



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S). 5340/2017

Dastagirsab

Appellant(s)

VERSUS

Sharanappa

@ Shivasharanappa Police Patil (D) by LRs. & Ors. Respondent(s)

J U D G M E N T

Joymalya Bagchi, J.

1. The appeal is directed against judgment and decree dated 12.01.2007 passed by the High Court of Karnataka reversing the judgment passed by the Principal Civil Judge (Senior Division), Gulbarga¹ in OS No. 93 of 2000 and decreeing partition and separate possession of half share of the suit land² in favour of the plaintiff-respondent no.7³ herein.
2. For clarity, parties are referred as per their status before Trial Court. The plaintiff's case is as follows:

¹ Hereinafter referred to as 'the Trial Court'.

² Land measuring 9 acres 1 gunta in Survey No. 49/2, Bablad Village, Taluk and District Gulbarga, Karnataka.

³ Hereinafter referred to as 'Plaintiff'.

- (i) 1st defendant-Sharanappa⁴ is the plaintiff's father. He had four sons, namely, Kashiraya-plaintiff, Bhimaraya-2nd defendant⁵, Mahalingappa-3rd defendant⁶ and Ravichandra-4th defendant⁷. They constituted a Hindu Undivided Family⁸ and 1st defendant was the Karta of the HUF. The suit land belonged to the HUF. 1st defendant was addicted to alcohol and indulged in bad habits. To meet his wayward lifestyle he had sold various parcels of land belonging to the HUF for meagre consideration. When the plaintiff objected, 1st defendant promised he would make fixed deposits in the name of all his sons and will not sell the suit land. He also stated he would settle larger sums in favour of 3rd and 4th defendants, and the suit land shall be divided amongst the plaintiff and the 2nd defendant. 1st defendant did not deposit any money in the name of plaintiff and 2nd defendant but deposited large amounts in favour of 3rd and 4th defendants, and colluded with the latter to execute a sale deed in respect of the suit land in favour

⁴ Hereinafter referred to as '1st defendant'.

⁵ Hereinafter referred to as '2nd defendant'.

⁶ Hereinafter referred to as '3rd defendant'.

⁷ Hereinafter referred to as '4th defendant'.

⁸ 'HUF' for short.

of the 5th defendant-appellant⁹ on 26.07.1995 without consideration or family necessity. The plaintiff was unaware of the sale transaction till December, 1999 as the possession had not been handed over to the 5th defendant. Upon enquires in December, 1999 the plaintiff came to know of the said sale and was assured by defendant nos.1 and 3 to 5 that the deed shall be cancelled.

- (ii) When the defendants failed to cancel the deed and tried to alienate the suit land to other parties, he filed the suit seeking declaration that the sale deed dated 26.07.1995 was null and void. He also prayed for partition and separate possession of the suit land.

- 3. During the pendency of the suit, 1st defendant-Karta died. 5th defendant contested the suit by filing written statement wherein he *inter alia* contended 1st defendant had agreed to sell the suit land for a valuable consideration. On 18.06.1994, he received Rs.1,00,000/- out of the said consideration and executed an agreement for sale. The agreement for sale as well as the money

⁹ Hereinafter referred to as '5th defendant'.

receipt was signed by his wife-Siddamma, daughter-Kashibai and 4th defendant-coparcener. On 26.07.1995, 1st defendant obtained the remaining consideration and executed a document which was signed by defendant nos. 3 and 4. Upon payment of the entire consideration, the sale deed was executed showing the sale consideration as Rs.72,000/- for court fee purposes. The sale had been executed by 1st defendant for legal necessity owing to the marriage of his daughter Kashibai. After the sale he was put in possession of the suit land as evident from mutation certificate, land revenue records, etc. The suit was a collusive one and is not maintainable as all the properties of the HUF and other parties had not been joined in the suit.

- 4.** The Trial Court framed eleven issues including the following:

- “1. Whether the plaintiff proves that he is entitled to share in the suit land? If so, to what extent?*
- 2. Whether the plaintiff proves that he is in joint possession of the suit property?*
-*
- 6. Whether defendant no.5 proves that he is a bona fide purchaser of the suit land for valuable consideration?”*

- 5.** Plaintiff examined himself and two witnesses to prove his case that the suit land was not sold for legal necessity while 5th defendant examined himself and three witnesses to probabalise the contrary.
- 6.** The Trial Court held the suit land belonged to the HUF and 1st defendant-Karta had sold various parcels of land of the HUF to meet financial needs of the family. On 26.07.1995, the suit land was sold to meet the expenses of the marriage of Kashibai, that is, due to legal necessity. Holding as such, the suit was dismissed.
- 7.** The High Court reversed the findings of the Trial Court and allowed the suit. The High Court held the appellant had not specifically denied the plaintiff's case and had not made due enquiry as to how the 1st defendant utilized the sale consideration in question. As such, the High Court held 5th defendant has not adduced any evidence in respect of legal necessity and the plea that the sale was for Kashibai's marriage is not well founded as she had been married earlier.
- 8.** Heard learned counsel for the parties and perused the record.

