

which has now arisen, namely, whether her interest had been improperly sold or not by the decree-holder. In this view the plaintiffs are entitled to redeem.

At the conclusion of the judgement we are asked to consider the first ground entered in the memorandum of appeal to the lower appellate court. It appears that in the court of first instance a plea practically of no substance was raised that Bachu Lal Singh was a member of the joint undivided Hindu family with Jhumak Singh and Padam Nath Saran Singh. No issue was framed on this point and from the statement made by the respondents' pleader in that court it appears sufficiently clear that the point was not pressed in that court. The mortgage deed of the 2nd June 1866 itself, the fact that the shares were separately redeemed, and the fact that Jhumak Singh mortgaged his rights as mortgagee of that very share, all go to show that there is no substance whatsoever in this plea. We do not deem it necessary to remit any issue for a finding on this point. The result is that we set aside the decree of the lower appellate court and reinstate that of the court of first instance with costs.

*Appeal decreed.*

## FULL BENCH.

*Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Banerji and Mr. Justice Piggott.*

NANDAN PRASAD (PLAINTIFF) v. AJUDHIA PRASAD (DEFENDANT)\*  
*Act No. IX of 1872 (Indian Contract Act), section 68—Minor—Necessaries.—  
 Hindu law—Joint Hindu family—Money borrowed to defray expenses of  
 sister's marriage.*

One of the brothers in a joint Hindu family, consisting of two brothers and a sister, all minors, the sister being about 13 years of age, borrowed a sum of money to provide for the expenses of the sister's marriage. After the death of the borrower the lender sued the surviving brother to recover the sum so advanced from the property of the joint family in his hands. *Held* that the suit was maintainable notwithstanding that the deceased brother was a minor at the time that the money was advanced. *Tulsha v. Gopal Rai* (1),

\* Second Appeal No. 1209 of 1908 from a decree of H. David, Judge of the Small Cause Court, exercising the power of a Subordinate Judge, at Cawnpore, dated the 31st of August, 1908, reversing a decree of Pirthi Nath, Munsif of Cawnpore, dated the 22nd of June 1908.

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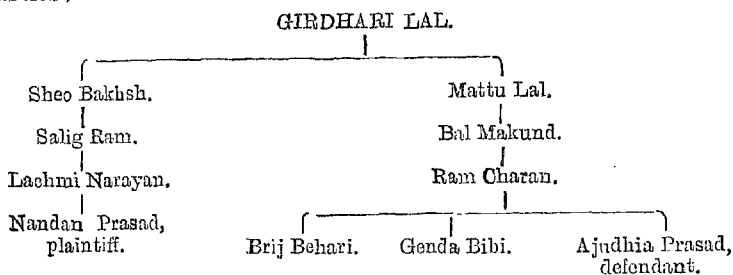
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*Vaikuntam Ammangar v. Kallapiran Ayyangar* (1), *Sham Charan Mal v. Chowdhry Debya Singh* (2) and *Chapple v. Cooper* (3) referred to.

THIS was a suit to recover money advanced to a minor member of a Hindu joint family to provide for the marriage of his sister.

The following pedigree will show the relationship of the parties :—



The plaintiff's case was that in 1905 Musammat Genda was more than 13 years of age. She had to be married, and in order to defray the marriage expenses, her brother Brij Behari, who was then an infant, borrowed money and some articles from Salig Ram (plaintiff's grandfather). Brij Behari having died, his minor brother, Ajudhia Prasad, got the family property by right of survivorship. The plaintiff brought the present suit against Ajudhia Prasad for recovery of the moneys advanced with interest. The defence was that Brij Behari was, at the date of the loan, a minor and the contract was void. The court of first instance (Munsif of Cawnpore) decreed the suit, but on appeal that decree was reversed by the Subordinate Judge, who dismissed the suit.

The plaintiff appealed to the High Court.

