

intended to seem as if they were doing the act complained of in pursuance of the Act. Their action was, therefore, well within the terms of s. 206 of the Bombay Municipal Boroughs Act, 1925. We are, therefore, of the opinion that it was incumbent on the plaintiffs to give notice of their claim for refund to the defendants. In so far as they gave the requisite notice under s. 206 of the Act to the defendants on May 2, 1947 they were well within their rights to prosecute their claim and institute the suit against the defendants for the refund of the amounts which the defendants had recovered from them up to July 31, 1947. This, however, could not be predicated of the plaintiffs' claim from the defendants for refund of the excess over the sum of Rs. 18,776-6-0. To the extent, therefore, that the plaintiffs claimed, in their amended plaint which they put on file on July 15, 1948, to recover the excess over this sum of Rs. 18,776-6-0, the plaintiffs' claim could not be sustained.

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[The rest of the judgment is not material to the report.]

*Appeal allowed in part.*

*Cross objections dismissed:*

K. B. S.

## APPELLATE CIVIL

*Before Mr. Justice Bhagwati and Mr. Justice Dixit.*

MUKTABASAPPA BHIMAPPA AMTI AND OTHERS (ORIGINAL DEFENDANTS NOS. 1 TO 9), APPELLANTS *v.* HANMANTAPPA KAREHANAMAPPA KOPPADA VAR (ORIGINAL PLAINTIFF), RESPONDENT.\*

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*Hindu law—Legal necessity—Sale by widow with limited estate—Sale challenged after long lapse of time—Proof of necessity—Recitals in sale deed—Presumptions in absence of recitals—Whether presumptions based on circumstances and available evidence are permissible.*

Where the parties to the transaction are dead and direct evidence as to legal necessity is not available, it is well settled that presumptions are permissible. Ordinarily, it is for a purchaser from a Hindu widow having a limited interest in the property sold to prove that the sale was justified by legal necessity which he may do by establishing that there was necessity in fact or that he made due inquiry about the existence of the necessity and believed in its existence. Where the transaction is ancient and there are recitals in the deed of sale as to necessity, recitals consistent with the circumstances and probabilities should be given

\* First Appeal No. 202 of 1949 (with F. A. No. 275 of 1949).

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their due weight when direct evidence is not forthcoming. But even where there are no such recitals, the Court may draw a presumption provided the presumption is supported by evidence and the circumstances of the case. Older the alienation, less strict the proof (as to legal necessity) required but apart from the circumstances and available evidence, the Court would not be justified in presuming that the transaction was for legal necessity merely on the ground that it was an ancient transaction.

*Subrahmanyam v. Soorayya*,<sup>(1)</sup> followed.

*Babulal v. Maniklal*,<sup>(2)</sup> disapproved.

FIRST APPEAL from the decision of S. M. Bhoj, Esquire, Civil Judge, Senior Division, at Hubli.

Suit for declaration and possession.

Govindappa's three sons Karehanamappa, Doddahanamappa and Sannahanamappa formed a joint Hindu family. Karehanamappa separated from the family in 1891 and died in 1899 leaving him surviving only two widows Hanamawa and Yellawa. On October 12, 1900, the two widows effected a partition of their husband's property dividing it equally between themselves.

On May 6, 1901, Hanmava, the senior widow, sold the property assigned to her share in the partition with her co-widow to the predecessor-in-title of defendants nos. 10 to 15 for Rs. 800. Yellawa, the junior widow, also sold her property to the predecessor-in-title of defendants nos. 1 to 9 by two sale deeds, one executed on May 29, 1901, for Rs. 1,379-4-3 and the other on July 11, 1906, for Rs. 200. In regard to the two alienations of 1901, the recitals in the sale deeds showed that each was justified by legal necessity to the extent of Rs. 379-4-3. Apart from this there were no recitals in the sale deeds showing necessity for any of the transactions.

Hanamawa died in 1917 and Yellawa died in 1946. Yellawa, before her death, had taken Hanamantappa (plaintiff) in adoption as a son to her deceased husband on December 4, 1944.

On February 21, 1948, the plaintiff brought the present suit against the defendants for a declaration that the alienations in their favour were not binding on him as they were made without legal necessity and for possession of the properties. The defendants denied the factum of the plaintiff's adoption and further contended that the alienations were justified by legal necessity.

<sup>(1)</sup> [1950] A. I. R. Mad. 514, F. B.      <sup>(2)</sup> (1941) Nag. 124.

The trial Judge held the adoption proved but found that there was no legal necessity for the widows to alienate the properties of their husband. Therefore, on February 9, 1949, he passed a decree for possession in respect of all the suit properties.

The defendants appealed to the High Court.

*G. P. Murdeshwar*, with *U. S. Hattangadi*, for the appellants.

*K. G. Datar*, for the respondent.

DIXIT J. In this case two questions arise for determination: (1) whether the plaintiff's adoption is proved, and (2) whether the alienations in suit are justified by legal necessity. The facts of the case in which these questions arise are simple.

