



# The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2023

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

## Introduction

### Facts And Procedural History :

An area of 98 acres was owned by Sashi Bhusan in District of Mouza Behala , 24-Parganas. When Sashi Bhusan died in 1920, his daughter named Sarala received the land.

She inherited her father's property under system of Dayabhaga law as the limited owner. Sarala became the wife of Kunja Behari after their marriage. Gobinda and Tulsi , as well as Nalini, Kamala, Mangala and Radha, were all left behind after the latter died in 1937. Kunja Behari had three daughters, two of whom married while he was still alive. Except for a mansion built on the Jand at Mouza Behala, Kunja Behari left no property behind. In 1937, before his death in 1937, Kunja Behari had been ill for approximately a year. He appears to have worked in a low-paying job for the majority of his life. Gobinda and Tulsi were still minors at the time of their father's death.

Sarala signed a deed on 22nd October ,1941 of Ext. E, which agrees to sell a portion of land (.90 acres) to Chapalabala, the wife of Sakha Nath Ghosh, for Rs 1100 on that day. Sarala had offered to sell the 90 acres of the land she owned because she was in desperate need of money and needed to pay off some obligations, according to the selling agreement. To show her gratitude, Sarala signed a receipt for Rs 101 in earnest currency. Sarala appears to have been reluctant to fulfil her end of the contract for some time after that. After signing a paper on 13 March,1942, she transferred the land she had agreed to sell to Banikana and Chapalabala for Rs 1500.

Now on account of financial needs and to meet certain debts and out of other legal necessity , she announced to sell 90 acres land at rent of Rs 23 per annum free from defects and encumbrances leaving a portion of homestead land measuring .08 acres. <sup>1</sup>

The deed further stated that Sarala had already received Rs 899 before to the day of the sale, and also Rs 500 was paid to her at the presence of Sub Registrar at the time of the transaction. A payment for Rs 500 was endorsed by that Officer in front of the Sub-Registrar.

Abinash Chandra Chakravarty attested to Sarala's thumb-mark, and four witnesses, including son Gobinda, confirmed to the deed. The sale deed stated that Rs 101 had been paid during the time of agreement sale, which was clearly stated in the

---

<sup>1</sup> Rani vs. Santa SC 1971

document. The recital inside the agreement of sale, Ext. E, backed up this assertion. Sale deed of Ext. C also stated that Rs 899 had been paid prior to the sale date, while Rs 500 had been paid prior to Sub-Registrar. The endorsement upon the sale deed shows that the payment for Rs 500 is backed by the document itself. Except for the recital, which mentions the payment of Rs 899, there is no other proof of the transaction's completion.<sup>2</sup> However, the plaintiffs had the burden to prove that the vendor had not received the consideration, and no serious effort was made to do so. Following Sarala's departure from the Sub-office, Registrar's a claim was made that Rs 500 had been taken from her. This part of the case about Sarala's repayment of amount of Rs 500 obtained by her before the Sub Registrar was disbelieved by the High Court. The High Court noted that there was no evidence whatsoever on the side of the defendants that the same was paid in relation to the payment of the remaining consideration, namely Rs 899.<sup>3</sup>

The land's rent was unpaid at the time of the transaction. The eldest daughter, Radha, appears to have stayed single preceding the date of the sale, while Mangala appears to have been married even before date of the sale. Sarala had to make sure that at least five people had food and clothing. Under addition to her residence and the property in issue, Sarala lacked any income or means of support.

She died on 12th April, 1950. Suit for a ruling finding that a sale deed dated 13th March, 1942, signed by Sarala also was not enforceable on the plaintiff since it was executed without legal need filed on 24th January, 1953 by Gobinda and Tulsi (Sarala's sons). By Banikana and Chapalabala (Defendants 1 and 2), as well as the landowners who had purchased it from them, the suit was contested<sup>4</sup>.

## Issue

---

1. Whether the decree declaring the deed of the sale was binding upon the plaintiff.
2. Whether Sarala was compelled to sell her property.