Dr. *Tej Bahadur Sapru* (with him *Pandit Mohan Lal Nehru*), for the appellant, contended that under the Hindu Law the brother was bound to provide for his sister's marriage. A sister's marriage was a charge on the family property. In fact, the *Mitakshara* allowed a share to an unmarried sister. Her marriage was a necessity, and if money was borrowed for that necessity it was a charge on the family property. The plaintiff's grandfather helped to discharge a legal obligation, and so he was

(1) (1900) I. L. R., 23 Mad., 512. (2) (1894) I. L. R., 21 Calc., 872.  
(3) (1844) 13 M. and W., 252.

entitled to be reimbursed. Brij Behari and Ajudhia Prasad were equally bound to meet the marriage expenses of their sister. The loan was advanced to the family and was not a personal loan to a minor member. Referring to the Indian Contract Act, section 11, he submitted that the words used therein were limited to a contract and should not be extended to cases other than those of a contract. He contended that the case was covered by section 68 of the Contract Act. The word "necessaries" need not mean in India what it did in England. It did not mean merely personal necessaries. Illustration (b) to section 68, made it clear that the 'necessaries' might be the necessaries of the minor or of those whom the minor was bound to support. Further, he submitted that the Indian Contract Act was not exhaustive. He referred to *Irrawaddy Flotilla Co. v. Bugwandas* (1).

Babu *Durga Charan Banerji* (for the Hon'ble Pandit *Moti Lal Nehru*) submitted that legal necessity did not mean the same thing as necessaries in section 68, Indian Contract Act. He submitted that it was the case of a loan. Brij Behari was a minor. The loan was advanced to a minor and so it was absolutely void. The family in a case like the present would only be liable if the member who borrowed was competent to contract. The plaintiff had to make out that it was a case for 'necessaries'. The word 'necessaries' had been defined in several Indian and English cases and must be construed accordingly. The necessaries must be the 'necessaries' of an infant and the question was whether the money was advanced to Brij Behari for his 'necessaries.' Then again, the plaintiff's remedy, if any, lay against the person or property of Brij Behari, to whom the money was advanced. The property now in the hands of Ajudhia Prasad came to him by survivorship and not by way of inheritance from Brij Behari. The girl or her guardian could not bring a suit to get her marriage expenses raised out of the family property. He referred to *Jagon Ram Marwari v. Mahadeo* (2).

Dr. *Tej Bahadur Sapru*, in reply, cited Leake on Contracts, p. 380, Chitty on Contracts, p. 146 (Ed. 1904), *Chapple v. Cooper*, (3) and Banerjee on Marriage and Stridhan, pp. 42 and 43.

(1) (1891) I. L. R., 18 Calc., 620, 628, 629. (2) (1909) I. L. R., 36 Calc., 768, 775  
(3) (1844) 13 M. and W., 252.

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PIGGOTT, J.—The facts found are as follows:—The defendant, Ajudhia Prasad, had an elder brother, Brij Behari Lal and a sister Musammat Genda Bibi. The suit is to recover Rs. 380 cash, and the value of goods worth Rs. 186-7, advanced to Brij Behari Lal for marriage of Musammat Genda. It has been found that Brij Behari Lal was in law a minor at the time when the advance was made; and it appears also to be a fact not now contested that the cash and goods so advanced were duly applied to the reasonable and necessary expenses of the marriage. Brij Behari Lal is dead, and the plaintiff seeks to recover the loan from the family property in the hands of Ajudhia Prasad. We were referred on behalf of the plaintiff appellant to the cases of *Vaikuntam Ammangar v. Kallapiran Ayyangar* (1) and another between the same parties reported in I. L. R., 26 Mad., p. 497. Here a person legally responsible for the provision of necessary funds for the marriage of a Hindu girl, had refused to make the necessary provision; the marriage was performed with the aid of money borrowed for the purpose by the girl's mother. It was held that the latter was entitled to succeed in a suit for the recovery of the money thus expended. It may be conceded that by general principles of Hindu Law both Brij Behari Lal and the defendant, Ajudhia Prasad, lay under an obligation to provide out of the family property the funds necessary for performing the marriage ceremonies of their sister in a manner suitable to the social position of the family and its pecuniary resources; but the distinction between the present case and those above referred to is obvious. The decision in the Madras case turned upon the principle recognised by section 69 of the Indian Contract Act, and the fact that the mother was a person interested in the performance of the girl's marriage. In the case now before us the plaintiff lent the minor, Brij Behari Lal, money for a certain purpose, but he neither performed the marriage ceremony himself nor was he a person interested in the performance of the same. He can succeed, if at all, only in virtue of the provisions of section 68 of the Indian Contract Act. I have referred to the notes on the said section in Cunningham and Shephard's edition of the Act, at pages 219 and

