

**2021 SCC OnLine SC 1236**

**In the Supreme Court of India**

(BEFORE M.R. SHAH AND SANJIV KHANNA, JJ.)

Beerreddy Dasaratharami Reddy ... Appellant(s);

*Versus*

V. Manjunath and Another ... Respondent(s).

Civil Appeal No. 7037 of 2021 (Arising Out of Special Leave Petition (Civil) No. 13853 of 2021)

Decided on December 13, 2021

The Judgment of the Court was delivered by

**SANJIV KHANNA, J.:**— The legal issue which arises for consideration in the present appeal is whether K. Veluswamy, as a *Karta*, has legal authority to execute agreement to sell dated 8<sup>th</sup> December 2006 for sale of the suit land, being agricultural land - (i) Sy. No. 7/1P1, measuring 4 acres, 21 guntas of land; (ii) Sy. No. 7/1P2 measuring 5 acres of land; and (iii) Sy. No. 8/3P3 measuring 2 acres of land, in all 11 acres 21 guntas of wet land, situated in Bagganadu Kaval Village, J.G. Hally Hobli, Hiriyyur Taluk, Chitradurga District, Karnataka.

**2.** It is an accepted position that on 8<sup>th</sup> December 2006, K. Veluswamy as a *Karta* of the joint Hindu family had executed the agreement to sell of the suit property for Rs. 29 lakhs and had received Rs. 4 lakhs in advance from Beerreddy Dasaratharami Reddy, the appellant before us. K. Veluswamy, the second respondent before us, has not entered appearance and contested this appeal. The appeal is contested by the first respondent before us, namely V. Manjunath, who is the son of K. Veluswamy. (For convenience, K. Veluswamy and V. Manjunath, wherever required have been collectively referred to the respondents).

**3.** On 26<sup>th</sup> November 2007, Beerreddy Dasaratharmi Reddy instituted the suit for specific performance of the agreement to sell impleading both K. Veluswamy and V. Manjunath. The Court of Senior Civil Judge, Hiriyyur decreed the suit *vide* judgment dated 22<sup>nd</sup> January 2013 rejecting the defence that the agreement was a camouflage for a loan agreement as K. Veluswamy was in need of money for construction of a farm house. K. Veluswamy as the *Karta* of the joint Hindu family property was entitled to execute the agreement to sell, which agreement being on account of legal necessity is valid.

**4.** K. Veluswamy accepted the decision. His son V. Manjunath preferred the regular first appeal before the High Court of Karnataka at Bengaluru and *vide* the judgment under challenge dated 6<sup>th</sup> March 2021 he has succeeded. The impugned judgment, while accepting that K. Veluswamy did execute the agreement to sell for the suit property for Rs. 29 lakhs and had received Rs. 4 lakhs as advance, held that the agreement to sell is un-enforceable as the suit property belongs to the joint Hindu family consisting of three persons, K. Veluswamy, his wife V. Manimegala and his son V. Manjunath and, therefore, could not have been executed without the signatures of V. Manjunath. Relying on *Pemmada Prabhakar v. Youngmen's Vysya Association*,<sup>1</sup> it was held that legal necessity is not proved. Execution of the agreement to sell by K. Veluswamy as a *Karta* of the joint Hindu family is held not established as no issue on the aspect of authority of the *Karta* to execute agreement to sell and legal necessity was framed. Consequently, it was held that the suit must be dismissed.

**5.** The agreement to sell, which is an admitted document and marked Exhibit P-1, it is accepted, was signed and executed by K. Veluswamy and his wife V. Manimegala.

