

1886
May 13.

Before Mr. Justice Pearson and Mr. Justice Straight.

GANRAJ DUBEY (DEFENDANT) v. SHEOZORE SINGH (PLAINTIFF).*

*Hindu law—Joint undivided family property—Alienation—Assent of coparceners
—Stranger.*

The member of a joint Hindu family who alienates his rights and interests in the family property to a stranger in blood thereby incapacitates himself from objecting to a similar alienation by another member of such family of his rights and interests in such property on the ground that such alienation was made without his consent, and such stranger is not competent to make such objection. *Ballabh Das v. Sunder Das* (1) followed.

In September, 1878, one Kishen having died, his widow Makhtola, as mother and guardian of his minor sons, gave one Sheozore Singh a usufructuary mortgage of Kishen's landed estate, consisting of a one-third share of certain lands, and delivered possession to him. In November, 1878, Kishen's brother, Kalahal, mortgaged his own one-third share of such lands and also Kishen's one-third share to one Ganraj, who dispossessed Sheozore Singh of Kishen's share. Sheozore Singh consequently brought the present suit against Makhtola, in her own name and as guardian of Kishen's minor sons, and against Kalahal and Ganraj, for possession of Kishen's share in virtue of its mortgage to him by Makhtola in September, 1878. The defendant Ganraj contended that the mortgage to the plaintiff was invalid, as the defendant Makhtola was not the lawful wife of Kishen. The defendant Kalahal contended that he and his brother Kishen and a third brother owned and held the land jointly in equal one-third shares. The Court of first instance held that the defendant Makhtola was the lawful wife of Kishen, that she and the minor sons of Kishen were entitled to his estate, and that the mortgage to the plaintiff was good and valid, and gave the plaintiff a decree, which the lower appellate Court, on appeal by the defendant Ganraj, affirmed. Neither of the lower Courts determined whether Kishen's estate was separate and divided property or not.

* Second Appeal, No. 43 of 1880, from a decree of Maulvi Muhammad Bakhs, Additional Subordinate Judge of Ghazipur, dated the 23rd September, 1879, affirming a decree of Chaudhri Jagan Nath, Munsif of Saidpur, dated the 30th June, 1879.

On appeal to the High Court the defendant Ganraj contended, *inter alia*, that the alienation of Kishen's share of the joint family property to the plaintiff without the consent of the defendant Kalahal, a co-sharer of that property, was invalid.

The *Senior Government Pleader* (Lala Juala Prasad), for the appellant.

Pandit *Ajudhia Nath* and Babu *Jogindro Nath Chandhri*, for the respondent.

The portion of the judgment of the Court (PEARSON, J., and STRAIGHT, J.,) material to the purposes of this report was as follows :—

PEARSON, J.—The plea which constitutes the second ground of the appeal was not taken in the Court of first instance. There it is true Kalahal pleaded that Kishen's estate was not a separate one, but not that the mortgage made by his widow and sons was invalid because it had been made without his consent; and Ganraj pleaded that it was invalid because she was not a lawful wife and his children were illegitimate. The plea now set up is here for the first time set up, not by Kalahal, who alone might under other circumstances, *i. e.*, if he had not by his own act incapacitated himself, have been competent to urge it, but by Ganraj, a stranger to the family, in whose mouth it does not lie,—*Bullabh Das v. Sundar Das* (1) The second ground of appeal is consequently disallowed. The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Oldfield and Mr. Justice Straight.

CHANDRA SEN (DEFENDANT) v. GANGA RAM AND ANOTHER (PLAINTIFFS).*

Hindu law—Joint Hindu family property—Alienation by Father—Son's Rights.

G, a member of a joint undivided Hindu family consisting of himself and his sons, having wrongfully converted to his own use the property of another person, such person sued him for damages for such conversion, and obtained a decree,

* Second Appeal, No. 1178 of 1879, from a decree of W. Tyrrell, Esq., Judge of Bareilly, dated the 30th July, 1879, affirming a decree of Pandit Indar Narain, Munsif of Barilly, dated the 26th May, 1879.

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