There was a Hindu undivided family consisting of Govindappa and his three sons Karehanamappa, Doddahanamappa and Sannahanamappa. On June 22, 1891, Karehanamappa separated from his two younger brothers, and at the partition which took place between them, family property consisting of survey Nos. 32, 150, 151, an open site and a threshing floor and some moveables fell to his share. Doddahanmappa and Sannahanamappa continued to live jointly as before. In 1899 Karehanamappa died sonless, leaving him surviving two widows Hanamawa and Yellawa. On October 12, 1900, these two widows effected a partition of their husband's property, and at this partition Hanamawa got about a half each of survey Nos. 150 and 151, the eastern portion of the open site and the threshing floor, while Yellawa got about a half of survey No. 150 and of survey No. 151, survey No. 32 and a half of the open site and the threshing floor.

The three alienations which are challenged in this suit are these. On May 6, 1901, Hanmawa, the senior widow, sold the property assigned to her share at the partition of 1900 to the predecessor-in-title of defendants Nos. 10 to 15 for a consideration of Rs. 800. Then on May 29, 1901, Yellawa, the junior widow, sold a portion of survey No. 150 and survey No. 151 to the predecessor-in-title of defendants Nos. 1 to 9 for Rs. 1,379-4-3, and lastly, on July 11, 1906, Yellawa sold a portion of the survey No. 151 left over, the house which appears to have been constructed on the open site and survey No. 32 to the predecessor-in-title, again of defendants Nos. 1 to 9 for a consideration of Rs. 200.

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Hanamawa died in 1917 and Yallawa died in 1946. But before her death, Yallawa took the plaintiff in adoption as a son to her deceased husband on December 4, 1944. This plaintiff is the natural son of Doddahanamantappa, who is defendant No. 10 in the suit.

Relying upon his adoption, the plaintiff filed the present suit on February 21, 1948, against the defendants claiming a declaration that the alienations in favour of the defendants mentioned above were not binding upon him, and he sought possession of the suit property. The basis of his claim was that, by virtue of his adoption, he was entitled to claim his adoptive father's property free from these alienations, which, according to the plaintiff, were not justified by legal necessity.

The defendants disputed the factum of the plaintiff's adoption and contended that even if the plaintiff was the adopted son of Karehanamappa, the alienations were justified by legal necessity.

The learned trial Judge held that the plaintiff had proved his adoption and that the alienations in favour of the predecessor-in-title of defendants Nos. 1 to 9 and of defendants Nos. 10 to 15 were not justified by legal necessity nor were they for the benefit of the estate. On that view, he came to the conclusion that the alienations were not binding upon the plaintiff, and consequently, he made in plaintiff's favour a decree for possession with mesne profits to be determined under O. 20, r. 12, of the Code of Civil Procedure, and costs as set out in the order. From the decree made in the suit, defendants Nos. 1 to 9 have preferred First Appeal No. 202 and defendant No. 15 has filed First Appeal No. 275. As these two appeals arise from the same judgment and decree, it will be convenient to dispose of them by a single judgment.

[His Lordship then dealt with the question of adoption and after holding that the plaintiff had satisfactorily proved his adoption he proceeded:]

The next question is whether the alienations are justified by legal necessity. In this connection certain facts have got to be borne in mind. The alienations took place in the year 1901 and 1906. The senior widow died in 1917 and the junior widow died in 1946. The suit was filed in 1948. The alienations are, therefore, being challenged after a lapse of 47 years in the case of two alienations and after a lapse of 42 years in

the case of the third alienation. The parties to the transactions are dead, and the plaintiff cannot be blamed for having brought this suit in the year 1948, i.e., a long time after the alienations, because the plaintiff himself was adopted in the year 1944. But the fact remains that the alienations are being challenged after a considerably long time, and the question is whether, in the circumstances of the case, the alienations are proved to have been justified by legal necessity.

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It appears that the adoptive father of the plaintiff had incurred a Tagavi loan from Government, and the amount was payable in certain instalments. Some of the instalments had been already paid, but others were outstanding, and when Hanamawa entered into the transaction of sale on the 6th of May 1901, part of the consideration was of a sum of Rs. 379-4-3 which the purchaser undertook to pay to Government as the amount due from the vendor. Similarly, in the case of the alienation made by Yallawa on the 29th of May 1901, the purchaser undertook to pay to Government the sum of Rs. 379-4-3 being the amount due to Government in respect of the instalments then outstanding and due to Government. When one refers to the three sale deeds, it is apparent that, apart from this recital of Rs. 379-4-3 being payable by the widows in each case to Government in respect of the Tagavi loan incurred by their husband, there are no recitals showing necessity for each of the transactions. The sale deed executed by Hanamawa is for the consideration of Rs. 800 and the two alienations made by Yellawa were respectively for the sum of Rs. 1,379-4-3 and Rs. 200. It is obvious that in regard to the alienations of 1901, therefore, the alienations are justified as to a portion of the amount of the consideration justifying the two transactions.