It was determined by the trial court that the selling deed was based on illegal necessity. Sarala had "strained financial conditions, according to the judge, and she signed the sale agreement to pay for her family's upkeep and to settle debts. She had to pay municipal taxes, the land's rent, and Radha's wedding expenditures. The plea that the deed sale was obtained through fraud, deception, or undue influence was still not taken seriously since no proof worth the name was adduced to support that argument, according to the learned Judge. Karta's ability to sell coparcenary property is a subject to specific limits, such as the sale must be for legal necessity or to benefit the estate, according to established legal precedent.<sup>5</sup>

The High Court ruled that Sarala's estate was not under severe and significant pressure to sell, and the plaintiffs claim that she was compelled to do just

---

<sup>2</sup> Ibid<sup>1</sup>

<sup>3</sup> Ibid<sup>1</sup>

<sup>4</sup> Ibid<sup>1</sup>

<sup>5</sup> Minor Saumya Pradipkumar Patel v. Shrimad Construction AIR 2021

that by persuasion and undue influence from the husband of Chapabala, Sakha Nath Ghosh .Even if full consideration had been paid, it was questionable that the sale had been completed. Defendants' claim of necessary consequence was not shown, and hence Sarala's sale deed, which was signed by the plaintiffs, was not binding on them. Sarala's land was sold to Dhiren Chandra who was an intermediary transferee, but because Dhiren Chandra was not a party to the dispute, the High Court concluded that the trial court's decision in favour of 10 Cottahas of Sarala's land could not be overturned. With respect to 10 Cottahas of northern land owned by Defendants 4, 5,6 & 16, this decision was reversed by the High Court, which permitted the appealing in part but denied the plaintiffs' case against them. Plaintiffs were granted a chance by the decree to modify the plaint by asserting a claim for real possession which had not previously been included in the plaint. Gobinda , the son of Sarala attested to both the sale agreement and sale deed. It was argued in front of us that Gobinda was indeed a minor at the time of the sale agreement and sale deed, and his authentication was therefore worthless. However, there is no dependable evidence to support this claim.

“Sarala was illiterate and unpractical in worldly matters,” the plaint stated .Shaka Nath Ghosh, the husband of Chapalabala , was an Officer, from one of the partner , of renowned Roy family and also was shrewd and cunning, Sarala called him " Dharamapita" and then used to rely on him since many affairs, used to be directed by his commands. The accused in this case refused to accept this plea. There was no mention of this at the trial, and also no evidence was presented in support of it. Fraud and undue influence claims were deemed inadmissible.

Even though it was argued that there was fraud, deceit and undue influence used to get the Kobala (sale deed) executed and registered in the favour of Defendant 1& 2 (Banikana and Chapalabala ), the trial court noted that there was no evidence to support this claim.

The plaintiffs' claim that Sarala was compelled to sell the land by Sakha Nath Ghosh's persuasion & undue influence were accepted by the High Court without reference to this fact. Sakha Nath Ghosh, the rent collector in one of the Roy Babus of Behala, to steal the valuable land belonging to Sarala. He had convinced Sarala to sign an agreement of sale, the High Court found. The High Court's conclusions are unsupported by any evidence, and they substantially vitiate their evaluation of the facts on record.

## Principals in the judgement

---

### **i. When the Karta alienates**

When a Karta sells a shared Hindu 's estate for a profit, it binds all members of the family, including minors and widows, regardless of age or marital status. The Karta can alienate their joint family property, independent of the legal requirements or the value of the estate, with the approval among the adult co-partners in existence today of such alienation. The Karta has unrestricted authority while doing his essential tasks, and he can even sell the entire property if he so desires. A Hindu family's Karta is unable to sell its property unless all of the family members are on board. As a result, selling the property will require the agreement of all family members. If your children are members of the HUF, you'll need their permission as

well. It was mentioned that Gobinda, the son of Sarala, was present in the date of the sale deed but also Gobinda is said to be a minor at the time of the deed and the attestation of a minor has no value whatsoever in such agreements or deeds.

## **ii. Dayabhaga School of law**

A coparcener, has complete control over all of his own property, and also his share of the family's common wealth. Tenants-in-Common-like nature of coparcenary. When it comes to Hindu law, there is a system called Dayabhaga that holds that children have no title to inherited property, before the death of their father. This includes both the male and female members of the family. After death of their father, children are given the right to inherit their father's possessions. Due to the existence of this law, the daughter of Sashi Bhusan (Sarala) who was unmarried at that time, inherited her father's property as the rightful heir. It is not compulsion that her sons had to inherit the property left by Sarala's father even after her death, it would be a possible scenario for the eldest of the family to inherit it if she had not sold the property.

