

section 152 of the Municipalities Act, and that, not having been so questioned, it was not open to the accused to attack its validity in a Criminal Court in defence of a charge under section 147. What he was exactly charged with in this case was disobedience of a written notice lawfully issued by the Municipal Board under the powers conferred upon it by Chapter VII of the Act. It seems to us that before anyone can be convicted of an offence under this section the court must be satisfied that what he had disobeyed was a notice lawfully issued by the Board under the powers conferred upon it by the Act. This was held in *Chhotey v. The Municipal Board of Lucknow* (1) by one of us. It seems also to be in conformity with the principle laid down by a Bench of this Court in *Queen-Empress v. Jasoda Nand* (2). Let the papers be returned.

[See also *Emperor v. Ram Dayal*, (1910) I. L. R., 33 All., 147. Ed.]

PRIVY COUNCIL.

BRIJ LAL (DEFENDANT) v. INDA KUNWAR (PLAINTIFF).

[On appeal from the High Court of Judicature for the North-Western Provinces, at Allahabad.]

Hindu law—Alienation by Hindu widow—Burden of proof—Evidence of legal necessity—Recitals as to evidence of necessity in mortgages or sale-deeds.

The *onus* of supporting a sale from a Hindu widow is on the purchaser.

Recitals in mortgages or deeds of sale with regard to the existence of legal necessity for an alienation by a Hindu widow are not of themselves evidence of such necessity without substantiation by evidence *aliunde*.

APPEAL from three judgements and decrees (two of them, dated the 23rd of December, 1909, and the third dated the 8th of March, 1910) of the High Court at Allahabad, which partly affirmed and partly reversed two judgements and decrees (dated the 27th of November, 1907, and the 13th of December, 1907) of the Subordinate Judge of Bareilly.

This appeal arose out of two suits (62 and 63 of 1907) instituted against the appellant and others. The former of them was brought on the 18th of April, 1907, by the respondent Inda Kunwar to recover possession of a 10 biswa share of a zamindari village.

* *Present* :— Lord SNOW, Lord MOULTON and Mr. AMEER ALI.

(1) (1905) 9 Oudh Cases, 29.

(2) (1898) I. L. R., 20 All., 501.

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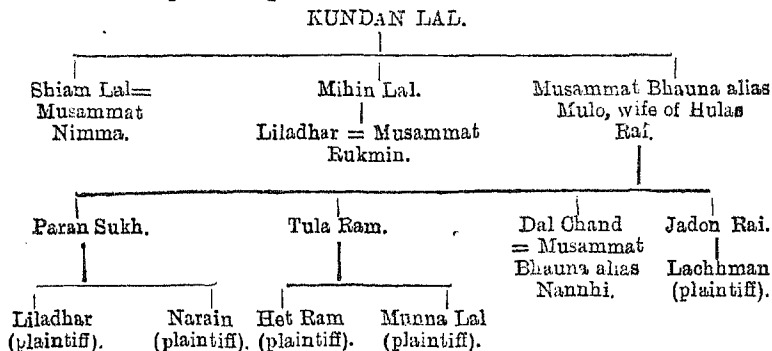
EMPEROR
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7, 11, 12, 13,
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named Khilchipur; and the latter suit was brought, on the same date, by the other respondents Het Ram, Munna Lal, Lila Dhar and Narain, and by one Lachhman (since deceased and now represented by those respondents) for possession of the other 10 biswas share of the said village. The following pedigree shows the relationship of the parties.



The appellant Lala Brij Lal had been for more than 30 years in possession of the 20 biswas of Khilchipur under sales executed by Musammat Rukhmin, Musammat Nimma and Musammat Bhauna, the widow of Dal Chand.

The plaintiffs in the two suits claimed as the reversioners of Lila Dhar and Dal Chand, and contended that the sales were not made for legal necessity, and were therefore not binding on the reversioners, the main defence in both suits being a denial of the above allegations.

For the purposes of this report the facts are sufficiently stated in the judgement of their Lordships of the Judicial Committee.

In suit 62 of 1907, the Subordinate Judge made a decree in favour of the plaintiff, Inda Kunwar, in respect of 2 biswas provided she redeemed that share by paying the defendants a proportionate amount due to them under a certain mortgage on the village, but as regards the remaining 8 biswas the Subordinate Judge dismissed the suit.

The other suit, 63 of 1907, was wholly dismissed by the Subordinate Judge.

In suit 62, the High Court (SIR JOHN STANLEY, C. J. and BANERJI, J.) decreed the plaintiff's claim, allowing her appeal, and dismissing a cross appeal brought by the defendants. The High

Court also allowed the appeal in suit 63 of 1907, and made a decree in favour of the plaintiffs. The defendant Lala Brij Lal (now appellant) applied for leave to appeal to His Majesty in Council from each of the three decrees against him, and the applications were granted and the three appeals consolidated by order of the High Court.

