HIGH COURT FOR THE STATE OF TELANGANA

****

SECOND APPEAL NO.103 OF 2015

Between :
Gosukonda Padma

.. Appellant

And

Panga Narsimha Reddy and others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED : 27.04.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A.SANTHOSH REDDY

1. Whether Reporters of Local Newspapers may be allowed to see the Judgments ? : Yes / No

2. Whether the copies of judgment may be marked to Law Reporters/Journals : Yes / No

3. Whether Their Lordship wish to see the fair copy of the Judgment ? : Yes / No

***THE HON'BLE SRI JUSTICE A.SANTHOSH REDDY**

+SECOND APPEAL No.103 of 2015

% 27.04.2023

Gosukonda Padma

... Appellant

vs.

$ Panga Narsimha Reddy and others.

…Respondents.

! Counsel for Appellant: Sri Resu Mahender Reddy, learned Senior Counsel on behalf of Sri K.Pradeep Reddy, learned counsel for the appellant.

^ Counsel for respondents: Sri Vivek Jain.

<GIST

>HEAD NOTE:

?CITATIONS:
(1997) 9 Supreme Court Cases 701
(2018) 14 Supreme Court Cases 445
2021 SCC OnLine SC 1236
(1996) 6 Supreme Court Cases 166
AIR 1963 Supreme Court 1633
1970(3) Supreme Court Cases 722
(1976) 4 Supreme Court Cases 682
1999 (1) A.P.L.J.134 (HC)

THE HON'BLE SRI JUSTICE A.SANTHOSH REDDY

SECOND APPEAL No.103 OF 2015

JUDGMENT:

This second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short "C.P.C.") is directed against the judgment and decree, dated 05.08.2014, in A.S.N.54 of 2011 on the file of IV Additional District Judge at L.B.Nagar, wherein the said appeal filed by the appellant herein was dismissed, confirming the judgment and decree, dated 23.12.2010, passed in O.S.No.68 of 2003 by the Junior Civil Judge, Ibrahimpatnam, Ranga Reddy District.

2. Heard Sri Resu Mahender Reddy, learned Senior counsel for the appellant-plaintiff and Sri Vivek Jain, learned counsel for the respondents-defendants. Perused the material placed on record. The submissions made on either side have received due consideration of this Court.

3. For convenience sake, the parties are referred to hereunder according to their litigative status before the trial Court.

4. Briefly stated, the facts are that the plaintiff filed suit for partition and separate possession of the suit schedule land i.e. agricultural land bearing Sy.N.415/e admeasuring Ac.0.13 guntas, Sy.N.416/e, admeasuring Ac.0.08 guntas, Sy.No.418/e admeasuring Ac.0.13 guntas, Sy.N.419/ Ac.0.18 guntas, Sy.No.420/e admeasuring Ac.0.08 guntas, Sy.No.421/e admeasuring Ac.0.11 guntas, Sy.No.422/e admeasuring Ac.0.13 guntas and Sy.No.423/e admeasuring Ac.0.13 gutas situated at Ibrahimpatnam Village and Mandal, Ranga Reddy District (hereinafter referred to as the "suit lands"). The plaintiff is the daughter and defendant Nos.2 and 3 are the sons of defendant No.1. Defendant No.4 is the purchaser of the suit schedule property.

5. The suit lands are ancestral properties and the plaintiff herein and defendant Nos.1 to 3 are entitled to 1/4th share each and they are cultivating the suit lands jointly on approximate basis without affecting regular partition with metes and bounds. The marriage of the plaintiff was held on 03.12.1993. The plaintiff demanded for partition in the suit schedule lands. The defendants initially agreed for partition, but subsequently postponed on one or the other pretext. On 25.05.2003, the plaintiff demanded defendant Nos.1 to 3 to divide the suit lands in four

equal shares and allot one such share to her. But, defendant Nos.1 to 3 refused for partition. As such, the plaintiff filed for partition and separate possession of the suit lands.

6. Defendant No.1 filed written statement contending that the mother of defendant No.1 is also having share in the suit lands and by then, she was alive, but, the plaintiff has not added her as party to the suit. Defendant No.1 being father and Kartha of the family borrowed money from the relatives and friends and performed the marriage of the plaintiff. It is stated that defendant No.2 met with accident and to meet medical expenses and treatment, he borrowed amounts from his well wishers. In order to clear the said loans, defendant No.1 was constrained to alienate the suit lands to defendant No.4 for valid sale consideration and executed registered sale deed vide document bearing No.3159/2002, dated 01.11.2002 and delivered possession of the same.

