Regional Director, Employees State Insurance Corporation, New Delhi
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dependants are entitled to receive damages under section 1 of the Fatal Accidents Act and this right as I have already stated is independent to the victim's right to recover damages which is enforceable for the benefit of the estate of the deceased under section 2 of the 1855 Act. For all these reasons I am of the opinion that the Corporation is entitled to claim indemnity under section 67 of the Employees State Insurance Act from the Dyer Meakin Breweries Limited, provided other conditions laid down in this section are satisfied.

It was stated before me in the course of arguments that the respondent-Brewery has paid damages to the dependants of the deceased. Its effect on the Corporation's claim cannot be determined in this appeal as the matter was not argued before me and it is not known when, to whom and under what circumstances this payment has been made. I am not suggesting that these circumstances will necessarily affect the legal position.

The result is that this appeal succeeds and is hereby accepted. There will be no order as to costs. The Employees Insurance Court will now decide the case on the merits.

B.R.T.

APPELLATE CIVIL.

Before Chopra and Gosain, JJ.

BALMAKAND,—*Appellant.*

versus

PINDI DASS AND OTHERS,—*Respondents.*

Civil Regular First Appeal No. 219 of 1950.

1957

Oct. 14th

Hindu Law—Right of the Karta of Joint Hindu Family to sell the property of the joint family—Extent of—Sale, Whether should be for the benefit of the family—Transaction, whether for the benefit of the family—Considerations to determine.

Held, that a Karta of a Joint Hindu Family has the right to sell the property of the joint family if it is for the benefit of the family. The mere fact that he has been able to sell the property at a rate much higher than the market rate is not enough. He has further to show that the money realised by the sale was needed by or was utilised for the purposes of the family. In the absence of such proof the turning of a stable asset like immovable property of the family into cash cannot by itself be said to be for the benefit of the estate.

Held, that the question whether a transaction is for the benefit of an estate or not involves the consideration of something more than merely whether the purchase price paid is a good price; it involves the further question of what is to be done with the purchase money. Thus if the land which cannot conveniently be cultivated with other property of the family is sold and the purchase money is invested in lands which can be so conveniently cultivated, the sale will be considered as for the benefit of the estate provided that the price obtained and the price paid are proper.

First Appeal from the decree of the Court of Shri A. S. Gilani, Additional Sub-Judge, Ist Class, Batala, dated the 26th day of June, 1950, dismissing the plaintiff's suit and leaving the parties to bear their own costs.

SHAMAIR CHAND and P. C. JAIN for *Appellants.*

ROOP CHAND and D. R. MANCHANDA for *Respondents.*

JUDGMENT

Gosain, J.

GOSAIN, J.—The facts giving rise to this first appeal are as under : One Balmukand, a resident of Batala, filed a suit against Pindi Das, Haveli Ram, Khem Chand and Sat Pal, sons of Nihal Chand, residents of Batala, on 12th February, 1947, for possession by specific performance of a contract of sale of 3/20 share of land measuring 13 *kanals* 1 *marla* situate in Mauza Faizpur (included in Batala) on payment of Rs. 9,687-8-0. The plaintiff alleged that all the four defendants were

eal brothers and constituted a joint Hindu family of which Pindi Das, defendant, was the *karkun* and manager, that defendant No. 1 as manager was fully competent to make any alienation of the property of the family, that the property in suit was the property of the joint Hindu family, that on 1st October, 1945, defendant No. 1 as Manager of the family entered into a transaction of sale of the property in dispute with the plaintiff at the rate of Rs. 250 per *marla* and received a sum of Rs. 100 as earnest money from the plaintiff, that the defendants in spite of being repeatedly asked to receive the remaining sale money from the plaintiff and execute and complete a sale-deed in respect of the land in suit had failed to perform their part of the contract, that the price of the land in question by calculation came to Rs. 9,787-8-0, and that after deducting Rs. 100 paid as earnest money the plaintiff was entitled to have specific performance of the contract on payment of Rs. 9,687-8-0. Defendant No. 1 filed one written statement and defendants Nos. 2 to 4 jointly filed another. Defendant No. 1 pleaded that the land in suit had never been sold by him: that the land sold by him was really another land situate in a locality called 'Jowahar Nagar'; that the contract of sale was at any rate vague and uncertain and was null and void; that he had no right to sell the land on behalf of defendants Nos. 2 to 4 and a suit for specific performance of the alleged contract did not lie. Defendants Nos. 2 to 4 pleaded that defendant No. 1 had not entered into any transaction with the plaintiff and that at any rate he was not entitled to enter into the transaction in question. They further pleaded that the defendants did not constitute Hindu joint family and that in any case the transaction was not for the benefit of the family. The trial Court recorded the statements of the plaintiff and

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and of Pindi Das on 3rd April, 1947, and then framed the following eight issues:—

(1) Whether defendant No. 1 on his own account and as the *karta* of the Joint Hindu Family consisting of the defendants entered into an agreement on 1st October, 1945, to sell the land in dispute with the plaintiff ?