## **iii. The Act of 1956 :**

This act of 1956 called the Hindu Succession Act. It has made the legislation a single rule. As of today, every Hindu has the ability to willfully dispose of his or her separate property. Using a testamentary presentation of his assets, he can even exclude his daughters from inheriting anything. Proximity of a relationship is a factor in the decision-making process, according to the Mitakshara Principle of Propinquity.

Intestate successions are the only cases in which this rule applies. The Indian Succession Act 1925 governs testamentary succession. The daughters are entitled to a share equal to that of the son<sup>6</sup>. This rule of succession governs the transfer of a Hindu male's stake in coparcenary property under Section 6 of the Hindu Succession Act. Before the 2005 change, women were not allowed to inherit their family's property because they were not considered coparceners. But in this very case, Sarala inherited her father's property after her father, the Karta passed away. No deeper history to if Sarala had any siblings is as such provided during the researcher's research but it is clearly stated that .98 acres of land that was owned by Sashi Bhusan is inherited wholly by Sarala, his daughter.

## **iv. Legal Necessity**

For a joint family, legal necessity implies any necessity that may be supported or justified by law, and in some situations, also for the family's property which can be supported or justified by law. Currently, the family does not have the money or other resources necessary to fulfil this need or purpose, and they are looking for a solution. To say that the family should pay debts about which more must be raised does not imply a genuine requirement by lawful pressure. This justification must be based on the fact that the joint family has substantial financial resources and property, for example, to back it up. Paying taxes is an example of a family's property being used for a purpose that necessitates the expenditure of money.

---

<sup>6</sup> Vineeta Sharma vs. Rakesh Sharma, AIR 2020 SC 3717

However, there is no need to do so because there are sufficient resources from which to pay the dues. When a reasonable and responsible man, who has been entrusted with the care of his family & their property, would do. Savings should be used instead of selling joint family property if a person is being prudent.<sup>7</sup>

Legal necessity has four conditions that needs to be met before an alienation can take place: If a need or purpose exists, such as a scenario involving family members or property that necessitates financial support, it must also serve a lawful purpose, which means it cannot be motivated by immorality, illegality, or public policy.

Third, the Karta's family does not have the money or other resources to meet that demand; and fourth, his course of conduct is consistent with what an ordinary, reasonable person would do in this situation.

## Judgement And Analysis

---

According to the analysis of the researcher, the High Court misunderstood the onus that the plaintiffs had to prove that Sarala did not receive the consideration stated in the deed and that a false recital had been made. The confession of Sailendra Nath Nandi, who had said Sarala did receive entire consideration, backs up the deed's assertions. It was disagreed with the High Court's conclusion that sale deed had not been backed by full consideration, so it can be rejected. The burden falls upon that person that upholds and also the purchase stated to show that its guardian had enough capacity to sell and that the transaction is bona fide.<sup>8</sup>

Gobinda, son of Sarala, witnessed the agreement for sale or the sale deed, which were both signed by him. It was argued before us that Gobinda was a minor at the time of the sale agreement and the sale deed, his attestation was thus worthless. However, there was no solid evidence in this particular case. Even though he was to be present or had agreed to be the sale deed, it would still not be taken into consideration as it was argued before us that Gobinda was a minor at the time of the agreement.

Alienees must prove the sale's legality. Sarala is a limited landowner. She could sell the entire estate for the legal necessity or estate benefit. In deciding whether to sell the entire estate, consider the estate's actual strain, its danger to be avoided, and the advantage to be provided. Legal necessity does not quite mean compulsion it means significant pressure on the estate. The alienee can prove legal necessity by showing genuine need or by showing he made proper, bona fide inquiries concerning the necessity and did everything reasonable to satisfy himself.

Legal necessity is not proven by recitals in a deed. Recitals are admissible in evidence, but their value varies by transaction. Recitals can be used to verify legal necessity. Recital weight varies by situation. Where evidence that could be submitted before the court with the person that seeks to cast aside the sale's special knowledge is withheld, such evidence is typically not available to the alienee, the court may be justified under appropriate instances in drawing an inference against the party that is seeking to set aside the sale here on ground

---

<sup>7</sup> Pundalik & Others v. Kiran & Another, 2018

<sup>8</sup> Rangammal v. Kuppuswami and another (2011) 12 SCC 220

of lack of legal necessity entirely or partially if he withholds evidence. For a transaction for the benefit of the family it does not need to be of defensive character.<sup>9</sup>