- 9.** From an analysis of the materials on record, the moot issue which falls for consideration is:

Whether the suit land was sold to 5th defendant for legal necessity i.e. the marriage of daughter Kashibai?

- 10.** Evidence on record unequivocally shows the 1st defendant was the Karta of an HUF of which his sons i.e., plaintiff, defendant nos. 2, 3 and 4 were coparceners. The HUF had owned various immovable properties. Some of these properties had been sold by 1st defendant-Karta to various alienees earlier. Plaintiff contended such sales were to meet the extravagant and bad habits of 1st defendant and not for legal necessity. The suit land also belonged to the HUF and had been sold by 1st defendant-Karta.

- 11.** Right of a Karta to sell joint family property is well settled. Karta enjoys wide discretion with regard to existence of legal necessity and in what way such necessity can be fulfilled. Whether legal necessity existed justifying the sale would depend on facts of each case. In *Beereddy Dasaratharami Reddy vs. V. Manjunath & Anr.*¹⁰, this Court succinctly elucidated:

¹⁰ Beereddy Dasaratharami Reddy vs. V. Manjunath & Anr. (2021) 19 SCC 263.

“6. Right of the Karta to execute agreement to sell or sale deed of a joint Hindu family property is settled and is beyond cavil vide several judgments of this Court including Sri Narayan Bal v. Sridhar Sutar (1996) 8 SCC 54] , wherein it has been held that a joint Hindu family is capable of acting through its Karta or adult member of the family in management of the joint Hindu family property. A coparcener who has right to claim a share in the joint Hindu family estate cannot seek injunction against the Karta restraining him from dealing with or entering into a transaction from sale of the joint Hindu family property, albeit post alienation has a right to challenge the alienation if the same is not for legal necessity or for betterment of the estate. Where a Karta has alienated a joint Hindu family property for value either for legal necessity or benefit of the estate it would bind the interest of all undivided members of the family even when they are minors or widows. There are no specific grounds that establish the existence of legal necessity and the existence of legal necessity depends upon facts of each case. The Karta enjoys wide discretion in his decision over existence of legal necessity and as to in what way such necessity can be fulfilled. The exercise of powers given the rights of the Karta on fulfilling the requirement of legal necessity or betterment of the estate is valid and binding on other coparceners.

7. Elucidating the position in Hindu law, this Court in Kehar Singh v. Nachittar Kaur (2018) 14 SCC 445 has referred to Mulla on Hindu Law and the concept of legal necessity to observe thus: (SCC pp. 449-51, paras 20-21 & 26)

“20. Mulla in his classic work Hindu Law while dealing with the right of a father to alienate any ancestral property said in Article 254, which reads as under:

‘Article 254

254. Alienation by father.—A Hindu father as such has special powers of alienating coparcenary property, which no other coparcener has. In the exercise of these powers he may:

(1) make a gift of ancestral movable property to the extent mentioned in Article 223, and even of ancestral immovable property to the extent mentioned in Article 224;

(2) sell or mortgage ancestral property, whether movable or immovable, including the interest of his sons, grandsons and great-grandsons therein, for the payment of his own debt, provided the debt was an antecedent debt, and was not incurred for immoral or illegal purposes (Article 294).’

21. What is legal necessity was also succinctly said by Mulla in Article 241, which reads as under:

'Article 241

241. What is legal necessity.—The following have been held to be family necessities within the meaning of Article 240:

- (a) payment of government revenue and of debts which are payable out of the family property;*
- (b) maintenance of coparceners and of the members of their families;*
- (c) marriage expenses of male coparceners, and of the daughters of coparceners;*
- (d) performance of the necessary funeral or family ceremonies;*
- (e) costs of necessary litigation in recovering or preserving the estate;*
- (f) costs of defending the head of the joint family or any other member against a serious criminal charge;*
- (g) payment of debts incurred for family business or other necessary purpose. In the case of a manager other than a father, it is not enough to show merely that the debt is a pre-existing debt;*

The above are not the only indices for concluding as to whether the alienation was indeed for legal necessity, nor can the enumeration of criterion for establishing legal necessity be copious or even predictable. It must therefore depend on the facts of each case. When, therefore, property is sold in order to fulfil tax obligations incurred by a family business, such alienation can be classified as constituting legal necessity.'

(See Hindu Law by Mulla "22nd Edition".)

26. Once the factum of existence of legal necessity stood proved, then, in our view, no co-coparcener (son) has a right to challenge the sale made by the karta of his family. The plaintiff being a son was one of the co-coparceners along with his father Pritam Singh. He had no right to challenge such sale in the light of findings of legal necessity being recorded against him. It was more so when the plaintiff failed to prove by any evidence that there was no legal necessity for sale of the suit land or that the evidence adduced by the defendants to prove the factum of existence of legal necessity was either insufficient or irrelevant or no evidence at all."

