

of Offenders Act have been excluded from application to the Act. This has been done and minimum sentence has been provided with an idea to deter the adulterators of food from playing with the health of the people. Only those accused can be visited with lesser sentence, whose cases fall within the purview of the proviso to section 16 and to others, whose cases do not fall within its ambit, no leniency can be shown. We do not find if the case of the respondent falls under any of the exceptions provided by the proviso to Section 16 of the Act. In this case, we do not agree with the learned counsel for the respondent to take the protracted litigation as a ground for lesser sentence.

25. We, therefore, sentence the respondent to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000. In default of payment of fine he shall undergo further rigorous imprisonment for four months.

Rajendra Nath Mittal, J—I agree.

S. S. Dewan, J—I also agree.

N. K. S.

FULL BENCH

*Before P. C. Jain, A.C.J., S. P. Goyal & I. S. Tiwana, JJ.*

MANOHAR LAL AND ANOTHER,—Appellants.

*versus*

DEWAN CHAND AND OTHERS,—Respondents.

*Regular Second Appeal No. 1263 of 1975.*

April 24, 1985.

*Hindu Law—Mitakshra School—Sale of coparcenary property by the Karta—Sale neither for legal necessity nor for the benefit of the estate—Suit by the sons challenging the sale—Sale—Whether liable to be set aside in toto—Vendor—Whether bound by the sale to the extent of his share.*

*Held*, that where a member of the Joint Hindu Family governed by Mitakshra Law sells or mortgages the joint hindu family property or any part thereof without the consent of the coparceners,

Manohar Lal and another v. Dewan Chand and others  
(S. P. Goyal, J.)

the alienation is liable to be set aside wholly unless it was for legal necessity and it does not pass the share even of the alienating coparcener. Even in Punjab whereby custom son cannot claim partition against father, the son is entitled to joint possession with the father when the alienation is set aside. Thus, it is held that under Mitakshra School of law the alienation if otherwise void does not even bind the share of the alienor.

(Paras 4 & 5).

1. Jawala Singh and another vs. Lachhman Das and others, A.I.R. 1974 Punjab and Haryana 188.
2. Lachhman Das vs. Ude Chand and others, L.P.A. 692 of 1973 decided on January 31, 1977.

OVERRULED

*This Regular Second Appeal referred by the Hon'ble Mr. Justice S. P. Goyal to the larger bench on 11th July, 1984. The larger bench consisting of Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice I. S. Tiwana again referred the case on 30th August, 1984 to Full Bench and the Full Bench consisting of Hon'ble the Acting Chief Justice Mr. Prem Chand Jain, Hon'ble Mr. Justice S. P. Goyal, and Hon'ble Mr. Justice I. S. Tiwana sent the case back to the single Bench on 24th April, 1985 for disposal on merits. The Hon'ble Mr. Justice S. P. Goyal finally decided the case on 9th May, 1985.*

*Regular Second Appeal from the order of the Court of Shri Romesh Chand Jain, Senior Sub Judge, with Enhanced appellate Powers, Hissar dater the 19th day of February, 1975, affirming that of Miss Kiran Anand, Sub Judge 3rd Class, Hissar dated the 19th day of March, 1971, dismissing the suit of the plaintiffs with costs.*

C. B. Goyal, Advocate, with L. N. Jindal, Advocate, for the Appellants.

S. C. Kapoor, Advocate, for the Respondents.

JUDGMENT

S. P. Goyal, J.

(1) Dewan Chand father of the appellants sold land measuring 112 kanals, 10½ marlas for Rs.8000/—vide sale deed dated September 19, 1963. The appellants filed this suit for joint possession

of the said land alleging that they constituted a joint Hindu family with their father; that the land sold was coparcenary property and that the sale has been made without consideration and legal necessity. The suit was contested by the vendees who controverted all the material allegations and further pleaded that the sale having been made for the benefit of the family and being an act of good management was binding on the plaintiffs. The trial Court after recording evidence of the parties negatived the plea that the property was coparcenary property and further holding that the sale had been made for consideration and legal necessity and as an act of good management dismissed the suit. Its findings were affirmed on appeal which led to the filing of this second appeal by the plaintiffs.

(2) The appeal came up for hearing before me sitting singly and finding as to the ancestral nature of the land in dispute was modified holding that 2/3rd of the land in dispute was coparcenary property. Thereafter the question arose as to whether the sale was liable to be set aside *in toto* qua the ancestral property or was valid and binding to the extent of the share of the vendors. The learned counsel for the respondents relying on *Jawala Singh and another v. Lachhman Das and others* (1), urged that the sale was binding to the share of the vendors. Doubting the correctness of the decision in *Jawala Singh's case* (supra) I referred the following question to a larger Bench:—

“Whether the sale of coparcenary property, if found to be neither for legal necessity nor for the benefit of the estate would be binding to the extent of the share of the vendor?”