(2) Whether defendants Nos. 2 to 4 do not form a Joint Hindu Family with defendant No. 1?

(3) Whether the land in dispute is the property of the Joint Hindu Family consisting of the defendants Nos. 1 to 4?

(4) Whether the alleged sale is for the benefit of the Joint Hindu Family? If not what is its effect?

(5) If the alleged agreement between defendant No. 1 and the plaintiff is proved and sale is not for the benefit of the Joint Hindu Family can the defendant No. 1 be ordered to sell his share in the land to the plaintiff ?(O.P.)

Onus objected to but over-ruled,—*vide* para 269, Mulla's Hindu Law, 9th Edition.

(6) In case it is found that the defendants do not form a Joint Hindu Family and the alleged agreement to sell is proved is not defendant No. 1 liable to part with his share in the land in dispute in favour of the plaintiff?

(7) Whether defendant No. 4 was present at the time of the alleged agreement to sell and consented to it and is bound by the same ?

(8) Relief.

The trial Court came to the conclusion that defendant No. 1 had on his own account and as the *karta* of the joint Hindu family consisting of the defendants entered into an agreement on 1st October, 1945, to sell the land in dispute to the plaintiff at Rs. 250 per *marla ;* that defendants Nos. 2 to 4 were members of the joint Hindu family along with defendant No. 1; that the property in question was the property of the joint Hindu family consisting of the defendants; that the alleged sale was not for the benefit of the joint Hindu family and was, therefore, not binding on defendants Nos. 2 to 4. The trial Court also found that the transaction could not be enforced against the share of defendant No. 1 in the property in question and that although defendant No. 4 was present at the time of the alleged agreement to sell, he did not give any consent to the sale in question. On the aforesaid findings the trial Court dismissed the plaintiff's suit on 26th June, 1950, leaving the parties to bear their own costs. The plaintiff has come up to this Court in first appeal.

It must be noted that the learned counsel for the parties did not contest the findings of the trial Court on issues Nos. 1, 2, 3, 5 and 6. Mr. Shamair Chand, learned counsel for the appellant, mainly contended that the sale in question had been made for the benefit of the joint Hindu family and that Sat Pal who was present at the time of the sale was actually consulted and had consented to the sale. As pointed out by the learned trial Court no such plea had been taken by the plaintiff in the plaint. Defendants Nos. 2 to 4 pleaded in their written statement that the alleged sale was not for the benefit of the family. On 3rd April, 1947, the trial Court recorded the statement of Balmukand, plaintiff, and it was in that statement for the first time that the plaintiff pleaded the sale

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to be for the benefit of the family. The exact words in which the plea was taken are—

> "Defendants Nos. 1 to 4 form a joint Hindu family of which defendant No. 1 is the *karta*. The defendants wanted to sell the land as it was fetching good price. The defendant No. 1 did not disclose any necessity for the sale. He told me that the land on partition will be of little use to them. Defendant No. 1 said that the sale deed will be executed after he can get copies of the *jama-bandi*."

It is proved on the record from the evidence of P.Ws. 9, 10 and 11 and of the plaintiff himself as P.W. 12 that on the 1st of October, 1945, Balmukand, plaintiff, purchased 23/120 share belonging to one Devi Sahai in the joint Khata in dispute and that the sale deed for the same was scribed by P.W. 9 Bua Das, Petition-writer of Batala. That transaction had been brought about by two brokers Ved Prakash, P.W. 10, and Narinjan Das, P.W. 11, who were also present at the time the sale-deed of 23/120 share was being scribed in the court compound by Bua Das. Pindi Das and Sat Pal, defendants, had also come to Bua Das at that particular time for the purpose of getting some plaint written by him. Pindi Das on learning that the plaintiff had purchased 23/120 share of the land inquired from the brokers as to what price had been paid for the land. On being told that the land had been purchased by the plaintiff at Rs. 175 per *marla*, Pindi Das offered to the brokers that if the plaintiff was willing to purchase their 3/20 share at the rate of Rs. 250 per *marla*, they would be willing to sell it. The brokers then contacted the plaintiff who showed his willingness to