Mr Purshottam Chatterjee, representing the plaintiffs, said that there was evidence solely of indebtedness amounting to Rs 75, Rs 25 as rent for the land owed to the head lessor, and Rs 50 expenditure incurred for the marriage of the daughter Mangala. Counsel relied on recital made in the plaint filed inside a suit for recovery of the rent by landlord over Sarala following the deed of sale wherein the rent for 1941, 1942 & 1943 was claimed. Counsel also noted that in Sarala's society, a daughter's marriage costs merely Rs 50. It cannot be trusted on this evidence. Besides paying rent and Mangala's wedding expenditures, she had additional duties. The High Court overlooked the compelling inference from these facts, especially Gobinda's participation in the sale agreement and deed. Sarala had to pay land rent and municipal taxes, feed and clothe herself and her children, and marry her daughter Radha. No additional property or income. Circumstances substantiate the deed's statements about estate pressure.<sup>10</sup>

Sarala's sale deed was backed by Sarala's legal requirement which was well-established, and the trial court correctly concluded that the deed of sale was conducted in order to meet Sarala's legal obligations. Given the additional evidence, it is believed the Defendants 1 & 2's assertions of legal necessity are well-supported.

Sarala's sale deed was backed by Sarala's legal requirement which was well-established, and the trial court correctly concluded that the deed of sale was conducted in order to meet Sarala's legal obligations. Given the additional evidence, it is believed the Defendants 1 & 2's assertions of legal necessity are well-supported. In view of the amendment made for Section 6 of the Hindu Succession Act, 1956<sup>11</sup>, Sarala had every right to sell the property for her family's benefit.

According to the analysis of the judgement, defendants 1 & 2 made a strong argument that Sarala's legal necessity justified the sale deed, or the trial court is correct to rule that it was. From Gobinda's attestation of the agreement of sale and sale deed and recitals in both deeds, taken in view of other evidence, we believe the level of need established by defendants 1 and 2 is abundantly proven.

The tenth defendant deceased before the High Court certified the appeal to this Court, and his heirs were not put on record, so the case was said to be moot. No one knows if the tenth defendant deceased either during the High Court's ruling. Again, the plaintiffs only sought a determination that the March 13, 1942 alienation in favour of Banikana and Chapalabala has been without the legal necessity and not enforceable on them, and a statement of their ownership to the disputed territory. The defendants alienees were impleaded as parties, but still no relief was sought against them. The complaint did not state why or how they were impleaded. Since the plaintiffs only seek relief against defendants 1 & 2, which cannot be granted, the fact that the 10th defendant's heirs are not impleaded in this appeal does not impair the defendants' entitlement to claim that appeal must be dismissed.

---

<sup>9</sup> Balmukand v. Kamla Wati and ors ,AIR 1964 SC 1385

<sup>10</sup> Smt. Anjanamma .N and Ors v. N. Manjunath and Ors , 2021

<sup>11</sup> Sharma vs. Rakesh Sharma, AIR 2020 SC 3717

Therefore, the plaintiffs' lawsuit was dismissed with costs.

## CONCLUSION

---

Disagreements emerged over the selling of a portion of the joint family property in this instance. The plaintiffs said that their mother sold the land without their consent and under duress. In this case, the Trial Court found in favour of the Defendants, who then appealed to the High Court of India in Kolkata.

The defendants appealed to the Supreme Court after High Court has ruled in their favour.

"Necessity" should not be understood with in sense as to what is absolutely necessary but rather with in the sense about what is proper & reasonable in a Hindu household, according to the Supreme Court.

The evidence cannot be trusted , besides paying rent and Mangala's wedding expenditures, she had additional duties. Sarala's claim that Tulsi and Gobinda were "domestic servants" is also unsupported by facts. The High Court overlooked the clear conclusion from these circumstances, especially Gobinda's participation in the sale agreement and deed. According to the analysis defendants 1 and 2 made a strong argument that Sarala's legal necessity justified the sale deed, and the trial court was correct to rule that it was. From Gobinda's attestation of the agreement of sale and sale deed and the recitals in both deeds, taken in light of the other evidence , it can be believed that the level of need established by defendants 1 and 2 is abundantly proven.

The pressure of debt was enough to prove that there was legal necessity in the court of law,the pressure for Sarala to sell the property was proved .What a prudent man/women would do for their family i.e that he would pay from his savings, alternative source or family property is assorted .Because of the law of Dayabhaga ,Sarala at least had her father's inherited property when she had no source of any income and was in need of money .