1911
July, 10.

Before Mr. Justice Karamat Husain and Mr. Justice Chamier.

BENI RAM AND OTHERS (DEFENDANTS) *v.* MAN SINGH (PLAINTIFF).*

Hindu law—Mitakshara—Joint Hindu family—Father committed to the Court of Session—Loan taken for his defence—Legal necessity.

Held that the necessity of raising money to pay for the defence of the head of a joint Hindu family committed to the Court of Session on a serious criminal charge was a valid legal necessity such as would support a mortgage of the family property executed by the father and one of his sons for such purpose. *Chandradeo* v. *Mata Prasad* (1), *Luchmun Koour* v. *Mudaree Lall* (2) and *Duleep Singh* v. *Sree Kishoon Panday* (3) referred to.

THE facts of this case were as follows:—

One Mathura Prasad, the head of a joint Hindu family, was committed to the Court of Session on charges under sections 467 and 471 of the Indian Penal Code. In order to raise funds for his defence, Mathura Prasad, with one of his sons, Janki Prasad, mortgaged some of the family property for the sum of Rs. 2,000. The present suit was to bring the mortgaged property to sale for realization of the mortgage debt, at the date of suit amounting to Rs. 10,094-14-3. The defendants were Janki Prasad and Beni Ram, sons of Mathura Prasad, and Gajadhar and Raj Bahadur, sons of Janki Prasad. The court of first instance (Subordinate Judge of Agra) decreed the claim. The defendants appealed to the High Court, where the principal questions raised were whether the deed of mortgage was duly executed and registered and whether it could be enforced against Beni Ram, Gajadhar and Raj Bahadur.

Mr. *Nihal Chand* (with him Babu *Jogindro Nath Chaudhri*) for the appellants.

The Hon'ble *Nawab Muhammad Abdul Majid* (with him Maulvi *Ghulam Mujtaba*), for the respondent.

CHAMIER, J.—This was a suit by the respondent to enforce a mortgage deed executed in his favour by Mathura Prasad, and his son, Janki Prasad. The defendants to the suit were Janki Prasad, Beni Ram another son of Mathura Prasad, and Gajadhar and Raj Bahadur, sons of Janki Prasad. The principal sum secured by the deed was Rs. 2,000. The claim was for

* First Appeal No. 15 of 1910 from a decree of Shoo Prasad, Subordinate Judge of Agra, dated the 6th of October, 1909.

(1) (1909) I. L. R., 31 All., 176. (2) (1850) 5 S. D. A., N.-W. P., 327.
(3) (1872) 4 N.-W. P., H. C. Rep., 83.

Rs. 10,094-14-3, and that amount has been decreed. In the court below it was contended by the defendants that the provisions of the deed relating to interest were unconscionable and should not be enforced. The contention was overruled and has not been repeated here. The only questions for decision are whether the deed in suit was duly executed and registered, and whether it can be enforced against the appellants, Beni Ram, Gajadhar and Raj Bahadur.

Of the marginal witnesses to the deed, Bhola Nath is dead and Piari Lal has disappeared. The two remaining witnesses, Chiddu and Chiranji Lal, a brother of Mathura Prasad, did their best to minimize the effect of their testimony, but both had to admit that the deed was signed by Mathura Prasad and Janki Prasad. Another witness, Jai Ram, whom the court below has believed, said that Mathura Prasad and Janki Prasad signed the mortgage deed in his presence in the Muttra jail. Chiranji Lal, Brahman, proves the due execution by Mathura Prasad, of a power of attorney, authorizing Janki Prasad to procure the registration of the mortgage deed. There can, I think, be no doubt that the mortgage was duly executed and registered.

Mathura Prasad had been committed to the Court of Session on charges under sections 467 and 471 of the Indian Penal Code, and the money was borrowed for the purpose of engaging counsel to defend him at the trial. The mortgagee was aware of the purpose for which the money was being borrowed. Mathura Prasad was ultimately convicted and sentenced to several years' rigorous imprisonment. The question is, whether the mortgage made in these circumstances is binding upon the other members of the family. According to the *Mitakshara* one member of a joint family may 'effect a gift, mortgage or sale of family property in time of distress for family purposes and especially for religious purposes.' Mathura Prasad was the manager of the family property and the mortgage must be held to be binding upon the family if it comes within the rule just stated.

According to the decision of the majority of the Full Bench in *Chandradeo* v. *Mata Prasad* (1), the mortgagee must make out a

(1) (1909) I. L. R., 31 All., 176.

1911

BENI RAM v. MAN SINGH.

Chamier, J.

case of necessity, although the persons against whom he is seeking to enforce his mortgage are the sons and grandsons of the mortgagor. If we were at liberty to adopt the view taken by the minority in that case, the present case would be clear enough. As we are bound by the opinions of the majority, we have to inquire whether there was legal necessity for the loan. Legal necessity is of various kinds and when one gets outside religious and other well recognized classes of necessity, there seems to be room for considerable difference of opinion as to whether a given expenditure is a legal necessity or not, although a learned writer on the Hindu Law has said that to any one acquainted with the inner life of Hindu families, it will be at once clear whether any particular instance of family expenditure is proper or not (Bhattacharyya on the Hindu Joint Family, Tagore Law Lectures, 1884-5, p. 488).

