

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF JULY 1998

B E F O R E

THE HON'BLE MR.JUSTICE T.N. VALLINAYAGAM

R.S.A.NO.590/1991

Between :

1. Smt. Lakkawa
W/o.Yallappa Badiger
aged about 54 years
Occ : Household work
of Rampur
Taluka Saundatti
Dist : Belgaum
2. Ningappa
S/o.Yallappa Badiger
aged about 17 years
minor
represented by his Mother
appellant No.1 of -do-
3. Gowrawwa
D/o.Yallappa Badiger
aged about 13 years
minors of -do-
4. Chidambar
s/o.Yallappa Badiger
aged about 19 years
Occ : Carpenter of
-do-

.. Appellants.

(By Sri. R.B. Deshpande, Adv.)

And :

1. Yallappa
S/o.Ningappa Badiger
major, of Ramapur site
taluka Saundatti
Dist. Belgaum
2. Somanagouda
S/o.Annappagouda Patil
major of Singarkoppa
Post : Asundi, Taluka Saundatti
Belgaum District

.. Respondents.

(By Sri. Umesh R. Malimath for R2)

..2..

R.S.A. filed U/s.100 of CPC., against the Judgment and decree dated 10.1.91 passed in "A.No.14/1990 on the file of the Prl. Civil Judge, Bailhongal, allowing the appeal and setting aside the Judgment and decree passed in O.S.No.176/87 dated 5.8.90, by the Munsiff, Saundatti.

This R.S.A. coming on for hearing
✓ this day, the Court delivered the following :

JUDGMENT

..3..

INVJ:

8-7-98

R.S.A. No.590/1991

JUDGMENT

The plaintiffs are the appellants. They are aggrieved by the dismissal of their suit for declaration that the sale by the Father first defendant is not binding on them and alternatively for a share in the property to the extent of $3/4$ share by the first Appellate Court while they succeeded before the Trial Court.

2. The first defendant is the father, 4th plaintiff is wife, 3rd plaintiff is the daughter and first and second plaintiffs are the sons. The father is dealing with the suit property in his capacity as manager sold the property for alleged legal necessity and the suit is to set aside the the sale and also alternatively asked for share of the plaintiffs. on the grounds that the sale can at best bind the share of the father. Though the Trial court accepted the case of the plaintiffs and

held that the sale is not binding on the 3/4 share of the plaintiffs at the same refusing to grant maintenance and marriage expenses to the third plaintiff, the Appellate Court held that the sale is binding in as much as it is for the legal necessity. This finding of the Appellate court that is being challenged before me.

3. The reliance was placed by the Trial Court in 1976(2) KLJ 186 in FAKIRAPPA v/s. VENKATESH to the following passage:

" Alienation made by father for discharging antecedents debts would be binding on the sons irrespective of fact that there was legal necessity or family necessity supporting it."

But the facts of that case is completely different and it will not apply to the facts of this case. In any event, the alleged legal necessity, has not been correctly proved, as found by the Trial Court, the Appellate Court

while analysing the law on the point has committed an error apparent on the face of record and accepted the plea of legal necessity. The catena of decisions referred to by the court below does not hold good to show the legal necessity to be the basis of the sale so as to bind the entire family. The allegation ~~whether~~^{was} that the first defendant father was addicted to bad habits like drinking, gambling and was not taking care of the family of the defendant. Defendant No.2 was Police Patil and the father of the D2 who is his uncle is an influential and powerful person in the village. The alleged debt supposed to have been incurred because of continuous draught and for some expenses of the marriage of the daughters. The same was however, denied and the Trial Court found that the purpose for which the necessities said to have been arisen has not been proved. The Appellate Court has come ^{to} to a different conclusion without relying ~~on~~ ^{on}.

the facts available on record.

4. I am satisfied that the sale will not bind the share of the plaintiffs which is 3/4. Therefore, holding that the judgment and decree of the First Appellate Court is not sustainable both on law and on facts, this second appeal is allowed setting aside the sale and restoring the decree of the Trial Court.

Sd/-
Judge

mpk/-