P.B. Basavarajaiah, father-in-law of V. Veluswamy, had also signed the agreement to sell. Payment of Rs. 4 lacs by Beerreddy Dasaratharmi Reddy and receipt of the said amount by K. Veluswamy as advance is also not disputed. Remaining amount of Rs. 25 lakhs was to be paid within three months and the sale deed executed and registered. The agreement to sell states that the subject property is a joint Hindu family property, enjoyed jointly and that the *Katha* is in the joint names. What is significant and important is the avowal by the executants that they were in need of funds to meet the domestic necessities and, consequently, had agreed to sell the suit property. If any dispute arises with regard to the sale transaction, it would be solved by the executants personally at their own risk and cost. Lastly, if there was any loan, mortgage, revenue arrears, etc. over the property, the same shall be cleared by the executants so as to execute and register the sale deed in favour of Beerreddy Dasaratharmi Reddy. The agreement to sell does mention that it would be also executed by V. Manjunath, and it is a fact that it is not signed and executed by him, but this, as discussed below, would not nullify the rights and liabilities arising from the agreement to sell.

6. Right of the *Karta* to execute agreement to sell or sale deed of a joint Hindu family property is settled and is beyond cavil *vide* several judgments of this Court including *Sri Narayan Bal v. Sridhar Sutar*,<sup>2</sup> wherein it has been held that a joint Hindu family is capable of acting through its *Karta* or adult member of the family in management of the joint Hindu family property. A coparcener who has right to claim a share in the joint Hindu family estate cannot seek injunction against the *Karta* restraining him from dealing with or entering into a transaction from sale of the joint Hindu family property, *albeit* post alienation has a right to challenge the alienation if the same is not for legal necessity or for betterment of the estate. Where a *Karta* has alienated a joint Hindu family property for value either for legal necessity or benefit of the estate it would bind the interest of all undivided members of the family even when they are minors or widows. There are no specific grounds that establish the existence of legal necessity and the existence of legal necessity depends upon facts of each case. The *Karta* enjoys wide discretion in his decision over existence of legal necessity and as to in what way such necessity can be fulfilled. The exercise of powers given the rights of the *Karta* on fulfilling the requirement of legal necessity or betterment of the estate is valid and binding on other coparceners.

7. Elucidating the position in Hindu law, this Court in *Kehar Singh (D) through Legal Representatives v. Nachittar Kaur*<sup>3</sup> has referred to Mulla on Hindu Law and the concept of legal necessity to observe thus:

"20. Mulla in his classic work Hindu Law while dealing with the right of a father to alienate any ancestral property said in Article 254, which reads as under:

"Article 254

254. Alienation by father.— A Hindu father as such has special powers of alienating coparcenary property, which no other coparcener has. In the exercise of these powers he may:

- (1) make a gift of ancestral movable property to the extent mentioned in Article 223, and even of ancestral immovable property to the extent mentioned in Article 224;
- (2) 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 (Article 294)."

21. What is legal necessity was also succinctly said by Mulla in Article 241, which reads as under:

"Article 241

241. What is legal necessity.—The following have been held to be family necessities within the meaning of Article 240:

- (a) payment of government revenue and of debts which are payable out of the family property;
- (b) maintenance of coparceners and of the members of their families;
- (c) marriage expenses of male coparceners, and of the daughters of coparceners;
- (d) performance of the necessary funeral or family ceremonies;
- (e) costs of necessary litigation in recovering or preserving the estate;
- (f) costs of defending the head of the joint family or any other member against a serious criminal charge;
- (g) payment of debts incurred for family business or other necessary purpose. In the case of a manager other than a father, it is not enough to show merely that the debt is a pre-existing debt;

The above are not the only indices for concluding as to whether the alienation was indeed for legal necessity, nor can the enumeration of criterion for establishing legal necessity be copious or even predictable. It must therefore depend on the facts of each case. When, therefore, property is sold in order to fulfil tax obligations incurred by a family business, such alienation can be classified as constituting legal necessity."

(See Hindu Law by Mulla "22<sup>nd</sup> Edition")

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26. Once the factum of existence of legal necessity stood proved, then, in our view, no co-coparcener (son) has a right to challenge the sale made by the karta of his family. The plaintiff being a son was one of the co-coparceners along with his father Pritam Singh. He had no right to challenge such sale in the light of findings of legal necessity being recorded against him. It was more so when the plaintiff failed to prove by any evidence that there was no legal necessity for sale of the suit land or that the evidence adduced by the defendants to prove the factum of existence of legal necessity was either insufficient or irrelevant or no evidence at all."