7. It is also stated that the suit is not maintainable, as the mother of defendant No.1 is not added as party. The plaintiff and defendant Nos.2 and 3 were well known about the alienation of the suit lands to defendant No.4, who is none other than the relative of parties to the suit. As such, the suit is not maintainable for partition and prayed to dismiss the suit.

8. Defendant No.4 filed written statement contending that he purchased the suit lands in the name of his minor son through registered sale deed vide document bearing No.3159/2002, dated 01.11.2002, and the mother of defendant No.1 also affixed her signature/thumb impression as attesting witness. Pursuant to the said sale deed, defendant No.4 was put in possession of the suit lands and since then, he is in exclusive possession and enjoyment of the same. The plaintiff was well aware of the said alienation. Defendant No.1 being kartha of the joint family alienated suit lands in favour of defendant No.4. Hence, the plaintiff is not entitled to seek partition of the suit lands and hence, he prayed to dismiss the suit.

9. On the basis of above pleadings, the trial Court has framed the following issues:

> 1. Whether the plaintiff is entitled for partition and separate possession of 1/4th share in the suit schedule property as prayed for?
> 2. Whether the suit schedule property are avail for partition?
>
> (verbatim reproduced)
>
> 3. To what relief?

Additional Issue No.1:

> 4. Whether the registered Sale Deed Document No.3159/2002 dated 01.11.2002 executed by D-1 in favour of D-4 is binding on Plaintiff?

10. On behalf of the plaintiff, Pws.1 and 2 were examined and got marked Exs.A.1 to A.3 on her behalf. On the other hand, on behalf of contesting defendant No.4, DW.1 was examined and marked Exs.B.1 to B.6 on his behalf.

11. On a consideration of the evidence available on record, the trial Court held that the sale deed executed by defendant No.1 in favour of defendant No.4 is binding on the plaintiff and defendant Nos.2 and 3 and thereby, dismissed the suit.

12. Aggrieved and dissatisfied with the judgment and decree of the trial Court, the plaintiffs filed appeal before the IV Additional District Judge's Court, Ranga Reddy District vide A.S No.54 of 2011. The learned Judge has formulated the following points for consideration:

> i) Whether the plaintiff is entitled for partition as prayed and registered sale deed vide doc.No.3159/2002, dated 01.11.2002 executed by D1 in favour of D2 is binding on the plaintiff?
>
> ii) Whether the judgment and decree dated 23.12.2010 in O.S.N.68 of 2003 on the file of learned Junior Civil Judge, Ibrahimpatnam, Ranga Reddy District is liable to be set aside or require any modification or alteration?

13. The appellate Court on re-appraisal of the entire evidence held that the finding of the trial Court is based on proper appreciation of oral and

documentary evidence and accordingly, dismissed the appeal confirming the judgment and decree of the trial Court.

14. Feeling aggrieved by the judgment and decree of the appellate Court, the unsuccessful plaintiff has preferred this second appeal.

15. While admitting the second appeal by this Court, the following substantial questions of law are formulated:

> 1. Whether the Courts below have erred in not considering the plaintiff as a coparcener, being the daughter of the 1st defendant and in not treating her on par with the son and had, therefore, erred in holding that she is not entitled to a share in the plaint schedule ancestral properties? Whether the Courts below have erred in not considering the plaintiff's right to claim partition in view of the amended provisions of the Hindu Succession Act, 1956, which placed the daughter on par with a son?
>
> 2. Whether the Courts below have mis-appreciated the oral and documentary evidence in regard to exhibit B1 sale deed and erred in not considering the plea that the said sale deed is not binding on the appellant as she was not the executant of the said document?

16. Learned Senior Counsel for the appellant has vehemently submitted that both the Courts below have committed serious error of facts and law in dismissing the suit and appeal of the plaintiff. He has submitted that when defendant No.4 has raised a defence of execution of Ex.B.1 sale deed by defendant No.1 for legal necessity, then the burden lies upon him to prove the same**.** According to the learned counsel, however, both the

Courts have shifted the burden on the plaintiff. He further submitted that there is no evidence to suggest that defendant No.1 has sold the subject lands to defendant No.4 for legal necessity of the family. Learned counsel also submitted that defendant No.1 has no exclusive right of ownership over the suit lands to alienate the same to defendant No.4. He further submitted that defendant No.1 did not mention the reasons for alienation of the suit lands in favour of defendant No.4 for the benefit and necessity of the family.