When the parties to a transaction are dead, and when there is no direct evidence to justify the transaction, it is well settled that presumptions are permissible in order to fill in details in justification of the transaction. Ordinarily, it is for a purchaser to prove that the transaction was justified by legal necessity. This, he may show by establishing that there was necessity in fact or by showing that he made due inquiry about the existence of the necessity and he believed in the existence of such necessity. There may be, again, cases where transactions are ancient and there may be recitals as to necessity in regard to such ancient transactions. In cases of this type, recitals consistent with the circumstances and probabilities will be given their due weight even when direct evidence is not

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forthcoming. There may be a third type of cases where there are no recitals in the sale deeds showing legal necessity, and question arises whether in such a case it is or is not permissible to the Court to raise presumptions, having regard to such evidence as is adduced in the case, and it is well settled that in the last type of cases the Courts would be justified in drawing presumptions provided those presumptions are supported by the evidence and the circumstances of the case. These principles will be found set out in Mulla's Principles of Hindu Law, 10th Edition, 1946, s. 182, page 190.

Mr. Murdeshwar for the appellants has relied strongly upon a decision of the Nagpur High Court reported in the case of *Babulal v. Maniklal*,<sup>(1)</sup> This is what the first part of the headnote says:

"In the case of an ancient transaction relating to the alienation of Hindu joint family property, it must be presumed that the alienation was lawful (i. e.) justified by legal necessity."

I should be excused for saying that the principle seems to be too broadly stated. If one turns to page 130 of the report, this is what the Nagpur Court said:

"The presumption will operate with greater force in a case where the reversioner fails to bring a declaratory suit during the life time of the alienor. It would not be unreasonable to assume that the failure to sue for declaration was due to the existence of evidence proving necessity. In any case, application of the rule as to presumption would depend on the particular facts of each case and we are decidedly of opinion that the facts and circumstances of this case are such as to justify the placing of onus on the reversioner of proving absence of legal necessity."

It seems to me that the true principle is that the more ancient the alienation, strict proof may not be required in order to prove the existence of legal necessity. But, I am not prepared to accept the contention that apart from the circumstances and such available evidence, the Court will be justified in presuming that the transaction is for legal necessity merely on the ground that it is an ancient transaction.

A view contrary to the view taken in the Nagpur case will be found in a Madras decision reported in *Subrahmanyam v. Soorayya*<sup>(2)</sup>. The principle which the Madras High Court laid down can be set out in the words of the headnote which is as follows:—

"In those cases where there are not even recitals of necessity in deeds of sale by limited owners, mere lapse of time does not have the effect

<sup>(1)</sup> [1941] Nag. 124.

<sup>(2)</sup> [1950] A. I. R. Mad. 514 F. B.

of rendering an alienation by the limited owner binding on the reversion. The presumption of a lawful origin drawn from long possession and enjoyment is not sufficient, without more, to establish that the alienation by the widow or other limited owner was legally effective to convey an absolute interest, for such possession and enjoyment would have been quite lawful and proper even if the alienation was valid only during her own lifetime.

It may save the alienee from an adverse inference arising from the scanty nature of the evidence adduced by him. It will allow presumption to fill in details in the evidence which have been obliterated by time. It will supply a few missing links in the evidence. But lapse of time cannot conjure up a chain consisting entirely of missing links. The burden of proof is not altered nor is evidence of justifying necessity, direct or circumstantial, positive or presumptive, dispensed with by mere lapse of time."

As at present advised, we think that the Madras case lays down the correct principle.

[The rest of the judgment is not material to the report. The order of the lower Court was ultimately confirmed with the modification that the recovery of possession by the plaintiff was made conditional upon his paying the sum of Rs. 379-4-3 to defendants nos. 1 to 9 and an equal sum to defendants nos. 10 to 15.]

*Decree modified.*

M. W. P.

## APPELLATE CIVIL

*Before Mr. M. C. Chagla, Chief Justice.*

HASANSAHEB NABISAHEB BAGAWAN, APPLICANT (ORIGINAL DEBTOR No. 3) v. VIRUPAXAPPA MAHANTAPPA TAPASHETTI AND OTHERS (ORIGINAL CREDITORS), OPPONENTS.\*

*Bombay Agricultural Debtors' Relief Act (XXVIII of 1947) s. 17 (1) (b)—*  
*"Total amount of debts due on the date of the application," meaning of.*

In an application made under the Bombay Agricultural Debtors' Relief Act, 1947, for adjustment of his debts the applicant contended that although there were decrees passed against him the aggregate amount of which exceeded Rs. 15,000 some of the decrees were payable by instalments and that if the instalments which had not fallen due on the date of the application were not taken into account, his debts would amount to less than Rs. 15,000 on the date of his application.

*Held*, that the expression "total amount of debts due on the date of the application" occurring in s. 17 (1) (b) of the Act means debts which

\* Civil Revision Application No. 1445 of 1957.

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