**8.** The aforesaid being the legal position, it has to be held that signatures of V. Manjunath, son of *Karta* - K. Veluswamy, on the agreement to sell were not required. K. Veluswamy being the *Karta* was entitled to execute the agreement to sell and even alienate the suit property. Absence of signatures of V. Manjunath would not matter and is inconsequential. As noted above, it is an accepted case of the respondents that K. Veluswamy did receive Rs. 4 lakhs as advance from Beeredy Dasartharami Reddy, as recorded in the agreement to sell.

**9.** On the question of satisfaction of the condition of legal necessity, the stand of the respondents is contradictory, for they have pleaded in the written statement and even before us that the joint Hindu family was in need of funds, which shows legal necessity. In fact, as recorded above, the need for funds is duly reflected and so stated in the agreement to sell dated 8<sup>th</sup> December 2006 which states that the executants were in need of funds to meet domestic necessities and, therefore, had agreed to sell the suit property. It is also an undisputed position that the suit property was encumbered in favour of the State Bank of Mysore, Adivala Branch, and the executants had informed that the dues of the bank would be cleared to release the mortgage before the date of registration. In *Kehar Singh* (supra), on the question what is legal necessity, reference was made to Article 241 from Mulla's Hindu Law which states that maintenance of coparceners, family members, marriage expenses, performance of necessary funerals or family ceremonies, costs of necessary litigation for recovering or preserving estate, etc. fall and have been held to be family's

necessities. Further, the instances are not the only indices for concluding whether the alienation was in need for legal necessity as enumeration on what would be legal necessity is unpredictable and would depend upon facts of each case. Thus, we are of the opinion that the agreement to sell cannot be set aside on the ground of absence of legal necessity.

**10.** Decision of this Court in *Pemmada Prabhakar* (supra) has no application, being a case of intestate property inherited by wife, three sons and three daughters as class I heirs under Section 8 of the Hindu Succession Act and the agreement to sell was not signed by wife, one son and three daughters and, therefore, neither binding nor enforceable against the non-executants. The ratio would not apply to a joint Hindu family property.

**11.** Omission to frame an issue as required under Order XIV Rule 1 of the Civil Procedure Code, 1908 does not vitiate the trial where the parties go to trial fully knowing the rival case and lead evidence in support of their respective contentions and to refute contentions of the other side (See - *Kannan (Dead) by LRs. v. V.S. Pandurangam (Dead) by LRs.*<sup>4</sup> and *Nedunuri Kameswaramma v. Sampati Subba Rao*<sup>5</sup>).

**12.** We are informed that during the pendency of the present appeal, the suit property has been transferred to a third person, which transfer would obviously be subject to and hit by the doctrine of *lis pendens*. Therefore, once we set aside the impugned judgment and restore the judgment of the trial court, the respondents would be bound to perform their obligations under the agreement to sell dated 8<sup>th</sup> December 2006 and execute the registered sale deed, notwithstanding any transaction which the respondents have executed.

**13.** In light of the aforesaid discussion, we allow the present appeal and set aside the impugned judgment and decree and restore the judgment and decree passed by the trial court. The appellant would deposit the balance sale consideration of Rs. 25 lakhs in the trial court within a period of eight weeks from today, which amount once deposited would be kept in an interest bearing fixed deposit and would be handed over/paid to K. Veluswamy, *Karta* of the joint Hindu family at the time of execution of the sale deed by him in favour of the appellant/Beerreddy Dasartharami Reddy. The appellant/Beerreddy Dasartharami Reddy will also bear necessary expenses like stamp duty, registration charges for execution of the sale deed. Physical possession of the property would be handed over by the respondents to the appellant/Beerreddy Dasartharami Reddy along with the execution of the sale deed, notwithstanding that the suit property has been sold to a third person during the pendency of the present appeal.

**14.** The appeal is disposed of in the above terms without any order as to costs.

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<sup>1</sup> (2015) 5 SCC 355

<sup>2</sup> (1996) 8 SCC 54

<sup>3</sup> (2018) 14 SCC 445

<sup>4</sup> (2007) 15 SCC 157

<sup>5</sup> AIR 1963 SC 884