17. Learned counsel further submitted that both the Courts below have erred in regard to Ex.B.1 sale deed by not considering the plea that it is not binding on the plaintiff, as she was not executant of the said document and also not considering the right which accrued to her by virtue of the amended provisions of the Hindu Succession Act, 1956, which placed the daughter on par with a son.

18. Learned counsel further submitted that considering the oral evidence on record, it clearly transpires that there is no legal necessity for defendant No.1 to sell the suit lands to defendant No.4. Therefore, he submitted that in the absence of proof of legal necessity, Ex.B.1 sale deed ought to have been declared as null and void and suit of the plaintiff

ought to have been decreed. Hence, he prayed to allow the present appeal and to pass decree in favour of the plaintiff as prayed.

Learned counsel placed reliance on various decisions which are referred to hereinafter.

19. Learned Senior Counsel has relied on the decision of **Sunder Das** v. **Gajanan Rao**[1], wherein, the Apex Court at para No.10 observed as under:

> " Once it is held that the suit house was an ancestral property in the hands of the plaintiffs' father, Defendant 6, the plaintiffs could naturally have right by birth in the suit house. However the moot question is whether the alienation of the suit house by the impugned sale deed by the plaintiffs' father, Defendant 6, to the contesting defendants was binding on the plaintiffs. So far as this question is concerned it must be kept in view that the plaintiffs' father was the "karta" of the Joint Hindu Family. The evidence shows that at the relevant time he was working as Upper Division Clerk in the Civil Court at Chhatarpur. His monthly income was Rs 150 in 1958-59 when the sale deed was executed as seen from his deposition as DW 1. He has clearly recited in the impugned sale deed in favour of the contesting defendants that he was selling the suit house for Rs 1800 on account of family necessity. He revealed in his deposition before the court that he had a family of seven persons to be maintained out of his income of Rs 150 per month as he had got his wife, three sons, namely, the present plaintiffs and two young daughters. It is also revealed from his evidence that he was staying at Chhatarpur as he was serving as Upper Division Clerk in the Chhatarpur Court. The suit house was situated at Village Datia. According to Defendant 6 he occasionally came to Datia to look after the house. No attempt was made in his evidence to get out of the clear recitals in the sale deed that he had entered into the transaction for family necessity. It is also pertinent to note that out of the three plaintiffs, Plaintiff 1 was major at the time of the sale deed. He has conspicuously remained absent from

[1] (1997) 9 Supreme Court Cases 701

the witness-box and avoided inconvenient cross-examination which he might have faced. In support of the plaintiffs only Plaintiff 3 PW 1 Govind Rao who was admittedly aged 8 years at the time of the sale deed has been examined. He naturally could not have any personal knowledge about what transpired in 1959 when his father who was serving in a civil court as Upper Division Clerk thought it fit to sell the ancestral house in Village Datia to the defendants and whether the recital made by him in the sale deed that the transaction was being executed for family necessity was right or not. Nor Defendant 6, vendor father of the plaintiffs, had even whispered about the necessity of inserting the recital in the sale deed that he was executing the same for family necessity. It has to be kept in view that Defendant 6 being the father of the plaintiffs and "karta" of the Joint Hindu Family was legally entitled to alienate the suit house and also the interest of the minor plaintiffs in the said house even for his own requirements unless it was shown that the transaction was tainted by any immoral or illegal purpose. That is not the case of the plaintiffs. Nor have they suggested that their father was addicted to any immoral conduct. Their only case is that their father had no right to alienate their undivided interest in the suit house. We must keep in view the fact that Defendant 6, father of the plaintiffs, was a worldly person who was presumed to know the ways of the world as he was attached to the civil court as Upper Division Clerk at the relevant time. His evidence shows that up to 1954 he had worked in the civil court as a Lower Division Clerk. Then he was promoted by the High Court to the post of Upper Division Clerk in the year 1954 and he was transferred to Panna and from Panna he was transferred to Chhatarpur. He also deposed that he used to visit Datia in connection with supervision of the suit house. Therefore, Defendant 6, father of the plaintiffs, apart from being the "karta" of the Joint Hindu Family was well versed in the ways of the world and was not a novice or a layman. With his open eyes he disposed of the suit house which appeared to be almost a ruin for Rs 1800. It is easy to visualize that when Defendant 6, the vendor, was staying with his family at Chhatarpur and when the ancestral house at Datia Village was in a ruinous condition and which would almost be a burden to them he thought it fit in his wisdom to dispose it of for Rs 1800 in favour of the defendants and made an express recital in the sale deed that it was for family necessity that he was disposing it of. As a Hindu father and "karta" of the family he had every right to do so and in the process could have legally disposed of the interest of his minor sons in the said property also for the benefit of the family and necessity of the family. The plaintiffs have not been able to lead any cogent evidence to rebut the clear recitals found in the sale deed to that effect. We may usefully remind ourselves of what *Mulla's Hindu Law*,