The cases of *Mahabir Prasad* v. *Basdeo Singh* (1), *Khalil-ul-Rahman* v. *Gobind Pershad* (2), *Pareman Dass* v. *Bhattu Mahton* (3), *Durbar Khachar* v. *Khachar Harsur* (4), *Sumer Singh* v. *Liladhar* (5), *Natasayyan* v. *Ponnusami* (6), *McDowell* v. *Ragava Chetty* (7), *Erasalu Gurunatham Chetty* v. *Adepally Raghavalu Chetty* (8) and *Prayag Sahu* v. *Kasi Sahu* (9), which were cited in the arguments, afford little, if any, assistance, for in all of them the question was whether a father's liability originating either in the commission of a crime or the breach of a civil duty could be enforced against the family property in the hands of his sons or grandsons. In all of them the question discussed was whether the debt incurred was illegal or immoral. The question of legal necessity was not discussed in any of those cases. On the question of necessity the respondent has relied upon the cases of *Luchmun Koour* v. *Mudaree Lall* (10) and *Duleep Singh* v. *Sree Kishoon Panday* (11). In the former the Court Pandit was of opinion that a case of *musibat* or family necessity had been established. The facts were that the head of a Hindu joint family

(1) (1884) I. L. R., 6 All., 234.
(2) (1892) I. L. R., 20 Calc., 328.
(3) (1897) I. L. R., 24 Calc., 672.
(4) (1908) I. L. R., 32 Bom., 348.
(5) (1911) I. L. R., 33 All., 472.
(6) (1892) I. L. R., 16 Mad., 99.
(7) (1903) I. L. R., 27 Mad., 71.
(8) (1908) I. L. R., 31 Mad., 472.
(9) (1911) 11 C. L. J., 599.
(10) (1850) 5 S. D. A., N.-W. P., 327.
(11) (1872) 4 N.-W. P., H. C. Rep. 83.

had been sent to prison on account of non-payment of a fine, and several decrees were being executed against him and the property was sold in order to pay off the decrees and obtain his release from prison. In the latter case a member of a joint family had been committed to a special commissioner on a charge of dacoity. While awaiting trial in order to effect his release, he raised money by selling family property and purchased his discharge from prison, it being the policy of Government at the time to discontinue criminal proceedings against persons who made restitution to the parties whom they had injured. The Court, while not expressing any opinion as to the soundness of the decision in the case of *Luchmun Koour* v. *Mudaree Lall*, held that sufficient necessity had been established to warrant the inference of assent to the sale by the minor members of the family. If these cases were rightly decided, there can be no doubt that there was legal necessity for the mortgage in the present case. I think it is doubtful whether either of these cases would now be followed. In one of them the father had been convicted of a criminal offence and sentenced to pay a fine, and in the other the vendor of the property expressly admitted responsibility for a dacoity. There is, however, a clear distinction between selling or mortgaging property in order to obtain the release from jail of a member of the family who has been shown to be guilty of a criminal offence and selling or mortgaging property in order to raise funds for the defence of a member who has been accused in a criminal court. In the one case the family has been disgraced and the release of the offender will not remove that disgrace. It is also desirable that an offender should suffer for his misdeeds. In the other the family is threatened with disgrace, and the intention is to ward it off. According to our system of jurisprudence and practice a man is presumed to be innocent until his guilt is established. The question, whether in such a case as this legal necessity exists for raising money cannot depend upon the result of the trial. It must be remembered that the deed in suit is signed not only by Mathura Prasad, who presumably knew that he was guilty, but also by his son Janki Prasad, who is not shown to have had anything to do with the offence, and who was *de facto* manager of the family affairs, while his father was in the lock-up. I doubt whether

1911

BENI RAM v. MAN SINGH.

any more pressing necessity could exist from the point of view of members of a Hindu family than the necessity for raising money to defend the head of the family against a serious criminal charge. In determining whether or not a case of *musibat* has been made out, one must have regard to the probable intention of the author of the rule and to the class for whom the rule was intended. It is not suggested that an excessive amount of money was raised, and the plea that the terms of the mortgage are unconscionable has been abandoned. I am of opinion that the Court below was right in holding that a case of necessity has been made out. I would dismiss the appeal with costs.

KARAMAT HUSAIN, J.—I agree.

BY THE COURT.—The order of the Court is that appeal be dismissed with costs.

Appeal dismissed.

1911

July, 10.

Before Mr. Justice Sir George Knox and Mr. Justice Karamat Husain.

CHUNNI LAL AND ANOTHER (DEFENDANTS) *v.* SITA RAM (PLAINTIFF.) *

Suit for declaration of invalidity of an adoption—Suit dismissed as time barred—Plaintiff debarred from obtaining a decree for possession on title.

When the setting aside of an adoption is essential to the granting of a decree for possession of immovable property, the fact that a suit to set aside the adoption has become time-barred is a bar to the granting of a decree for possession on title. *Lachman Lal Chowdhri* v. *Kanhaya Lal Mowar* (1) referred to. *Natthu Singh* v. *Gulab Singh* (2) and *Chandania* v. *Salig Ram* (3) distinguished.

THE facts of this case were as follows :—

On the death of one Musammat Maghi Bai, widow of one Banke Das, the defendant, Chunni Lal, claiming to be the adopted son of Banke Das, obtained entry of his name in place of tha of Maghi Bai. He thereafter sold a portion of the property. Thereupon the plaintiff, Sita Ram, brought a suit for a declaration that Chunni Lal was not an adopted son; that the sale-deed executed by him was null and void, and for possession of the property on the ground of the plaintiff being the next reversioner He also prayed for an alternative relief that in the event of its

* Second Appeal No. 326 of 1909, from a decree of F. S. Tabor, District Judge of Banda, dated the 18th of January, 1909, modifying a decree of Achal Bihari, Subordinate Judge of Banda, dated the 12th of November, 1908.

(1) (1894) I. L. R., 22 Calc., 609. (2) (1895) I. L. R., 17 All., 167.
(3) (1903) I. L. R., 26 All., 40.