purchase the share of the defendants at the rate of Rs. 250 per *marla*. The plaintiff was already a co-sharer in the joint *khata* in question. With the purchase of 23/120 share, the plaintiff had completed his title to 17/20 share of the joint land and the only share of this land which still remained with others was 3/20. It was this share that the defendants had offered to the plaintiff and with the purchase of this share the plaintiff would have become a complete owner of the *khata*. The plaintiff naturally wishing to become the complete owner accepted the offer of the defendants and paid Rs. 100 as earnest money to Pindi Das who accepted the same and concluded the contract as *karta* of the joint Hindu family. Sat Pal being present there was consulted by Pindi Das. Sat Pal says that he did not give any consent to the transaction, but the brokers P.W. 10 and P.W. 11, swear that he gave his consent. In any case, it appears that both parties felt satisfied with this contract of sale inasmuch as the plaintiff acquired title to the small portion which was not with him and thus completed the purchase of the entire *khata* and the defendants got Rs. 250 per *marla* as price of the land which was being sold that very day at the rate of Rs. 175 per *marla* and which they had purchased in 1939 per Exhibit P. 5 at a very insignificant price. It is not understood as to what led Pindi Das and his brothers to change their mind later. It may be that defendants Nos. 2 and 3 did not agree to this sale or it may be that the defendants decided to retain this small share of the joint *khata* with a view to compel the plaintiff to pay higher price at some later time. We cannot, however, go into the realm of conjectures. None of the parties has given any reason why the transaction was not completed. The plaintiff, after waiting for considerable time, was compelled to bring the present suit and all the

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defendants chose to contest it. The suit has been dismissed by the trial Court mainly on the ground that it was not proved that the sale was for the benefit of the estate and was as such not binding on all the defendants. The sole point that arises in the appeal, therefore, is, whether on the facts and in the circumstances of the case the sale is proved to be for the benefit of the estate.

Mr. Sharnair Chand drew our attention to paragraph 243A of Mulla's Hindu Law and contended that the words "for the benefit of the estate" which occur, in the judgment of the Judicial Committee in *Hunooman Parsad's case* (1), are not merely restricted to transactions of defensive character calculated to protect the estate from some threatened danger or destruction, and are wide enough to include all such transactions which a prudent owner or rather a trustee may carry out with the knowledge that was available to him at the time of the transaction. His argument is that in each case it is a question of fact whether a particular transaction is for the benefit of the estate, and the test to find out the same is whether a prudent owner or trustee would enter into the transaction in question with the knowledge of all the circumstances existing at the time. He contends that Pindi Das and Sat Pal made this offer to sell the land in question at Rs. 250 per *marla* because they knew that portions of the same *khata* were being sold on the same day for Rs. 175 per *marla* and that the transaction would bring them Rs. 10,000 instead of the market value of Rs. 7,000. He further contends that the defendants were only owners of a very small portion in the joint *khata* and were not earning any income from the same. His case indeed is that Pindi Das and Sat Pal who are businessmen sold the land

(1) 6 Moo. Ind. App. 393

clearly with the object of obtaining hard cash amounting to Rs. 10,000 in lieu of a dead asset yielding at the moment nothing to the family and not likely to yield anything till the land was partitioned during the lengthy course necessarily involved in such partitions by the revenue officers. Mr. Shamair Chand, however, cannot take the matter any further. He concedes that besides the point that the price obtained by the sale was Rs. 75 per *marla* more than the market value on that day, there is nothing else to prove benefit to the estate. There is neither any plea nor any evidence to show how the sale money was to be utilised, and whether it was at all needed by the family for any purposes of the same. He has drawn our attention to *Jagat Narain and another* v. *Mathura Das and others* (1), *Syed Hayat Ali Shah* v. *Nem Chand minor* (2), *Lala Atma Ram* v. Thakur Sadhu Singh and another (3), and also to an unreported judgment in *Swarn Kumar* v. *Munshi Ram, etc.*, (4), decided by Kapur, J., on the 5th of June, 1951. The facts of these rulings are distinguishable and in none of them was it held that the mere fact that the manager of the family obtained more price was by itself sufficient to find that the sale was made for the benefit of the estate.