16th Edn. by S.T. Desai, has to state in connection with "alienation by father" at paragraph 256 of the said volume. It reads as under:

"256. *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—

(1) he may make a gift of ancestral moveable property to the extent mentioned in paragraph 225, and even of ancestral immovable property to the extent mentioned in paragraph 226;

(2) he may sell or mortgage ancestral property, whether moveable 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

(paragraph 295).

Except as aforesaid, a father has no greater power over coparcenary property than any other manager (*o*), that is to say, he cannot alienate coparcenary property except for legal necessity or for the benefit of the family (paragraph 242). This section must be read with what is stated under paragraphs 213-215 ante."

Shri Khanduja, learned counsel appearing for the respondent-plaintiffs, in this connection submitted that the defendants as alienees should have properly enquired as to why the transaction was being entered into by the father of the minor plaintiffs in their favour. It is difficult to appreciate this submission. The evidence on record clearly shows that contesting defendants before entering into the suit transaction had taken all permissible precautions and made enquiries in this connection. Contesting defendants Witness 1 Tehalram stated in his evidence that he was informed by Defendant 6, that his uncle had expired. His debt has to be paid off. Moneylenders had also to be paid. That he tried to verify these facts. That he went to the shop of Chetandas in the area. He also enquired from grocer Meghamal and found out that Defendant 6 was in debts and, therefore, he came to the conclusion that Defendant 6 was in need of money and accordingly he had sold his house to him. Shri Khanduja, learned counsel appearing for the plaintiffs, submitted that Defendant 1 in his cross-examination has stated that Defendant 6 Hanumantrao had no title to the property and in order to help him he had purchased the house from him. It is difficult to appreciate this contention. The evidence of Defendant 1

when read in its correct perspective showed that he was informed by one Ganpati that the property belonged to King and the King of Datia had given it to the ancestor of the plaintiffs Mukundrao to stay therein and accordingly he thought that Defendant 6 would not be having title to the property. It must be kept in view that the plaintiffs' ancestor Mukundrao had died 60 years prior to the suit. Therefore, even if originally the property might have belonged to the King it was being occupied by the plaintiffs' ancestor Mukundrao and his descendants since generations as owners thereof and even by doctrine of adverse possession they would have perfected their title. It may also be kept in view that there was nothing on the record to suggest that the King of Datia had ever attempted to put forward any claim of ownership over the suit property. Even that apart it was not the case of the plaintiffs themselves that the suit property did not belong to their father or their ancestors. On the contrary their case is that the suit house did belong to their father jointly with them. Therefore, it is too late in the day for the learned counsel for the plaintiffs to submit that suit house did not belong to the plaintiffs and, their father or that at the time of the sale plaintiffs' father had no right, title or interest in the suit house. In our view the evidence on record clearly establishes that the defendants made all permissible efforts to find out the legal necessity which prompted Defendant 6 to enter into the said transaction in their favour. It is of course true, as contended by Shri Khanduja for the plaintiffs, that the efforts made by the contesting defendants by relying upon the evidence of Meghamal DW 2 who is said to have sold grocery on credit to Defendant 6 at the relevant time remained unsuccessful as there would have been no occasion for Defendant 6 who was staying with his family at Chhatarpur to purchase at Datia grocery items on a continuous basis on credit from witness Meghamal. But even leaving aside the evidence of witness Meghamal which was not accepted by the courts below we find that the evidence of the plaintiffs and Defendant 6 clearly establishes that the suit house which was in a dilapidated and ruinous condition at Datia was found to be a dead burden to the family and, therefore, for family necessity it was disposed of by Defendant 6, father of the plaintiffs in 1959. The said transaction, therefore, as the recitals in the sale deed themselves rightly showed, in the light of surrounding circumstances was a transaction for the benefit of the family. The said conclusion of ours gets further fortified from the well-established facts on record that after purchasing the suit house the contesting defendants reconstructed it to a substantial extent by spending an amount of Rs 33,000 as held by a Division Bench of the High Court especially when the suit house was purchased for an amount of Rs 1800. That shows that it must be in a totally dilapidated condition and the defendants appear to have purchased only the site on which they put a substantially new