12. Plaintiff-coparcener has assailed the sale transaction undertaken by 1st defendant-Karta on the ground it was not made for legal necessity but to meet his expensive and wasteful habits. Evidence has come on record 1st defendant-Karta had previously sold various properties of the HUF. Though it is the plaintiff's case that such sales were not for legal necessities, he has not challenged any of these transactions. To justify his present claim, the plaintiff asserts the 1st defendant assured him money derived from such sales would be settled in favour of the sons including the plaintiff and that no other properties would be sold. It is further the plaintiff's case, no money was settled in his favour or that of the 2nd defendant but substantial sums were settled in favour of 3rd and 4th defendant. Though the plaintiff alleges 1st defendant acted in a biased and unfair manner, admittedly the plaintiff has not taken any steps for recovery of such outstanding dues earlier or even in the present suit.

13. In view of such conduct, the Trial Court rightly inferred the earlier sale transactions of HUF properties were for financial

needs and the plea that the previous HUF assets were disposed of to meet the Karta's extravagant habits was an afterthought.

14. With regard to the sale of the suit land to 5th defendant, the Trial Court noted that during cross-examination the plaintiff admitted his father had informed him that the property had been sold to meet family needs. High Court completely glossed over this fact and reversed the finding on a specious logic that the sale of the suit land for Kashibai's marriage was improbable as the marriage had already taken place prior to the sale in question.

15. It is true Kashibai's marriage had taken place in 1991, couple of years prior to the 1st defendant-Karta entering into sale of the suit property for valuable consideration. It is common knowledge families incur heavy debts to perform marriages of their daughters and such debts have a cascading effect on family finances down the years. Apart from the 1st defendant-Karta disclosing to the plaintiff such sale was to meet family needs, the money receipts for the sale consideration were signed by two of the coparceners, as well as the 1st defendant's wife and daughter Kashibai, whose marriage

expenses are stated to be the reason for the sale. These circumstances demonstrate expenses borne by the coparceners in respect of Kashibai's marriage created financial stress on the family leading to the sale of the suit land. High Court overlooked these facts and came to an erroneous finding that 5th defendant's case for sale on the ground of legal necessity for marriage is not proved.

- 16.** High Court held as 5th defendant had not made enquiries regarding the source of title or the manner in which the sale consideration was distributed among coparceners, hence he cannot be held to be a *bona fide* purchaser. We are conscious that the onus to prove that a sale made by the Karta on behalf of other coparceners of HUF for legal necessity lies on the alienee/purchaser¹¹. The 5th defendant-purchaser, through deft cross examination of the plaintiff and other evidence, has established a clear nexus between the sale transaction and the expenses undertaken for Kashibai's marriage and has thereby discharged the onus. In these circumstances, his case cannot be disbelieved on the score that all the coparceners had not received the sale consideration. This fact

¹¹ See *Rani v. Santa Bala Debnath* (1970) 3 SCC 722 (paras 10-11).

is in the special knowledge of the plaintiff and other coparceners. Onus of proof on the stranger-purchaser cannot run counter to the principle of reverse burden enshrined in Section 106 of the Evidence Act, 1872 and saddle him with the liability to prove facts which are within the special knowledge of the coparceners of the HUF.

17. The suit land stood in the name of 1st defendant-Karta. Relying on such land entries, 5th defendant purchased the land for valuable consideration. The money receipts were executed by some of the coparceners namely, defendant nos. 3 and 4 as well as Kashibai. Given these facts, we are inclined to hold 5th defendant-purchaser could not have doubted the right of the 1st defendant-karta to effect the sale for legal necessities and had acted as a man of ordinary prudence to purchase the suit land.

18. On the contrary, conduct of the plaintiff in belatedly challenging the sale transaction after five years in the year 2000 raises grave doubt regarding his *bona fides*. Plaintiff sought to justify the delay by contending he was unaware of the sale since possession of the suit land was not parted with. Such explanation is wholly facetious as ample evidence in the

form of mutation certificate, land record entries standing in the name of 5th defendant have come on record establishing his continued possession of the suit land. High Court not only ignored these facts improbabilising the plaintiff's case but made up a third case that the plaintiff was working for gain elsewhere and could not have been aware of the sale transaction. No such case was either pleaded or probabilsed by the plaintiff during trial.

- 19.** *In fine*, we are of the view the High Court erred in holding the sale in favour of 5th defendant was not for legal necessity and the latter was not a *bona fide* purchaser for valuable consideration. As such, we set aside the impugned judgment and decree of the High Court and uphold the judgment of the Trial Court dismissing the suit. The appeal is allowed.

....., J
(**SANDEEP MEHTA**)

....., J
(**JOYMALYA BAGCHI**)

**NEW DELHI,
SEPTEMBER 16, 2025**