

Before : J. V. Gupta, J.

PARAS RAM AND OTHERS,—Appellants.  
*versus*  
 RAM SINGH AND ANOTHER,—Respondents.

Regular Second Appeal No. 1688 of 1979

April 11, 1989.

*Hindu Law—Alienation—Litigation between plaintiff and defendant—Defendant mortgaging the property for raising money for maintenance—Such necessity whether legal—Mortgage proved for consideration—Validity of such mortgage.*

*Held*, that once it was held that the mortgage in question was for consideration the issue of legal necessity could not be held against the defendant-appellants. It is in evidence and not disputed that there was litigation going on at the time of the filing of the suit as well as at the time of the mortgage, between the plaintiff and Shiv Lal, defendant, and he had no other source of income to maintain himself and, therefore, he mortgaged the suit for land a consideration of Rs. 30,000 with the defendants. In the circumstances, it could not be held that the mortgage was not for legal necessity. The conception of legal necessity changes with advancement of time.

(Para 5).

*Regular Second Appeal from the decree of the Court of the Senior Sub-Judge, Gurgaon (with enhanced appellant powers) dated the 31st day of January, 1979, affirming with costs that of the Sub Judge 1st Class, Palwal, dated the 20th October, 1978, passing a decree for declaration, with costs, in favour of the plaintiff and against the defendants, to the effect that the impugned mortgage-deed Ex. D1, dated 7th March, 1975, is illegal, being against-custom and is not binding on the reversionary rights of the plaintiff with regard to the suit land.*

*Claim for a decree for declaration to the effect that plaintiff is the owner of the suit land to the extent of  $\frac{1}{3}$  share comprising kherat No. 95 khata No. 228 Rectangle No. 5 Killa No. 19/1(1—14), Rectangle No. 12 Killa No. 61/1/19(0—2) 6/1/20(0—2) Rectangle No. 81 Killa No. 16(2—7), 17/2(6—13), 18/2(1—13), 24/1(0—13) Rectangle No. 5 Killa No. 2(3—15) 8(5—7) 9(8—0) Rectangle No. 63 Killa No. 5/1(4—5) Rectangle No. 54 Killa No. 25(7—9) Rectangle No. 5 Killa No. 12/2 (6-7) 13(8-8) 14 (8—0) Rectangle No. 63 Killa No. 4/1(4—0) total 66 K.3 M share becomes 33 K.1 M. situate in village. Bhulwana, Tehsil Palwal, may be passed in favour of the plaintiff and against the defendants with costs.*

*Claim in Appeal:—For reversal of the order of both the Courts below.*

C. B. Goyal, Advocate, for the Appellants.

Arun Jain, Advocate, for the Respondents.

## JUDGMENT

J. V. Gupta, J.

(1) Shiv Lal, defendant No. 1, is the owner of the suit land. *Vide* mortgage deed dated 7th March, 1975 (Ex. D1) he mortgaged the suit land for a sum of Rs. 30,000 with Paras Ram and others, defendants. Out of this amount, a sum of Rs. 10,000 was paid by a separate receipt while Rs. 20,000 was paid before the Registrar at the time of registration of the mortgage deed. The plaintiff Ram Singh claiming himself to be the adopted son of mortgagor Shiv Lal, filed a suit for declaration challenging the said alienation made by his adoptive father Shiv Lal. It was alleged that the suit property was ancestral *qua* him, that the mortgage was without consideration and legal necessity and that the parties were governed by custom in matters of alienation. Shiv Lal, mortgagor, filed his written statement. He denied that the plaintiff Ram Singh was his adopted son. He pleaded that the plaintiff had got an adoption deed executed by fraud; that the mortgage created by him was for consideration and legal necessity; that there was a litigation going on between him and the plaintiff Ram Singh who claimed himself to be his adopted son; and that since he had no other means of livelihood and no expenses for fighting the litigation against the plaintiff he had no option than to mortgage the suit land for a sum of Rs. 30,000 which amount was duly received by him. The mortgagees/defendants pleaded that the suit land was not ancestral *quo* the plaintiff, that the mortgage was for consideration and legal necessity and that the plaintiff Ram Singh was not the validly adopted son of Shiv Lal, mortgagor.