On the consolidated appeal.

As to there being legal necessity for the sales.

De Gruyther, K. C. and *J. M. Parikh*, for the respondent, contended that the *onus* of showing that there was such necessity was on the appellant, and he had not discharged it. Reference was made to Mayne's Hindu Law, 7th edition, page 862, section 640. The mere statement in the documents that legal necessity existed for the sale was not sufficient to prove that that was so, and there was no other evidence to support it: *Maheshur Bakhsh Singh v. Ratan Singh* (1).

Sir Erle Richards, K. C. and *B. Dube* for the appellant contended that the sales made by Rukhmin and Bhauna, widow of Dal Chand, were made for legal necessity, and were binding on the reversioners.

The *onus* was on the respondents to show the want of legal necessity. Reference was made to Mayne's Hindu Law, 7th edition, page 840, section 624; and page 460, section 349, as to the law of necessity. *Maheshur Bakhsh Singh v. Ratan Singh* (1) and *Deputy Commissioner of Kheri v. Khangan Singh* (2).

De Gruyther, K. C., replied.

1914, February 6th:—The judgement of their Lordships was delivered by Mr. AMEER ALI.

The suits which have given rise to this consolidated appeal from three decrees at the High Court at Allahabad relate to a property called mauza Khilchipur lying in the district of Bareilly in the United Provinces of India.

The mauza is now in the possession of the defendant appellant under a usufructuary mortgage executed in 1871, in favour of his ancestor Madho Ram by two Hindu ladies, Rukmin and Nimma,

(1) (1895) I. L. R., 23 Calc., 766; L. R., 23 I. A., 57.

(2) (1907) I. L. R., 29 All., 331 (338); L. R., 34 I. A., 164 (172).

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and one Dal Chand. Other titles were created subsequently in favour of Madho Ram or his son Darbari Lal, to some of which reference will be made in the course of this judgement. But the plaintiffs' claim to possession depends principally on their right to redeem the mortgage of 1871.

Mauza Khilchipur belonged originally to one Kundan Lal. He died many years ago, leaving two sons Mihin Lal and Sham Lal, who, it is not disputed, were joint in food and estate. Mihin Lal died in 1853, and Sham Lal in 1859, leaving his widow Nimma and a nephew named Lila Dhar, Mihin Lal's son. On Sham Lal's death, the whole property devolved on Lila Dhar. Lila Dhar died in 1861, when Rukmin, his widow, became the owner, taking a widow's estate under Hindu law. But although Rukmin as the widow of the last full owner was entitled to the entire property, it would appear that Sham Lal's widow claimed, or was acknowledged to possess, an equal interest with Rukmin. In 1862, the two widows jointly sold a half or 10 biswa share of the village to Dal Chand, who is said to have been Rukmin's manager. In 1871, the three, Dal Chand, Rukmin, and Nimma executed the usufructuary mortgage referred to above for a period of 12 years in respect of the entire mauza, represented as 20 biswas, in favour of Madho Ram, the conditions being that at the end of the term the debt would become satisfied and the mortgagors would recover the property without payment of the "principal mortgage money" or interest. Dal Chand died, it is said, in 1873, and in 1874 his widow, Bhauna, sold the equity of redemption in respect of eight biswas out of the 10 biswas he had acquired from Rukmin and Nimma to the son of Madho Ram, Darbari Lal, and his widow, Chando, one of the defendants in the present suits. The equity of redemption in respect of the remaining two biswas was sold in execution of a decree against Bhauna, and passed ultimately into the hands of the appellant.

It is unnecessary for the determination of this appeal to refer to the subsequent transactions by which Madho Ram's son acquired the equity of redemption in respect of the 10 biswas that had remained in the hands of Rukmin and Nimma after the sale of the moiety to Dal Chand.

The Brahman plaintiffs claim to be the reversioners of both Lila Dhar and Dal Chand. They allege that Bhauna, Dal Chand's widow, died in 1905, Nimma in 1906, and Rukmin a few years ago, and that upon their respective deaths whatever rights they had purported to create in favour of Madho Ram came to an end, and they are entitled to possession of the entire property. They have transferred a moiety of the mauza with all the appurtenant rights to Inda Kunwar, who brings one suit in respect of the share purchased by her, whilst the Brahman plaintiffs have sued separately for the other share claimed by them.

With regard to the 10 biswas Dal Chand had purchased from Rukmin and Nimma, they allege that the sale of the equity of redemption in respect of eight biswas by Bhauna was without legal necessity and that the execution sale of the two biswas was in respect of a personal decree against her, and that, consequently, neither transaction is binding against them.