(1) (1900) I. L. R., 23 Mad., 512.

220 of the ninth Edition. The authors quote from an English case, *Chapple v. Cooper* (1), where it is laid down that:—

“Things necessary are those without which an individual cannot reasonably exist. In the first place, food, raiment, lodging and the like. Again..... instruction in art or trade, or intellectual, moral, and religious information may be a necessary also. Again, as man lives in society, the assistance and attendance of others may be necessary to his well being. Hence attendance may be the subject of an infant’s contract. Then, *the classes being established*, the subject matter and extent of the contract may vary according to the state and condition of the infant himself..... But in all these cases, it must first be made out that the class itself is one in which the things furnished are essential to the existence and reasonable advantage and comfort of the infant contractor..... Contracts for charitable assistance and comfort to others, though highly to be praised, cannot be allowed to be binding because they do not relate to his own personal advantage.”

The essential difficulty of the present case lies in the application of the principle of law based upon English decisions to the widely different conditions of Indian society. Nor can the principle itself be considered altogether apart from those provisions of Hindu law which bear upon the devolution of property in a Hindu joint family and the duties and liabilities of the members of such family *inter se*. This became clearly apparent in the course of the argument, when it was urged upon us on behalf of the respondent that the plaintiff could in no case recover anything from Ajudhia Prasad, because his remedy (if any) lay against the estate of the minor, Brij Behari Lal, to whom the money was advanced, and the family property was now in the hands of Ajudhia Prasad by survivorship, and not by inheritance from Brij Behari Lal. I am satisfied that this argument is adequately met by the rejoinder that the loan was made to Brij Behari Lal as manager of the joint family, that it was virtually a loan to the family itself, and that Ajudhia Prasad was as much liable as his elder brother for the provision of the necessary expenses of the sister’s marriage. But if the question is thus complicated in one of its aspects by considerations arising out of Hindu law, it seems to me that we must be careful to bear in mind the principles of the same law, when we come to apply the doctrines laid down in English cases on the subject of

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"necessaries" to the position of minors who are members of a Hindu joint family, particularly in a case like the present, when it so happened that the family contained no member who had attained legal majority. I think that in all the English cases one essential element in the transaction is that there should be a certain *urgency* about the minor's need. It is not enough that he should benefit by the advance made to him, or that the expenditure should be for purposes entirely proper and reasonable; it must be for some purpose the accomplishment of which could not well be postponed without irremediable detriment to the minor himself or to some person whom he was legally bound to support. The same principle underlies those Indian cases, as for instance, *Sham Charan Mal v. Chowdhry Debya* (1) in which money advanced to meet legal expenses where the liberty or estate of the minor was in jeopardy has been held to be recoverable. Looked at from this point of view the age of the girl, Musammat Genda Bibi, becomes the decisive factor in the case. I am prepared to hold without serious hesitation that in the case of a family of the caste to which the parties to the present case belong and one holding their position in society, the marriage of a girl of thirteen could not be much longer postponed without serious detriment to her at any rate. It could scarcely have been postponed another couple of years to allow of Brij Behari Lal's attaining majority. For Musammat Genda Bibi herself, therefore, it seems clear that the reasonable expenses of her marriage were, at the time when the money was advanced, a "necessary." If the lender had taken advantage of his position as a relative (for though only distantly related to Brij Behari Lal he was descended from the same common ancestor), to perform the marriage ceremonies at his own expense, it seems clear to me that he would have been entitled to recover money thus spent from the estate of the minor brothers, who were legally liable to provide it. I am not prepared to hold that any satisfactory distinction can be based upon the mere fact that the necessary cash and other goods were handed over to Brij Behari Lal and the management of the business left in his hands. Moreover,