> construction at a huge cost of Rs 33,000 as compared to the original purchase price of Rs 1800. The very fact that Defendant 6 who was presumed to be well acclimatised with the court proceedings as he was an Upper Division Clerk in the Civil Court at Chhatarpur at the relevant time stood by the transaction and the recitals in the sale deed for eleven and a half years and the further fact that he saw to it that his sons challenged the transaction after such a long period of time when the defendants in the meantime went on spending huge amounts on the property and ultimately came forward in the suit to support the plaintiffs, leave no room for doubt that the suit was got filed by Defendant 6 only with a view to knock out more money from the contesting defendants and was clearly a collusive suit. On an overall consideration of evidence on record, therefore, we find ourselves unable to endorse the conclusions reached by both the courts below that the suit transaction was not binding on the plaintiffs. The said finding is against the weight of evidence and cannot be sustained. We, therefore, hold that the plaintiffs had made out no case for getting any relief from the Court in the present proceedings and their suit was, therefore, liable to be dismissed. Accordingly this appeal succeeds and is allowed. The judgment and decree passed by the trial court and as confirmed with modification by the High Court are quashed and set aside. The plaintiffs' suit will stand dismissed. However in the facts and circumstances of the case there will be no order as to costs all throughout."

20. Learned Senior Counsel has relied upon the observation of Apex Court in **Kehar Singh (Dead) through legal representatives** v. **Nachittar Kaur[2],** which is as under:

> **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:

[2] (2018) 14 Supreme Court Cases 445

(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."

> **24.** It has come in evidence that firstly, the family owed two debts and secondly, the family also needed money to make improvement in agricultural land belonging to the family. Pritam Singh, being a karta of the family, had every right to sell the suit land belonging to family to discharge the debt liability and spend some money to make improvement in agricultural land for the maintenance of his family. These facts were also mentioned in the sale deed.
>
> **25.** In our considered opinion, a case of legal necessity for sale of ancestral property by the karta (Pritam Singh) was, therefore, made out on facts. In other words, the defendants were able to discharge the burden that lay on them to prove the existence of legal necessity for sale of suit land to Defendants 2 and 3. The defendants thus satisfied the test laid down in Hindu Law as explained by Mulla in Article 254(2) read with Articles 241(*a*) and (*g*) quoted above.
>
> **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."

21. Learned Counsel also relied upon the observation made by Apex Court in **Beereddy Dasaratharami Reddy** v. **V.Manjunath**[3], wherein the Apex Court, by relying upon the judgment of Kehar Singh's case (2 supra), at para No.9 observed as under:

> " On the question of satisfaction of the condition of legal necessity, the stand of the respondents is contradictory, for they have pleaded in the written statement and even before us that the joint Hindu family was in need of funds, which shows legal necessity. In fact, as recorded above, the need for funds is duly reflected and so stated in the agreement to sell dated 8th December 2006 which states that the executants were in need of funds to meet domestic necessities and,

[3] 2021 SCC OnLine SC 1236

> therefore, had agreed to sell the suit property. It is also an undisputed position that the suit property was encumbered in favour of the State Bank of Mysore, Adivala Branch, and the executants had informed that the dues of the bank would be cleared to release the mortgage before the date of registration. In *Kehar Singh* (supra), on the question what is legal necessity, reference was made to Article 241 from Mulla's Hindu Law which states that maintenance of coparceners, family members, marriage expenses, performance of necessary funerals or family ceremonies, costs of necessary litigation for recovering or preserving estate, etc. fall and have been held to be family's necessities. Further, the instances are not the only indices for concluding whether the alienation was in need for legal necessity as enumeration on what would be legal necessity is unpredictable and would depend upon facts of each case. Thus, we are of the opinion that the agreement to sell cannot be set aside on the ground of absence of legal necessity."