The contesting defendants, the representatives of Madho Ram, denied that the Brahman plaintiffs were the reversioners of either Lila Dhar or Dal Chand; that their claim was barred by the Statute of limitations, as Rukmin, the widow of the last full owner, died more than 12 years before suit, and that, even if the Brahman plaintiffs were the reversioners of Lila Dhar or Dal Chand, the transactions impugned by them were for legal necessity and consequently binding against them. The two suits were tried together, and although in consequence of the decree of the Subordinate Judge there were three separate appeals to the High Court, they were heard together; and subsequently on an application for leave to appeal to His Majesty in Council, all three appeals were consolidated. The case has thus come before their Lordships as a single consolidated appeal. Their Lordships propose, therefore, in order to avoid confusion, to deal with the two suits as one consolidated action from the outset. The Trial Judge was of opinion that the evidence produced to establish the relationship of the Brahman plaintiffs to Lila Dhar was wholly untrustworthy. He, therefore, did not consider it necessary to enter upon an inquiry as to the time of Rukmin's death.

He held, however, that the Brahman plaintiffs (save Lachman) were the reversioners of Dal Chand, being his brother's sons;

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that the sale of the equity of redemption by Bhauna in respect of eight biswas was for legal necessity, but that there was no proof that the sale by auction of the two biswas in execution of the decree against her was "in satisfaction of a debt contracted by her for legal necessity." He accordingly made a decree in Inda Kunwar's suit for the redemption of the mortgage of 1871 in respect of two biswas, and dismissed the rest of her claim as well as the claim of the Brahman plaintiffs in their suit.

From these decrees there were, as already observed, three appeals to the High Court, one by the defendants in respect of the two biswas, and the two others by the two sets of plaintiffs, namely, Inda and the Brahmans respectively.

As regards the relationship of the Brahman plaintiffs to Lila Dhar, the learned Judges of the High Court have come to a diametrically opposite conclusion to the Trial Judge. They hold that it is satisfactorily established that they are the descendants of one Bhauna, alias Mulo, a daughter of Kundan Lal, and therefore related as *bandhus* to Lila Dhar, Rukmin's husband. They have further held that the sale by Rukmin and Nimma in 1862 to Dal Chand, the mortgage of 1871 by these three to Madho Ram, and the sale of the equity of redemption by Bhauna, Dal Chand's widow, in respect of eight biswas, were without legal necessity. They have also held that Rukmin was alive within 12 years from date of suit. They accordingly reversed the decree of the Trial Judge by which he had dismissed the plaintiffs' claim in respect of eighteen biswas, and, affirming his order in respect of the two biswas, made a decree in favour of the plaintiffs in both suits.

In the present appeal the defendant Brij Lal, the grandson of Madho Ram, challenges all the conclusions of the High Court. The case as presented at their Lordships' Bar is divisible into two parts, one relating to the reversionary right to Dal Chand's estate, the other to Lila Dhar's. It is not disputed now that the Brahman plaintiffs, including Lachman, are the sons of Dal Chand's brothers, and are, therefore, entitled to his estate on the death in 1905 of his widow Bhauna. The only question for determination on this part of the case is whether the sale by Bhauna of the equity of redemption in respect of the eight biswas was for legal necessity. The *onus* of supporting a sale from a

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Hindu widow is undoubtedly on the purchaser. In the present case the appellant has adduced no evidence to prove such legal necessity as would bind the husband's estate. He has relied simply on the recitals in the schedule attached to the sale-deed. Recitals in mortgages or deeds of sale with regard to the existence of necessity for the alienation have never been treated as evidence by themselves of the fact. And it has been repeatedly pointed out by this Board that to substantiate the allegation there must be some evidence *aliunde*.

In these circumstances, their Lordships are of opinion that the conclusion of the High Court with regard to the sale by Bhauna of the equity of redemption in respect of the eight biswas is well founded.

Respecting the other two biswas which belonged to Dal Chand, there is a concurrent finding of fact by the two Courts that the decretal debt in execution of which it was sold was not for legal necessity. In the result, therefore, as regards the share purchased by Dal Chand from Rukmin and Nimma in 1862, and which he jointly with them mortgaged in 1871 to Madho Ram, the Brahman plaintiffs, as reversioners of Dal Chand, are entitled to the same.