(1) (1894) I. L. R., 21 Calc., 872.

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as regards Brij Behari Lal himself, it can fairly be said that any further postponement of his sister's marriage would have involved him in a considerable degree of social discredit; that its postponement for another two years might have made it difficult to effect the marriage at all, and that the social discredit in that case would have been serious. There was thus an element of urgency about the matter even as regards Brij Behari Lal himself. On the whole, therefore, I am of opinion, that, though the present case is one very near the boundary line, it may fairly be said that the provision of the reasonable expenses for Musammat Genda Bibi's marriage was at the time when the loan in question was taken, a matter of necessity for her minor brother.

I would therefore, accept this appeal, set aside the decree of the lower appellate court and restore that of the court of first instance.

STANLEY, C. J.—I also am of opinion that the plaintiff is entitled to recover out of the ancestral property in the hands of the defendant the amount of the money advanced by Salig Ram, as also the value of the goods supplied by him for the marriage of the defendant's sister, Musammat Genda Bibi. At the time of her marriage Genda Bibi was of marriageable age and it would have been a disgrace to the family if she had not been married. At the time of her marriage the joint family consisted of Brij Behari, the defendant Ajudhia Prasad and their sister, Genda Bibi. Musammat Sumitra, the mother of these three persons, had been the certificated guardian of Brij Behari and Ajudhia Prasad, but she died before the marriage of Genda Bibi. Brij Behari was the elder of the two brothers, and he managed the affairs of the family after the death of Musammat Sumitra. The moneys and goods supplied by Salig Ram were entered in the account books of the family, and it has been found that the sum of Rs. 566-7-9 was provided by Salig Ram for the marriage expenses. The court of first instance gave a decree for this amount, with interest, but upon appeal the learned Judge of the Court of Small Causes at Cawnpore set aside the decree of the court of first instance and dismissed the plaintiff's suit on the ground that the money

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advanced by Salig Ram amounted to a simple loan to Brij Behari and that inasmuch as Brij Behari was a minor at the time of the loan the transaction was void *ab initio* and not enforceable.

It is admitted that both Brij Behari and Ajudhia Prasad were, according to the Hindu law, under a legal obligation to provide for the marriage expenses of their sister. The money was really advanced to both brothers through the elder brother to enable them to discharge a legal liability. It is clear on the authorities that the reasonable expenses of a sister's marriage are chargeable on the family property in the hands of brothers in the same way as the cost of her maintenance. [See West and Buhler, 754, Mayne's Hindu Law, 6th edition p. 450, and *Tulsha v. Gopal Rai* (1)]. The right to such maintenance and expenses does not rest on contract. The liability is created by Hindu law and arises out of the jural relation of the members of the Hindu family. In *Vaikuntam Ammangar v. Kallapiran Ayyangar* (2) it was held that where an uncle had improperly refused to perform the marriage ceremony of his niece, the daughter of his undivided brother, deceased, the widow of the latter having borrowed money for the purpose and performed the ceremony, was entitled to recover the amount expended on the marriage from the uncle. It seems to me that according to Hindu law Salig Ram, having made the advances, whether they were made to his cousins, Brij Behari and Ajudhia Prasad, who were under a legal obligation to bear the expenses of their sister's marriage, or to Brij Behari as managing member or head of the family, his legal representative is now entitled to recover the advances so made out of the family property in the hands of the defendant. It is not suggested, I may add, that the expenses of the marriage were other than reasonable.