In *Jagat Narain and another* v. *Mathura Dass and others* (1), the adult manager of the family had found it very inconvenient and to the prejudice of the family's interest to retain property eighteen or nineteen miles away from Bijnore to the management of which neither of them could possibly give attention and they had considered it to the advantage of the estate to sell that property and purchase other property at a more accessible situation. It had also been found that the property was

(1) I.L.R. 50 All. 969 (F.B.)
(2) A.I.R. 1945 Lah. 169
(3) A.I.R. 1938 P.C. 77
(4) R.S.A. 175 of 1948

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sold at very advantageous terms although an unfortunate incident happened that the Bank where the money was deposited closed its doors. The sale was clearly an act of good management and the purpose was to sell property which could not be managed, and with the sale money thereof to purchase property which the family could manage.

In *Sayed Hayat Ali Shah* v. *Nem Chand Minor* (1), the facts found were that the joint Hindu family in that case was dependent on trade and originally owned a provision shop in or near the Chandni Chowk, Delhi. This state of affairs continued till about the year 1928. The provision shop was then given up and a cycle shop was started and the whole family was dependent on the income received from this shop. In the beginning of 1938 a sum of Rs. 2,300 was borrowed from one Thakar Das on the security of ancestral property of the joint Hindu family and later in the same year this property was again mortgaged by the manager of the family for obtaining some more money. The objects of the loan were that the family wished to extend the scope of its business by selling perambulators and manufacturing rubber solution in addition to the cycle business. It was found by the Full Bench that the mortgages in those circumstances were for the benefit of the estate.

In the unreported judgment of Kapur, J., in *Swarn Kumar* v. *Munshi Ram, etc.* (2), the facts were that Madan Gopal, manager of the family, was a State servant on Rs. 50 a month and had three sons and three daughters. He gave up service because he was unable to pull on with the meagre salary and joined his nephew Surrendar Nath in cloth business which Surrender Nath was

(1) A.I.R. 1945 Lah. 169 (F.B.)
(2) R.S.A. 175 of 1948

previously carrying on. The property at Ferozepore which Madan Gopal was finding difficult to manage was sold off for the purpose of investing the money on the cloth business and the trial Court and the District Judge both found on evidence that the act of Madan Gopal was an act of good management and that by investing the money obtained by sale of the property he was able to carry on the business and was thus able to maintain his growing family. Kapur, J., found that the findings of the Courts below were findings of fact and that in the circumstances of the case the sale of the property was for the benefit of the estate.

Lala Atma Ram v. *Thakur Sadhu Singh and another* (1), related to an agriculturist governed by custom. The facts found in that case were that the vendor was not able to manage the cultivation of his land and was very much indebted with the result that he was not even able to pay the land revenue and in those circumstances he sold the land to a non-agriculturist with the sanction of the Deputy Commissioner. On these facts it was found that the sale was an act of good management and could not be attacked by his sons.

The facts of the present case are entirely different. The plaintiff has not been able to prove any benefit to the estate. He has only proved that Pindi Das was able to sell the land at a rate much higher than the market rate. This by itself is not a benefit to the estate. In the absence of any further fact that the money realised by the sale was needed by the family or was utilised for the purposes of the family, we feel that the turning of a stable asset like immovable property of the family into cash which was to be realised by the then

(1) A.I.R. 1938 P.C. 77

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manager of the family could not by itself be for the benefit of the estate.

Mr. Daulat Ram Manchanda, learned counsel for the respondents, drew our attention to a Full Bench authority of the Bombay High Court reported in *Hem Raj* v. *Nathu and others* (1), where almost a similar point was decided. Sir John Beaumont, C.J., who delivered the main judgment in that case, observed at pages 543 and 544 of the report as under :—

> "In my opinion, the view taken by the Full Bench of the Allahabad High Court in *Jagat Narain* v. *Mathura Das* (2), that the question turns on what a prudent owner would do in dealing with his own estate goes too far, and there is no justification in Hindu Law for saying that the manager of a minor can sell the minor's property solely on the ground that if he were the owner of the property he would as a prudent man sell it. I may point out that the question whether a transaction is for the benefit of an estate or not involves the consideration of something more than merely whether the purchase price paid is a good price ; it involves the further question of what is to be done with the purchase money. In the present case the purchase money was invested in business, so that the ultimate result of the transaction was that the minor, in place of a piece of land worth Rs. 600, had an interest costing Rs. 900 in a business ; but whether that interest was worth more than Rs. 600 does not appear on the evidence. To sell a piece of