22. On the other hand, learned counsel appearing for the respondents vehemently submitted that there are concurrent findings of fact by both the Courts below regarding the execution of Ex.B.1 sale deed in favour of defendant No.4 by defendant No.1. He also submitted that both the Courts below have accepted that Ex.B.1 sale deed was executed by defendant No.1 in favour of defendant No.4 and defendant Nos.2 and 3 were also aware of the said transaction along with mother of defendant No.1 to meet the marriage expenses of the plaintiff and to meet the medical expenditure incurred for defendant No.2, who met with accident. He also submitted that both the Courts below have rightly appreciated the oral and documentary evidence and concurrently held that the suit lands were sold by defendant No.1 to meet the legal necessities of their family.

Learned counsel further submitted that the plaintiff has also thorough knowledge of the sale transaction entered into by her father in favour of defendant No.4. He further submitted that when there are concurrent findings of facts by both the Courts below, this Court cannot interfere with the findings of the Courts below. Both the Courts below have properly appreciated the facts and circumstances of the case and rightly dismissed the suit. There is no illegality committed by the both Courts below and therefore, he prays to dismiss the appeal. Learned counsel placed reliance on the following decisions:

In **Navaneethammal** v. **Arjuna Chetty**[4] **,** the Apex Court at para No. 11 observed as under:

> **11.** " This Court, time without number, pointed out that interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to reappreciate the evidence just to replace the findings of the lower courts."

In **Madamanchi Ramappa** v. **Muthaluru Bojjappa**[5]**,** the Apex Court at para No.9 observed as under:

> **"** Aggrieved by the decree passed in his appeal by the District Court, the respondent moved the High Court under Section 100 CPC, and his appeal was heard by Sanjeeva Rao Nayudu, J. The learned Judge emphasised the fact that no sale deed had been produced by the

[4] (1996) 6 Supreme Court Cases 166
[5] AIR 1963 Supreme Court 1633

> appellants to prove their title, and then examined the documentary evidence on which they relied. He was inclined to hold that Ext. A-8 had not been proved at all and could not, therefore, be received in evidence. It has been fairly conceded by Mr Sastri for the respondent before us that this was plainly erroneous in law. The document in question being a certified copy of a public document need not have been proved by calling a witness. Besides, no objection had been raised about the mode of proof either in the trial court or in the District Court. The learned Judge then examined the question as to whether the said document was genuine, and he thought that it was a doubtful document and no weight could be attached to it. A similar comment was made by him in respect of the cist receipts on which both the courts of fact had acted. In his opinion, the said documents were also not genuine and could not be accepted as reliable. He then referred to the fact that the appellants had offered security in proceedings between the respondent and his judgment-debtor Boya Krishnappa, and held that the said conduct destroyed the appellants' case; and he also relied on the fact that the lease deeds produced by the appellants had been disbelieved and that also weakened their case. It is on these considerations that the learned Judge set aside the concurrent findings recorded by the courts below, allowed the second appeal preferred by the respondent and directed that the appellants" suit should be dismissed with costs throughout. It is the validity of this decree which is challenged before us by the appellants and the principal ground on which the challenge rests is that in reversing concurrent findings of fact recorded by the courts below, the learned Judge has clearly contravened the provisions of Section 100 of the Code."

In **Smt. Rani** v. **Smt.Santa Bala Debnath**[6]**,** the Apex Court at para Nos.10 and 11 observed as under:

> " Legal necessity to support the sale must however be established by the alienees. Sarala owned the land in dispute as a limited owner. She was competent to dispose of the whole estate in the property for legal necessity or benefit to the estate. In adjudging whether the sale conveys the whole estate, the actual pressure on the estate, the danger to be averted, and the benefit to be conferred upon the estate in the particular insistence must be considered. Legal necessity does not mean actual compulsion: it means pressure upon the

[6] 1970(3) Supreme Court Cases 722

> estate which in law may be regarded as serious and sufficient. The onus of proving legal necessity may be discharged by the alienee by proof of actual necessity or by proof that he made proper and bona fide enquiries about the existence of the necessity and that he did all that was reasonable to satisfy himself as to the existence of the necessity.
>
> Recitals in a deed of legal necessity do not by themselves prove legal necessity. The recitals are, however, admissible in evidence, their value varying according to the circumstances in which the transaction was entered inter. The recitals may be used to corroborate other evidence of the existence of legal necessity. The weight to be attached to the recitals varies according to the circumstances. Where the evidence which could be brought before the Court and is within the special knowledge of the person who seeks to set aside the sale is withheld, such evidence being normally not available to the alienee, the recitals go to his aid with greater force and the Court may be justified in appropriate cases in raising an inference against the party seeking to set aside the sale on the ground of absence of legal necessity wholly or partially, when he withholds evidence in his possession."