(2) The trial court found that Shiv Lal, mortgagor, took the plaintiff in adoption and since then he was transplanted in his family and became his son for all intents and purposes, and as such had the *locus standi* to file the suit. The parties were held to be governed by customary law according to which alienation of ancestral land could not be made without legal necessity. The land was held to be ancestral *qua* the plaintiff. Though the alienation was found for consideration it was held to be without legal necessity. In view of these findings, the suit was decreed,—*vide* judgment dated 20th October, 1978. In appeal, the learned Senior Sub-Judge with enhanced appellate powers affirmed the findings of the trial court and, thus, maintained the judgment and decree of the trial court. It was categorically found by the learned lower appellate court that as regards the question of consideration, the mortgagees

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had succeeded in proving that the mortgage was for consideration. Although it was further held that they had not succeeded in proving the legal necessity but there was no discussion on that issue and the learned lower appellate court just maintained the finding of the trial court.

(3) The learned counsel for the appellants submitted that after both the courts below had come to the conclusion that the mortgage was for consideration, the legal necessity was amply proved on the record. He submitted that from the written statement filed by the Shiv Lal himself in the present suit, it was quite evident that some litigation was going on between the plaintiff and Shiv Lal, defendant and he had no other source of livelihood and for that purpose he had no option than to mortgage the land for Rs. 30,000 with the defendant-appellants. Thus, argued the learned counsel, the notion of legal necessity changes with passage of time, and on the facts and circumstances of the case, the mortgage should be held for legal necessity as well. The other findings of the courts below were not challenged by him.

(4) On the other hand, learned counsel for the plaintiff-respondents submitted that the defendants did not lead any evidence to prove the legal necessity, and on the evidence produced by them the courts below have found that the defendants have failed to prove the issue of legal necessity, and that being a finding of fact should not be interfered with in Second Appeal.

(5) After hearing the learned counsel for the parties I am of the considered view that once it was held that the mortgage in question was for consideration the issue of legal necessity could not be held against the defendants-appellants. It is in evidence and not disputed that there was litigation going on at the time of the filing of the suit as well as at the time of the mortgage, between the plaintiff and Shiv Lal, defendant, and he had no other source of income to maintain himself and, therefore, he mortgaged the suit land for a consideration of Rs. 30,000 with the defendants. In the circumstances, it could not be held that the mortgage was not for legal necessity. The conception of legal necessity changes with advancement of time. The plaintiff was the adopted son of Shiv Lal, mortgagor. Instead of serving his adoptive father, he started litigation with him. In such circumstances, if Shiv Lal mortgaged the suit land it could not be said that the alienation was without any legal necessity. The plaintiff himself was responsible for this alienation on the facts

and circumstances of the case. Thus, the approach of the courts below in this behalf was wholly wrong, illegal and misconceived. From the evidence on record, it could not be held that the mortgage was without any legal necessity. Consequently, this appeal succeeds, the judgments and decrees of the courts below are set aside and the suit is dismissed with costs.

P.C.G.

Before : H S. Rai, J.

MOHAN BIR SINGH,—Appellant.

versus

STATE OF PUNJAB,—Respondent.

Criminal Appeal No. 8—SB of 1988

April 29, 1989.

*Arms Act (XI of 1878)—S. 25—Confiscation of licenced weapon—No notice issued to the owner—Opportunity of being heard not provided to the parties—Validity of such order.*

*Held, that if an adverse order was to be passed against the appellant, he should have been given a notice to show-cause as to why the weapon be not confiscated. As no notice was issued at the time of confiscation, the order confiscating the revolver is set aside and the case is remanded to the trial Court to decide the issue of confiscation after giving an opportunity of being heard to the parties.*

(Para 5).

*Appeal from the order of the court of Shri R. L. Anand, Additional Judge, Special Court, Ludhiana, dated 18th February, 1985, convicting and sentencing the appellant.*

**CHARGES AND SENTENCES :** *U/s 25 of the Arms Act. To undergo R.I. for a period of 9 months and to pay a fine of Rs. 100 in default of which accused shall further undergo R.I. for two months.*

*Case No. 184 dated 24th December, 1984*

*FIR No. 82 dated 14th February, 1984 U/s 25 of the Arms Act, P.S. Civil Lines, Ludhiana.*

*V. Ram Swaroop, Advocate, for the Appellant.*

*Charu Tuli, Advocate, for the Respondent.*