(1) I.L.R. 59 Bom. 525
(2) I.L.R. 50 All. 969

land at a very good price would not be beneficial if the purchase money was to be invested in an insolvent business. However, apart from that consideration, in my opinion, the manager of a minor under Hindu law is not entitled to sell merely for the purpose of enhancing the value of the property of the minor, or for increasing the minor's income. On the other hand I am not prepared to go quite so far as Mr. Justice Patkar went in *Ragho* v. *Zaga Ekoba* (2), and to say that no transaction can be for the benefit of the minor which is not of a character to protect or preserve property of the minor. It would generally, I think, be difficult to justify a sale not of that character, but I can conceive of cases not of that character in which the facts might nevertheless be of such a compelling character that any Court would hold the transactions to be for the benefit of the estate, e.g., the sale of land which could not conveniently be cultivated with other property of the minor, and the investment of the purchase money in lands which could be so conveniently cultivated, assuming of course that the price obtained, and the price paid, were proper; or the sale of lands in order to raise money to secure irrigation or permanent improvement of the other lands of the minor; or a beneficial exchange; or a case like the one in *Nagindas Maneklal* v. *Mahomed Yusuf* (2), where it was necessary to sell in order to prevent the

(1) I.L.R. 53 Bom. 419
(2) I.L.R. 46 Bom. 342

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disruption of the property. In the present case there is nothing to justify the sale except the fact, which I accept, that the price obtained was greater than which would normally be obtained in the market. Apart from the fact that we have no satisfactory evidence as to the manner in which the purchase money was to be dealt with, I think that a sale of that character and for that purpose is not justified by the cases to which I have referred. That being so, I think the appeal must be allowed."

We have no doubt that this is the correct exposition of law, and with great respect we follow the *ratio decidendi* of the said case and find that the sale in question was not for the benefit of the estate and was not, therefore, binding on defendants Nos. 1 to 4. The plaintiff cannot be granted a decree for specific performance of the contract in question because the property in suit belongs to the joint Hindu family and Pindi Das, manager of the family, was not entitled to sell it except for the benefit of the estate.

We, however, feel that there was no justification for the defendants retaining Rs. 100 as earnest money. Mr. Shamair Chand submits that the defendants should be directed to refund this amount with interest at 6 per cent per annum from the date they received the amount to the date when they actually pay. We feel that this request is quite reasonable in the circumstances of the case. We do not approve of the conduct of Pindi Das and we strongly condemn the attitude adopted by him in this suit and the false allegations which he made in the written statement and in his evidence. Pindi Das has been withholding

this amount of Rs. 100 wrongfully. He is said to have died during the pendency of the appeal. His estate is bound to refund Rs. 100 along with interest at 6 per cent per annum from 1st October, 1945, to the date of actual payment to the plaintiff.

We, therefore, modify the decree of the trial Court and dismissing the plaintiff's suit for specific performance pass a decree in favour of the plaintiff for Rs. 100 along with interest at 6 per cent per annum from 1st October, 1945, to the date of its payment to the plaintiff. This amount will be recoverable from the estate of Pindi Das. The parties shall bear their own costs throughout.

Chopra, J. I agree.

B. R. T.

APPELLATE CIVIL

(Letter Patent Appeal)

Before Bhandari, C. J. and Grover, J.

MESSRS. BHOLABHAI-BHOGILAL,—*Appellant.*

versus

RATTAN CHAND AND OTHERS,—*Respondents.*

Letter Patent Appeal No. 84 of 1954.

1957

Oct. 15th

Code of Civil Procedure (Act V of 1908)—Order XXX—Object of—Whether an exception to section 45 of the Indian Contract Act—Suit by partner in his own name and not in the name of the firm—Whether governed by Order XXX—Letters Patent Appeal—Finding of fact by single Judge—When can be interfered with in appeal. ... ...

Held, that order XXX was introduced into the Code of Civil Procedure as an exception to the provisions of section 45 of the Indian Contract Act, and it is an enabling provision in as much as it allows two or more partners to sue, provided the suit is brought in the name of the firm. But