In **Jangbir** v. **Mahavir Prasad Gupta**[7]**,** the Apex Court at para Nos.8 and 9 observed as under:

> **8.** It is urged on behalf of the appellants that the construction of a document is always a question of law. Reliance was placed upon *Meenakshi Mills, Madurai* v. *CIT* [AIR 1957 SC 49 : 1956 SCR 691 : (1957) 31 ITR 28] and *Nadunuri Kameswaramma* v. *Sampati Subba Rao*. This Court has never laid down that inferences from contents of a document always raise questions of law. Indeed in *Nedunuri Kameswaramma case*, this Court observed (at pp. 215-16):
>
> "A construction of documents (unless they are documents of title) produced by the parties to prove a question of fact does not involve an issue of law, unless it can be shown that the material evidence contained in them was misunderstood by the court of fact. The documents in this case, which have been the subject of three separate considerations, were the Land Registers the Amarkam, and Bhooband Accounts and the Adangal Registers, together with certain documents derived from the zamindari records. None of these documents can be

[7] (1976) 4 Supreme Court Cases 682

> correctly described as a document of title, whatever its evidentiary value otherwise."
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> **9.** We think that, unless interpretation of a document involves the question of application of a principle of law mere inferences from or the evidentiary value of a document generally raises only a question of fact.

23. It is now well settled principle in regard to the powers under Section 100 of C.P.C. that when Courts below record its concurrent findings of the facts based on appreciation of the facts and evidences, such findings being concurrent in nature are generally not to be disturbed by the High Court. However, when such findings are found to be against any provisions of law or against pleadings or evidence on record or are found to be wholly, perverse, the High Court can interfere in such concurrent findings of the facts and pass appropriate orders in a given case.

24. A perusal of the judgments of the Courts below, it clearly transpires that while dealing with point of legal necessity of the family, it has been concurrently held by the both the Courts that the execution of the sale deed under Ex.B.1 by defendant No.1 in favour of defendant No.4 was for legal necessity of the family. In this regard, both the Courts below have referred to the oral and documentary evidence produced in

the suit. It appears from the record that as per the evidence of the plaintiff she is the daughter and defendant Nos.2 and 3 are the sons of defendant No.1 and the suit lands are ancestral property and they are in joint possession of the same. The plaintiff claimed that she is entitled for the relief of partition of the suit lands and claimed 1/4th share. Defendant No.1 has pleaded in the written statement that at the time of marriage, being Kartha of the family borrowed loans from some relatives and friends and performed her marriage. It is also stated that defendant No.2 met with road accident and to meet his medical expenditure, he borrowed hand loans from well wishers. To clear those loan amounts, defendant No.1 was constrained to sell the suit lands to defendant No.4 for a valid sale consideration. It is also alleged that the plaintiff as well as defendant Nos.2 and 3 have not objected for alienation of the suit lands and at the time of execution of Ex.B.1 sale deed in favour of defendant No.4 and the possession of the suit lands was also delivered to him soon after the execution of sale deed.

25**.** **I**n the present case, defendant No.1 being Kartha of the family to perform the marriage of plaintiff and to meet the expenditure incurred for the treatment of defendant No.2, who met with accident necessitated him

to sell the suit lands in favour of defendant No.4. The main contention of the plaintiff is that Ex.B.1 sale deed does not contain the recital that joint family property was sold to meet the legal necessity of the joint family. What is meant by legal necessity is clearly enunciated in **Smt.Rani**'s case (6 supra), wherein the Apex Court observed that legal necessity does not mean actual compulsion and the onus of proving legal necessity is on alienee by proof that he made proper and bondafide enquiries about the existence of the necessity. It is important to consider as to whether the recitals of Ex.B.1 contain anything about the legal necessity and whether in the absence of such recitals would make the transaction null and void. **Smt.Rani**'s case (6 supra), the Apex Court held that recitals in a deed of legal necessity do not by themselves prove legal necessity. The recitals, are, however, admissible in evidence, their value varying according to the circumstances in which the transaction was entered into. In the instant case, the evidence has been brought on record and also the pleadings of the written statement filed by defendant No.1 establish that the sale transaction under Ex.B.1 took place within the knowledge of plaintiff and defendant Nos.2 and 3 to meet the legal necessity of the joint family by defendant No.1 as kartha of the family and the same was attested by the

grand mother of the plaintiff and defendant Nos.2 and 3. The name of defendant No.4 was also mutated in revenue records pursuant to Ex.B.1 sale deed and Exs.B.3 to B.6 show that defendant No.4 has been in possession of the suit lands.

