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him out of his difficulty by construing the decree which he got as a decree for the sale of the zamindari, a decree which would not have been a lawful one, there being no decree for sale except one passed under the Transfer of Property Act. We must regard the decree as lawfully made, and in that light it was simply an ordinary decree against a representative, to be enforced in respect of such assets of the deceased debtor as he might have. We allow the appeal and the objection of Shiamanand, and dismiss the application for execution with costs in all Courts.

Appeal decreed.

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July 16.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.

RUSTAM SINGH (PLAINTIFF) v. MOTI SINGH (DEFENDANT).*

Hindu law—Mortgage by a married woman of property inherited from her father—Legal necessity—Expenses of daughter's marriage.

Ordinarily it is the duty of the father in a Hindu family to provide for his daughter's marriage; but where the father was not possessed of sufficient means to do so, and the mother, in order to raise money to meet the expenses of the daughter's marriage, mortgaged property of her own which had come to her from her father, it was held that the mortgage was made for legal necessity and was a valid mortgage.

THIS was a suit for sale on a mortgage made by a Hindu woman during the life-time of her husband of property which had come to her from her father. The mortgage was alleged by the plaintiff mortgagee to have been made in part to secure a former debt advanced for payment of Government revenue and in part to secure a present advance said to have been made to meet the expenses of the marriage of the mortgagor's daughter.

The suit was defended by one Kunjan Singh, uncle of the mortgagor's minor son, who pleaded that Musammat Alaf Kuar, the mortgagor, had no power to mortgage the property, at any rate for any period longer than her own life-time; that there was no legal necessity for the mortgage; that the alleged marriage took place long before the execution of the mortgage, and that the mortgage was in fact never executed by Alaf Kuar.

*Second Appeal No. 630 of 1894, from a decree of Syed Siraj-ud-din, Subordinate Judge of Mainpuri, dated the 1st June 1894, reversing a decree of Lalâ Ishri Prasad, Munsif of Mainpuri, dated the 7th August 1893.

The Court of first instance (Munsif of Mainpuri) found that the deed was genuine and that there was necessity for the loan inasmuch as the income of Chet Singh, Alaf Kuar's husband, was insufficient to defray the expenses of his daughter's marriage, and accordingly decreed the plaintiff's claim.

The defendant appealed. The lower appellate Court (Additional Subordinate Judge of Mainpuri), differing from the Munsif on the question of necessity, decreed the appeal and dismissed the plaintiff's suit.

The plaintiff thereupon appealed to the High Court.

Munshi *Ram Prasad* for the appellant.

Pandit *Sundar Lal* for the respondent.

EDGE, C. J., and BLENNERHASSETT, J.—The plaintiff brought his suit for sale on a mortgage made by a married Hindu lady in the life-time of her husband of property which had come to her from her father and was not her stridhan. The consideration for the mortgage was money advanced by the plaintiff to the lady in order to enable her to get her daughter married. Her daughter was the daughter of her husband then living. The lady also had a son living, who is still a minor, and is a defendant to this suit. Her husband was Chet Singh. The defence is that she had no power to grant the mortgage in question. The first Court decreed the claim. The Court of first appeal dismissed the suit. As we read the judgment of the Court below, the greater part of Chet Singh's property was mortgaged, and what remained was barely sufficient for the support of himself and his family. It was under these circumstances that Alaf Kuar borrowed the money and made the mortgage. There can be no doubt that it was the father's duty in this instance to get his daughter married. His son was a minor, and, so far as appears, they were the sole members of the family. The father was unable out of his resources to effect the marriage of his daughter, and thereupon Alaf Kuar, the mother of the girl, was obliged to have recourse to the property that came from her father to her. There is no doubt of its being the pious duty of the father to effect the marriage. He was unable to do so ;

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so under these circumstances we think that the money, the consideration of this mortgage, was borrowed for necessary purposes, namely, the marriage of the daughter. We allow this appeal, and set aside the decree of the lower appellate Court and restore the decree of the first Court with costs in all Courts.

Appeal decreed.

1896
July 16.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhasset.

MANGLI PRASAD (PLAINTIFF) v. ISHRI PRASAD (DEFENDANT).*

Partition—Usufructuary mortgage—Mortgage of different shares in an undivided area to different mortgagees—Mortgagees no right of partition “inter se.”

Two mortgagees held separate usufructuary mortgages, the one of a two-thirds share, the other of a one-third share, in an undivided area of mufti land, granted by the owners of those shares respectively. *Held* that one mortgagee could not, in a suit to which neither of the mortgagors was a party, obtain partition of the share mortgaged to him.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Moti Lal* for the appellant.

Mr. *Abdul Raoof* and *Munshi Madho Prasad* for the respondent.

EDGE, C. J., and BLENNERHASSETT, J.—The owners of a two-thirds undivided share of certain mufti land granted a usufructuary mortgage of their share to the plaintiff. The owner of the remaining one-third undivided share granted a usufructuary mortgage of his share to the defendant. The plaintiff brought this suit to have the two-thirds share mortgaged to him partitioned off from the one-third share mortgaged to the defendant. The suit was brought in the Civil Court. The Court of first instance dismissed the suit on the ground that it was one for the Court of Revenue. The Court of first appeal, holding the same view as the Court of first

* Second Appeal No. 688 of 1894, from a decree of Syed Siraj-ud-din, Additional Subordinate Judge of Mainpuri, dated the 7th May 1894, confirming a decree of Pandit Alopri Prasad, Munsif of Phaphund, dated 22nd September 1893.