From another point of view also it seems to me that the plaintiff appellant is entitled to succeed in his appeal. Under section 68 of the Indian Contract Act if a person incapable of entering into a contract or any one whom he is legally bound to support, is supplied by another person with necessaries

(1) (1884) I. L. R., 6 All., 692. (2) (1900) I. L. R., 28 Mad., 512.



suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. Brij Behari and Ajudhia Prasad were under a legal obligation not merely to maintain their sister, but also to provide for the expenses of her marriage, and being under age were incapable of entering into a contract. It was as much obligatory upon them to provide for the expenses of their sister's marriage as it is obligatory upon a lunatic to supply his wife and children with necessaries suitable to their condition in life. If a party supply the wife and children of a lunatic with such necessaries, he is entitled, under the illustration appended to section 68, to be reimbursed from the lunatic's property. So here, as it appears to me, Salig Ram having supplied Brij Behari and Ajudhia Prasad with what was requisite for the marriage of their sister is entitled to be reimbursed out of the family property. The term "necessaries" is comprehensive and is not confined to necessaries for the person of the infant himself, but may extend to necessary things provided for other members of his family. It would have been open to Musammat Genda to institute a suit to have her marriage expenses provided out of the family estate. Such a suit would have involved the defendant and his brother in unnecessary costs. This has been avoided. In the case of *Sham Charan Mal v. Chowdhry Debya Singh* (1) it was held by Ghosh and Gordon, JJ., that money supplied to a minor to provide for his defence in criminal proceedings pending against him on a charge of dacoity and used by him for that purpose, must be taken to have been advanced for necessaries within the meaning of section 68 of the Indian Contract Act. The learned Judges in their judgement say that "the liberty of the minor being at stake we think the money should be taken to have been borrowed for necessaries." In *Chapple v. Cooper* (2) it was held that an infant widow was bound by her contract for the furnishing of the funeral of her husband who had left no assets. Alderson, B., in his judgement in that case quoted the following words of Lord Bacon:—"If a man under the years of 21

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(1) (1894) I. L. R., 21 Calc., 372. (2) (1844) 13 M. and W., 252.

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contract for the nursing of his lawful child, this contract is good and shall not be avoided by infancy and no more than if he had contracted for his own aliments or education." Lord Bacon treated a contract for necessaries to an infant's wife and lawful children as an illustration of the maxim *persona conjuncta æquiparatur interesse proprio*: Alderson, B., in his judgement, points out that decent Christian burial was a part of a man's own rights and might be classed as a personal advantage and reasonably necessary to him, and then he draws the conclusion that if this be so, the decent Christian burial of a man's wife and lawful children who are *personæ conjunctæ* with him, is also a personal advantage and reasonably necessary to him and the rule of law applies that he may make a binding contract for it. According to Lord Bacon "the Law hath so much respect for nature and conjunction of blood that in divers cases it compares and matches nearness of blood with consideration of profit and interest and in some cases allows of it more strongly." The same principle is recognised by Hindu law. A marked feature of the law governing the joint Hindu family is the respect and consideration shown to female members of the family. The head of the family is bound to supply maintenance and marriage expenses for the daughters of the family, and money advanced to him for such an object may reasonably, I think, be regarded as money supplied for necessaries within the meaning of section 68. From either point of view, therefore, from which the question before us may be regarded, the defendant is, in my opinion, liable to discharge the debt contracted for the marriage expenses of his sister. I would, therefore, allow the appeal, set aside the decree of the lower appellate court and restore the decree of the court of first instance with costs in all courts.

BANERJI, J:—I agree with the learned Chief Justice and have nothing to add.

BY THE COURT:—The order of the Court is that the appeal be allowed, the decree of the lower appellate court set aside and the decree of the court of first instance restored with costs in all courts.

*Appeal decreed.*