

L. D. Kataria v. K. N. Kutty (Koshal, J.)

(10) In the above view of the matter it is not necessary for us to decide if the offences complained of are also of the type mentioned in section 197 which has been held inapplicable to the case of the petitioner by reason of the fact that he was removable from the office of the Managing Director (the office with which we are here concerned) by the Governor in his absolute discretion and not by or with the sanction of a State Government or the Central Government.

(11) In the result the petition is dismissed.

DHILLON, J.—I agree.

K.S.K.

REVISIONAL CIVIL

*Before Harbans Singh, C.J.*

SHIV KUMAR.—*Petitioner.*

*versus*

MOOL CHAID, etc.,—*Respondents.*

Civil Revision No. 555 of 1971

August 4, 1971.

*Hindu Law—Joint Hindu Family holding property—Karta of the family trying to alienate such property without legal necessity—Other coparceners—Whether can prevent such alienation by bringing a suit for injunction.*

*Held*, that if an act of the Karta of a Joint Hindu family is illegal, according to the law by which he is governed, and if the coparceners come to know of the contemplated act, they should be in a position to prevent him from doing it and thus save an innocent alienee from further litigation. It cannot possibly be the law that they must wait till the transaction is complete and then take steps to get back the property. Hence when the property is a Joint Hindu family property and the proposed alienation by the Karta is not for the benefit of the family or for legal necessity, any of the coparceners can prevent such an illegal act by bringing a suit for injunction. (Paras 8 and 12.)

*Petition under Section 44 of Act IX of 1919, & S. 115, of Civil Procedure Code, for revision of the order of Shri T. P. Garg, Senior Sub Judge (with*

enhanced appellate powers), Narnaul, dated 16th April, 1971, reversing that of Shri S. R. Bansal, Sub Judge III Class, Narnaul, dated 21st December, 1970, rejecting the application of Shiv Kumar plaintiff respondent under Order 39 Rules 1 and 2 read with Section 151 C.P.C., and directing the parties to appear before the learned trial court for further proceedings on 10th May, 1971.

A. S. Anand and Madan Lal, Advocate, for the petitioner.

H. L. Sarin, Advocate with K. R. Chaudhri and M. L. Sarin, for the respondents.

#### JUDGMENT

HARBANS SINGH, C. J.—This revision raises an interesting point Shiv Kumar, who is petitioner before me, brought a suit against his own father and his two brothers seeking a permanent injunction for restraining them from alienating the property in dispute, which was alleged to be joint Hindu family property. The allegations in the plaint were that in connivance with his two other sons, Dina Nath and Satya Pal, his father, Mool Chand, was alienating the property in dispute without any valid legal necessity or any benefit of the family and the estate and that the alienation was being effected to cause wrongful loss to the plaintiff.

(2) The ancestral nature of the property was denied by the father, who claimed that the property was his self-acquired. Nothing, however, seems to have been said by him to the effect that he was alienating the property for any legal necessity.

(3) A temporary injunction was also claimed by the plaintiff his father and his brothers from alienating the property during the pendency of the suit. This was granted by the trial Court, but the lower appellate Court, apart from going into *prima facie* merits of the case, whether the property was ancestral or not, observed that according to Hindu law, as modified by custom in Punjab, a son is not entitled to seek partition of the joint family property during the lifetime of his father and that, consequently, a son has no right whatever to prevent his father from alienating the joint Hindu family property, and the only remedy available to him is that, after the alienation, he can bring a suit challenging the alienation on the ground that the same is not binding on the family, being not for legal necessity. In

view of the above, he vacated the injunction order and the plaintiff has filed this revision.

(4) So far as the question of ancestral nature of the property is concerned, that is a disputed question of fact, which cannot be gone into at this early stage of the suit and I would not like to make any observation regarding that.

(5) The question for determination is, whether, if the property is a joint Hindu family property, a son, being a coparcener, is entitled to prevent the manager or the Karta of the family, who may happen to be his father, from alienating the property without any legal necessity and thus depriving the family and particularly the plaintiff-son from the enjoyment of the joint Hindu family property. The case was heard yesterday and was adjourned to enable the counsel to look into this matter.

