

In our opinion the third ground of appeal has no force, and the order of remand appealed against was a proper order. We dismiss the appeal with costs.

*Appeal dismissed.*

1902

ALI AHMAD  
v.  
NAZIRAN  
BIBI.

*Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Banerji.*  
GHANSHAM SINGH (PLAINTIFF) v. BADIYA LAL AND ANOTHER  
(DEFENDANTS).\*

1902

July 7.

*Hindu Law—Hindu widow—Alienation for legal necessity—Duty of person advancing money to Hindu widow—Burden of proof.*

If a mortgagee advances money to a Hindu widow holding a widow's estate in the property mortgaged after making proper inquiry for the purpose of ascertaining that the money is required for legal necessity, it is not incumbent on him to see that the money he advances is applied to meet such legal necessity, nor is he bound to ascertain that every pie of the money so advanced is actually required for a legal necessity. *Amar Nath Sah v. Achar Kunwar* (1) referred to.

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

Pandit *Moti Lal Nehru* and *Munshi Gokul Prasad* (for whom *Babu Sital Prasad Ghosh*), for the appellant.

Pandit *Sundar Lal*, for the respondent.

STANLEY, C.J. and BANERJI, J.—This suit was brought by the plaintiff to have it declared that two mortgages, one made by the widow of Charan Singh and the other by his mother, were made without legal necessity and were void, and for possession and mesne profits. Charan Singh was the owner of the property in suit. After his death his mother *Jai Kunwar* was recorded as owner. On the 8th of January, 1877, the mother and the widow together hypothecated a share in the village *Nawanagir* to *Madan Gopal* to secure a sum of Rs. 300. *Madan Gopal* sued upon his mortgage and obtained a decree, and at the auction sale *Ishri Prasad*, father of the defendants, purchased the property on the 23rd of August, 1892. Again, on the 7th of February, 1881, the same parties mortgaged a share in another village called *Kajrauth* to one *Murli Dhar*. On his death the name of

\* Second Appeal No. 989 of 1900 from a decree of L. G. Evans, Esq., District Judge of Aligarh, dated the 13th of August, 1900, reversing a decree of *Maulvi Ahmad Ali Khan*, Subordinate Judge of Aligarh, dated the 29th September, 1899.

1902

GHANSHAM  
SINGH  
v.  
BADIYA  
LAL.

Ishri Prasad was entered in respect of the mortgaged property. The mother of Charan Singh died many years ago. His widow Dan Kunwar died on the 17th of November, 1896. After her death the present suit was instituted by the present plaintiff claiming to be the representative of Charan Singh.

The defence to the suit was that the mortgage was made for legal necessity. The first Court held that the first mortgage was not made for any legal necessity, and in respect of the property comprised in that mortgage decreed the plaintiff's claim. As regards the second mortgage, the first Court held that it was made for legal necessity to some extent, that is, that money to the amount of Rs. 282 was required to meet a legal necessity; that as regards the balance, there was no legal necessity for the loan, and accordingly gave a decree to the plaintiff for possession of the property comprised in the second mortgage subject to the payment of Rs. 282. Upon appeal the District Judge held on the evidence that both the mortgages were made to meet legal necessities. In regard to the first mortgage, the money was required to meet Government revenue and partition expenses, and in the case of the second mortgage the money was required to meet partition expenses, Government revenue, moneys expended on a well, and in the purchase of seed. Accordingly so finding he has dismissed the plaintiff's claim with costs.

It is now contended before us by the learned pleader for the appellant that the District Judge ought to have found how much of the moneys advanced on foot of each mortgage were actually required to meet legal necessities. We are unable to follow him in this contention. If a mortgagee advances money after making proper inquiry for the purpose of ascertaining that the money is required for legal necessity, it is not incumbent on him to see that the money which he advances is applied to meet such legal necessity, nor is he, in our opinion, bound to ascertain that every pice of the money so advanced is actually required for a legal necessity. In the case of *Amar Nath Sah v. Achan Kunwar* (1) their Lordships of the Privy Council observed that in order to sustain an alienation of property by a Hindu widow having a widow's estate, it must be

shown that there was either a legal necessity for the alienation, or at least the grantee was led, on reasonable grounds, to believe that there was. There is nothing in their Lordships' judgment to suggest that there is any obligation on the lender in such a case to satisfy himself that the entire money which he is advancing is actually required for a legal necessity, provided he acts *bond fide* in the matter, and reasonably believes that the money is required to meet a legal necessity. This being our view the appeal fails and is dismissed with costs.

*Appeal dismissed.*

1902

GHANSHAM  
SINGH  
v  
BADIYA  
LAL.

1902

July 9.

*Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Banerji.*  
 PARMANAND (DEFENDANT) v. DAULAT RAM AND OTHERS (PLAINTIFFS).  
 Act No. IV of 1882 (*Transfer of Property Act*), sections 67, 85, 99  
 —Mortgage—Sale under a decree of equity of redemption—Rights  
 of purchaser, the decree having become final.

On the 22nd of March, 1881, one Nathu Ram mortgaged certain property with possession. On the 9th of May, 1881, the mortgagees leased the mortgaged property to Nathu Ram, who, as security for the rent due from him, further pledged his equity of redemption. The original mortgagees died. The rent due under the lease fell into arrears; and the successor in title of the mortgagees instituted a suit against the mortgagor to recover the amount due to him for arrears of rent by sale of the equity of redemption of the property. On the 27th of November, 1889, a decree for sale was passed, and on the 31st of March, 1890, an appeal against the decree for sale was rejected. The property was accordingly sold by virtue of the decree for sale, and was purchased by the successor in title of the mortgagees on the 20th of April, 1891. The sons of Nathu Ram thereupon brought a suit, claiming proprietary possession of the property on the ground that the sale of the equity of redemption was illegal and void, and conveyed nothing to the purchaser.

*Held* that the sale having been the outcome of a suit under section 67 of the Transfer of Property Act, 1882, did not offend against section 99 of the Act, and that although, according to law as laid down by the High Court, the sale of an equity of redemption was not contemplated by the Transfer of Property Act, yet, inasmuch as the sale had taken place under a decree which had become final, it could not at that time be upset. *Matadin Kasodhan v. Kazim Husain* (1) and *Tara Chand v. Indad Husain* (2) referred to.

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

\* First Appeal No. 267 of 1901 from a decree of Maulvi Ahmad Ali Khan, Subordinate Judge of Aligarh, dated the 30th of June 1900.

(1) (1891) I. L. R., 13 All., 432. (2) (1896) I. L. R., 18 All., 325.