(3) When the matter came up before the Division Bench, it was brought to their notice that the decision in *Jawala Singh's case* (supra) had been later on confirmed by a Letters Patent Bench in *Lachhman Dass v. Ude Chand and others* (2). The Division Bench consequently referred the above question to the Full Bench.

(4) It was admitted between the parties that in Punjab and Haryana, the Hindus are governed by Mitakshra School of Hindu

---

(1) A.I.R. 1974 Punjab and Haryana 188.

(2) L.P.A. 692 of 1973 decided on 31st January, 1977.

Manohar Lal and another v. Dewan Chand and others  
(S. P. Goyal, J.)

Law. According to paragraph 269 of the Hindu Law by Mulla which is a book of unquestioned authority since more than half a century, where a member of joint Hindu family, governed by Mitakshara law sells or mortgages the joint Hindu family property or any part thereof without the consent of the coparcenor, the alienation is liable to be set aside wholly unless it was for legal necessity and it does not pass the share even of the alienating coparcenor. It has been further laid down in this paragraph that even in the Punjab where by custom son cannot claim partition against father, the son is entitled to joint possession with the father when the alienation is set aside. Similar is the statement of law contained in paragraph 260. The above statement of law was duly recognised and enforced by the Privy Council in *Lachhman Prasad and others v. Sarnam Singh and others* (3), *Anant Ram and others v. Collector of Etah and others* (4), and *Manna Lal v. Karu Singh and others* (5). The Full Bench of the Allahabad High Court in *Chandradeo Singh and others v. Mata Prasad and others* (6), and *Mathura Misra and others v. Rajkumar Misra and others* (7), laid down the law to the same effect. In the United Punjab also as expressed in *Badam and others v. Madho Ram and others* (8), *Chiranji Lal v. Kartar Singh and other* (9), *Daya Ram and others v. Harcharan Dass and others* (10), *Raj Kishore v. Madan Gopal and others* (11), and *Ralla Ram and another v. Atma Ram and another* (12), the established view has been the same. A departure was made for the first time in *Jawala Singh's case* (supra) relying on the following observations of the Supreme Court in *Balmukand v. Kamla Wati and others* (13),

“No doubt Pindi Dass himself was bound by the contract which he has entered into and the plaintiff would have been entitled to

- (3) A.I.R. 1917 P.C. 41.
- (4) A.I.R. 1917 P.C. 188.
- (5) A.I.R. 1919 P.C. 108.
- (6) 1 Indian Cases 479 (F.B.)
- (7) A.I.R. 1921 Patna 447.
- (8) A.I.R. 1922 Lah. 241.
- (9) A.I.R. 1925 Lah. 130.
- (10) A.I.R. 1928 Lah. 111.
- (11) A.I.R. 1932 Lah. 636.
- (12) A.I.R. 1933 Lah. 343.
- (13) A.I.R. 1964 S.C. 1385

the benefit of section 15 of the Specific Relief Act which runs thus."

On the basis of the same observations, the decision in *Jawala Singh's case* (*supra*) was confirmed by the Letters Patent Bench. In *Balmukand's case* (*supra*) no question that where Mitakshra law prevailed alienation of joint Hindu family property made by the Manager or any coparcenor without any legal necessity and consent by the other coparcenors did not bind the share of the alienor, was raised before the Supreme Court and as such the observations referred to above which were made in the context of section 15 of the Specific Relief Act would be operative in that limited sphere. By no stretch of reasoning while making the said observations, the Supreme Court can be said to have laid down the law that in the States where Mitakshra law applies, alienation would be binding qua the share of the vendor even though it was made without the consent of other coparcenors and legal necessity nor for the benefit of the estate.

(5) Though this question was not directly involved but the full Bench of this Court in the *Commissioner of Gift Tax v. Tej Nath* (14), (full Bench) while determining the nature of the alienation by way of gift and the power of the manager in this regard observed that the rule in both cases (i.e. gift and other alienation) is firmly established that alienation of Hindu undivided family property not permitted by the context of Hindu Law does not even bind the share of the Karta though in the application of this rule, estoppel prevents the Karta from avoiding the alienation. It is, therefore, apparent that except the discordant note struck in *Jawala Singh's case* (*supra*) the proposition of law that under Mitakshra School of Law, the alienation if otherwise void, does not even bind the share of the alienor has been invariably accepted and holds the field in this Court since more than five decades. Accordingly the question referred to us is answered in the negative and the decision in L.P.A. No. 692 of 1973 (*Supra*) overruled. The case would now go back to the single Bench for disposal on merits.

---

N. K. S.

---

(14) 1972 P.L.R. 1.