26. The other contention raised by the plaintiff is that Ex.B.1 sale deed is not binding on her, as she was not the executant of the said documents. Under Article 254 a Hindu father has special powers of alienating coparcenary property, which no other coparcener has. In **Beereddy Dasaratharami Reddy**'s case (3 supra), the Apex Court, by referring to Kehar Singh's case (2 supra), at para No.9 observed on the question of what is legal necessity, reference was made to Article 241 from Mulla's Hindu Law which states that maintenance of coparceners, family members, marriage expenses, performance of necessary funerals or family ceremonies, costs of necessary litigation for recovering or preserving estate, etc., fall and have been held to be family's necessities. Further, the instances are not the only indices for concluding whether the alienation was in need for legal necessity as enumeration on what would be legal necessity is unpredictable and would depend upon facts of each case.

27. In **V.V.V.Ramaraju** v. **K.Malleswara Rao**[8]**,** this Court while considering the question as to sale deed therein is valid and binding on the plaintiffs therein observed at para No.9 that " it is well settled that under Hindu Law the father has special powers of alienation of joint family property including the son's share either for legal necessity or for the benefit of the estate. He can also sell joint family property including the son's share for the discharge of antecedent debts, which are not Avyavaharika i.e. which are not tainted by illegality or immorality. It is also observed that the sale was thus made for discharging the debts incurred by the father for meeting the litigation expenses and for payment of decree debts. It cannot be said that the said debts are tainted by any illegality or immorality. It, therefore, follows that the sale deed is perfectly valid and binding on the plaintiffs."

28. Coming to the present case, as defendant No.1, being Kartha of the family has special powers of alienation of joint family property, alienated the ancestral property for payment of debts incurred for maintenance of coparcerners i.e. medical expenditure of his son and to clear the debts incurred for marriage of the plaintiff, who is her daughter. As such, the

[8] 1999 (1) A.P.L.J. 134 (HC)

said alienation can be classified as constituting legal necessity as held in **Kehar Singh**'s case (2 supra).

29. The Hindu Succession (Amendment) Act, 2005 (39 of 2005) was enacted to remove gender discriminatory provisions in the Hindu Succession Act, 1956. Under the amendment, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son. In the present case, the plaintiff is also entitled to claim partition of the property. However, in the facts and circumstances of the case stated supra, defendant No.1 being Kartha of the Hindu joint family alienated the property to defendant No.4 under Ex.B.1 to meet medical expenditure of defendant No.2 and the debts incurred at the time of marriage of the plaintiff and the mother of defendant No.1 is one of the attesting witness to the said transaction. The judgments of the Courts below clearly establish that defendant No.1 being kartha of the family has alienated the suit property for legal necessity. Therefore, in the said circumstances, the contention of the plaintiff that Ex.B.1 sale deed executed by defendant in favour of defendant No.4 is not binding on her is not tenable. The approach, reasoning and the conclusion arrived by the Courts below on proper

appreciation of evidence on record on the question of legal necessity in alienation of the suit schedule property does not call for any interference.

30. In view of the same, as held by the Apex Court in **Navaneethammal**'s case (4 supra) interference with the concurrent findings of the Courts below by this Court under Section 100 of C.P.C. must be avoided unless warranted by compelling reasons. In the instant case, I find that the findings arrived at by both the Courts below were based on proper appreciation of all the relevant oral and documentary evidence. Therefore, there are no compelling reasons before me to interference with the concurrent findings recorded by the Courts below.

31. In view of the foregoing discussion, the Second appeal is dismissed. There shall be no order as to the costs. As a sequel, miscellaneous applications, if any, pending in this second appeal, shall stand closed.

A.SANTHOSH REDDY , J

27. 04.2023
Note:
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