

## CIVIL APPELLATE

*Before Falshaw and Kapur, JJ.*SHIV SHANKAR AND OTHERS,—*Plaintiffs-Appellants**versus*BHOLA AND OTHERS,—*Defendants-Respondents*

Regular Second Appeal No. 187 of 1948

1953

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June 6th

*Hindu Law—Alienations—Adult male members of the family joining in—Whether proof of legal necessity and act of good management.*

*Held*, that in all the alienations made, all the adult male members of the family had joined, thereby furnishing presumptive proof of necessity and passed title to the alienees. It was, therefore, for the persons who wanted to

impeach the alienations to establish that alienations were not justified by necessity.

Second Appeal from the decree of the Court of Shri Harbans Singh, Additional District Judge, Ferozepore, dated the 21st July, 1947, modifying that of Shri Hamid Ullah, Sub-Judge, II Class, Ferozepore, dated the 24th June, 1946 (granting the plaintiffs a declaration that the alienations in suit being void are ineffective against them and also granting them decree for possession of the suit land against the defendants and further directing the major alienees defendants to pay the costs of the suit to the plaintiffs) to the extent of holding that the two alienations in respect of perpetual lease in favour of Bhola Singh and Jowala Singh and sale in favour of Bhag Singh, were acts of good management as the family was living in Ferozepore and land was situated in a village which was eight miles away and was not connected by any railway and was not bringing any income to the family and dismissed the plaintiffs' suit with respect to these two alienations and giving no order as to costs.

D. N. AGGARWAL and J. N. SETH, for Appellants.

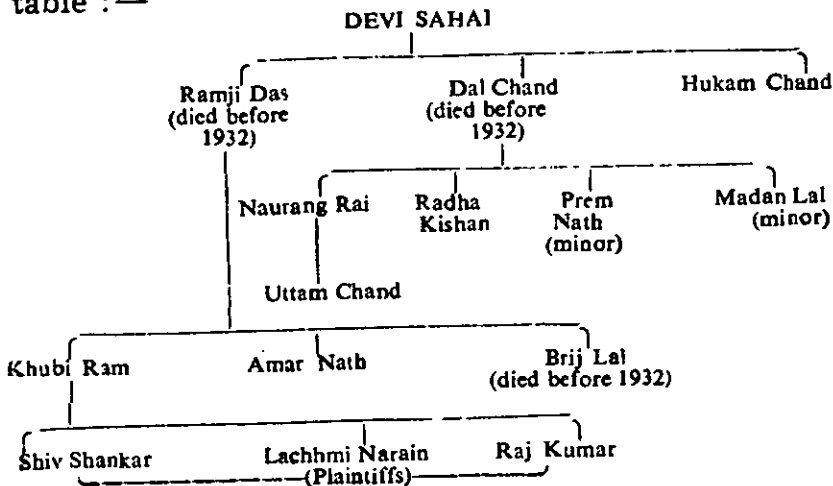
SHAMAIR CHAND, Y. P. GANDHI and LABH SINGH, for Respondents.

#### JUDGMENT

KAPUR, J. The sole question which is to be decided in this case is whether the finding of the learned District Judge Mr. Harbans Singh as to the alienations being acts of good management and for necessity should be upheld.

Kapur, J.

The relationship of the alienors and of the plaintiffs is shown by the following pedigree-table :—



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On the 28th of November 1932, Hukam Chand and the sons of Ramji Das, and the four sons of Dal Chand of whom two were minors executed a deed of perpetual lease in favour of Ishar Singh, Sundar Singh, Jowala Singh and Bhola Singh, the amount of the lease being Rs. 5 per *ghumaon* per annum. On the 17th of March 1934, by an oral agreement one-third of the land which was the share leased to Jowala Singh and Bhola Singh, was confirmed but Ishar Singh and Sundar Singh gave up two-thirds which was their share. Evidently there was a partition in the family of Devi Sahai which was till then a joint Hindu family and Khubi Ram and Amar Nath on the 13th March 1936, sold 344 *kanals* 2 *marlas* to Bhag Singh, defendant, for a sum of Rs. 4,310-4-0.

On the 28th of March 1941, Khubi Ram and Amar Nath mortgaged by a mutation 499 *kanals* to Hukam Chand, son of Devi Sahai and the four sons of Dal Chand for Rs. 4,000 and out of this 224 *kanals* with specific field numbers were sold to Uttam Chand, son of Naurang Rai on the 4th of June 1942. Khubi Ram alone made a report of this transaction.

On the February 1944, the sons of Khubi Ram brought a suit challenging all these alienations including the perpetual lease, the sale in favour of Bhag Singh, the mortgage in favour of Hukam Chand and sale in favour of Uttam Chand. The plaintiffs alleged in this case that these alienations were made without consideration and legal necessity and not for the benefit of the family. This suit was decreed by the trial Court and two appeals were taken to the Additional District Judge in regard to the perpetual lease and sale in favour of Bhag Singh, and he held that the alienations were acts of good management as the family was living in Ferozepore and land was situated in a village which was eight miles away and was not connected by any railway and was not bringing any income to the family, besides all the adult male members of the family had joined in the various alienations, and, therefore, held that this

was presumptive proof of necessity relying upon a Bench decision of the Lahore High Court in *Brij Lal v. Mt. Mauli* (1). The plaintiffs have come up in appeal to this Court.

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and others  
v.

Bhola and  
others

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Kapur, J.

A preliminary objection was taken that the appeals are barred by time as the judgment of the lower Court was not filed till long after the period of limitation had expired. But as in those days conditions were extraordinary I do not think we should dismiss the appeal on that ground.

The question to be decided is whether the finding of the learned Judge on the question of consideration and necessity and of the alienations being acts of good management can be upheld. In all the alienations which were made all the adult male members of the family joined and I agree with the opinion of the Lahore High Court in *Brij Lal's case* (1), that this is presumptive proof of necessity and passes a good title and it is for the person who wants to impeach the alienation to establish that the alienation was not justified by necessity; see also *Shamsher Datt Singh and others v. Lalta Singh and others* (2), which was relied on in that judgment, Mr. Dwarka Nath Aggarwal has drawn our attention to another judgment of this Court, *Khushi Ram v. Mehr Chand* (3), where it was held—

“When a joint family consists of adults and minors the mere fact that all the adult members including the manager have consented to the alienation is not proof of legal necessity. Such consent, however, may supply any lacuna that may exist in the evidence of legal necessity.”

The view taken in this case does not seem to be any different from that taken by the Lahore High Court in *Brij Lal's case* (1). I am, therefore, of the opinion that there is no substance in these appeals and they must, therefore, be dismissed. I would accordingly dismiss these appeals with costs throughout.

FALSHAW, J.—I agree.

Falshaw, J.

(1) A.I.R. 1948 Lah. 17

(2) I.L.R. 1946 Lah. 52

(3) A.I.R. 1950 E.P. 272