharges this burden, he is not bound to see that the money paid by him is actually applied by the alienor to meet the necessity; vide, *inter alia*, *Hunoomanpersaud Panday* v. *Munraj Koonweree* (6 Moo. I.A. 393).

In the opinion of their Lordships the enquiry contemplated by the law was made by the vendee in this case, and this ground alone would sustain the sale made in his favour.

Their Lordships have no hesitation in holding that the judgment appealed from is wrong and must be set aside. They will, therefore, humbly advise His Majesty that these consolidated appeals should be allowed, that the decrees granted by the High Court be set aside, and those made by the Trial Judge dismissing the suits be restored. The respondents must pay the costs incurred by the appellant here as well as in India.

(46887—3A) Wt. 3151—17 190 1 35 P. St. G. 338

In the Privy Council

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DELIVERED BY SIR SHADI LAL

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