(6) So far as the right of a Karta is concerned, it is well established that he can alienate the joint Hindu family property only for legal necessity and for the benefit of the estate. If the Karta happens to be a father, then, as observed in paragraph 256 of Mulla's Hindu Law, at page 290, he has the power to "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. "The author then goes on to say that "except as aforesaid, a father has no greater power over coparcenary property than any other manager, that is to say, he cannot alienate coparcenary property except for legal necessity or for the benefit of the family."

(7) That being the case, the only point for determination is that, if the Karta tries to alienate the property not for legal necessity, can he be restrained by the other coparceners or the other coparceners must watch and let the Karta part with the property by sale, mortgage or otherwise and bring a suit thereafter challenging such an alienation.

(8) Apart from any law, common sense should dictate that if an act of the Karta is illegal, according to the law by which he is governed, and if the coparceners come to know of the contemplated act, they should be in a position to prevent him from doing it and

thus save an innocent alienee from further litigation and it could not possibly be the law that they must wait till the transaction is complete and then take steps to get back the property.

(9) N. R. Raghavacharia in his treatise on Hindu Law, Sixth Edition, in paragraph 269, at page 298, specifically deals with this topic. The heading is "Right to restrain improper acts" and it runs as follows:—

"A coparcener, who does any act which is either illegal or improper and prejudicial to the joint interests or enjoyment can be restrained from such act by an injunction at the instance of the other coparceners. In suit for an injunction as between members of a coparcenary with reference to joint family property, the exercise of the Court's jurisdiction is limited to acts of waste, illegitimate use of the family property or acts amounting to ouster. ...."

(10) In *Anant Ramrav v. Balvant* (1), it was observed as follows:—

"In dispute between members of a joint Hindu family with respect to joint property, the exercise of the Court's jurisdiction to grant relief by injunction should be confined to acts of waste, illegitimate use of the family property, or acts amounting to ouster."

In that case, the question was, whether the plaintiff was in the enjoyment of a portion of the house from the use of which he was being ousted, and for that matter the case was sent back to the district Court for giving a proper finding. Be that as it may, the fact is that a Court can grant an injunction where one of the coparceners by his wrongful act tries to waste the property, or makes illegitimate use of the same or acts in a way which amounts to ouster. It goes without saying that if a coparcener sells property, without any legal necessity and which he is not authorised to do under the law, he is certainly ousting the other coparceners.

(11) In paragraph 306, at page 351, of the Raghavacharis's Hindu Law, alienation by a father is particularly dealt with as follows:—

"An alienation by a father of the joint family property neither for family necessity nor for his antecedent debt has the

(1) I.L.R. 19 Bom. 269.

Messrs The Punjab Copra Crushing Oil Mills, Jullundur v. The  
State of Punjab, etc. (Tuli, J.)

same effect as that of an alienation by a coparcener, who  
is neither a manager nor a father of a joint family."

(12) In view of the above, I have no hesitation in holding that  
in a proper case, i.e., where the property is a joint Hindu family  
property (assuming it is proved by the plaintiff) and the proposed  
alienation is not for the benefit of the family or for legal necessity,  
any of the coparceners can prevent such an illegal act by bringing  
a suit for injunction.

(13) For the aforesaid reasons, I find that the judgment and the  
decree of the lower appellate Court, proceeded on an altogether wrong  
view of the law leading to failure to exercise the jurisdiction. I,  
therefore, accept this revision with costs, set aside the order of the  
lower appellate Court and restore that of the trial Court Intimation  
will be sent to the Court below.

K. S. K.

CIVIL MISCELLANEOUS

*Before Bal Raj Tuli, J.*

MESSRS THE PUNJAB COPRA CRUSHING OIL MILLS,  
JULLUNDUR.—*Petitioner.*

*versus*

THE STATE OF PUNJAB, ETC.—*Respondents.*

Civil Writ No. 734 of 1970.

August 4, 1971.

*Punjab General Sales Tax Act (XLVI of 1948)—Sections 2(ff) 5(2) (a)  
(i) and 5(3)—Assessee making purchase of declared goods through  
commission agents—Whether liable to pay purchase tax "Oil cakes"—  
Whether "fodder" and exempt from sales-tax.*

*Held*, that under section 5(3) of Punjab General Sales Tax Act, purchase  
tax is payable in respect of the declared goods at the stage of purchase of  
such goods by the last dealer liable to pay tax under this Act. If an assessee  
buys declared goods through a commission agent and the commission agent  
is taken to have acted as the agent for the assessee, then the purchaser of