The position respecting the other 10 biswas seems to their Lordships quite different. The right of the plaintiffs to that share rests on the allegations that they are the grandsons of one Bhauna alias Mulo, who was a daughter of Kundan Lal and the sister of Sham Lal and Mihin Lal. There is no documentary evidence in support of the statement that the wife of Hulas Rai, the grandfather of the plaintiffs, was a daughter of Kundan Lal. It was natural to expect that in 1862, when Rukmin and Nimma sold a moiety of the property to Dal Chand, the uncle of the plaintiffs, on which occasion the relationship of Lila Dhar, Rukmin's husband, was stated with some particularity, a reference should be made to the vendee's connection with the family. Other documents of a similar nature are equally silent. As observed already, the plaintiffs' allegation rests entirely on oral testimony. Having regard to the divergence of opinion between the two Courts in India with respect to the credibility of the plaintiffs' witnesses, their Lordships have closely examined the evidence, and they cannot help considering it to be

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of a very dubious character. The witnesses had to prove only one link in the chain of relationship; the discrepancies therefore, in their statements on material points, which have been somewhat lightly passed over by the High Court, seriously affect, in their Lordships' opinion, the value of their testimony. Their Lordships agree with the Trial Judge in considering the evidence as to Mulo being a sister of Sham Lal and Mihin Lal as worthless. In this view of the case, it is hardly necessary to determine whether Rukmin was alive or not within twelve years from date of suit. Admittedly she left her home many years ago. The plaintiffs allege she went on a pilgrimage, and was last heard of eight or nine years before the action. The defendant, on the other hand, says she had to leave her home a considerable time before owing to having been outcasted for unchastity. Most of the witnesses who speak to her being recently alive state they obtained their information from Het Ram, one of the plaintiffs, who has not thought fit to enter the witness-box. On the other hand, there are some corroborative circumstances which incline their Lordships to believe that Rukmin left the village in consequence of her lapse, and died many years ago in a distant relative's home.

On the whole, it appears to their Lordships that the plaintiffs have failed to establish their right to recover possession of the remaining 10 biswas, as reversioners to Rukmin's husband. The decree of High Court in the suit of Inda Kunwar omits, however, from consideration the covenant in the deed of mortgage which provides that at the time of redemption the mortgagors:—

“ Shall be liable for the amount of arrears and the amount of *takavi* advances and the amount advanced on account of seed which may be due to the mortgagee by the tenants of the village according to the entries in the *patwari's* papers.”

Their Lordships are of opinion that the decrees of the Courts in India should be discharged, that the claim of the Brahman plaintiffs in their suit should be dismissed, and in the suit of Inda Kunwar who has acquired the 10 biswas, which alone the Brahman plaintiffs had a right to sell, there should be a declaration that she is entitled to recover possession of the same from the defendant appellant, with mesne profits as provided by law, less any sum that may be found due to the mortgagee defendant upon the taking

of proper accounts on the basis of the above-recited covenant within a time to be specified by the High Court.

And their Lordships will humbly advise His Majesty accordingly.

Considering the result, they think the ends of justice will be served by making the parties bear their respective costs in the appeals to the High Court and to this Board.

Solicitors for the appellant: *Barrow, Rogers & Nevill.*

Solicitor for the first respondent: *Edward Dalgado.*

J. V. W.

BAKHTAWAR BEGAM (DEFENDANT) v. HUSAINI KHANUM AND ANOTHER
(PLAINTIFFS) And cross-appeal: two appeals consolidated.

[On appeal from the High Court of Judicature for the N.-W. Provinces, at Allahabad.]

Limitation—Suit for redemption—Mortgage by conditional sale—Specified period for redemption—Payment of mortgage debt within specified time—Accrual of cause of action—Act No. XV of 1877 (Indian Limitation Act), schedule II, article 148.

Ordinarily, and in the absence of a special condition entitling the mortgagor to redeem during the term for which the mortgage is created, the right of redemption can only arise on the expiration of the specified period. But there is nothing in law to prevent the parties from making a provision that the mortgagor may discharge the debt within the specified period, and take back the property. Such a provision is usually to the advantage of the mortgagor.

The father of the plaintiff executed a mortgage by way of conditional sale on the 6th of January, 1880, in respect of 12 villages in favour of the predecessor in title of the principal defendant; and there was at the time of execution a contemporaneous agreement "that the sale would be cancelled on payment of the amount of consideration in nine years." In a suit brought on the 6th of January, 1899, for redemption the High Court held on the construction of the contract that the suit was not barred, as the right to redeem only arose on the expiry of the nine years.

Held, by the Judicial Committee, that the case must be decided, not on the construction of the contract, but on the case made by the plaintiff on the pleadings, which was that she was entitled under the agreement to redeem the property within the period of nine years, and by the statement of account produced with the plaint which showed that the mortgage debt was actually satisfied under the contract on the 4th of September, 1888; and that being so the right to redeem then accrued, and the whole suit was therefore barred, not having been brought within 60 years from that date [article 148 of schedule II of the Limitation Act, XV of 1877].

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