

always accepting statements of this nature as sufficient to condone the making of a false statement. I discharge Shambhu with this warning. The contents of this warning will be duly and carefully explained to him.

1913

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 EMPEROR  
 v.  
 MANGAL.

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## APPELLATE CIVIL

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*Before Mr. Justice Rynes and Mr. Justice Piggott.*

KAPILDEO AND ANOTHER (DEFENDANTS) v. THAKUR PRASAD AND ANOTHER  
 (PLAINTIFFS)\*

1913  
 November, 14.

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*Hindu law—Joint Hindu family—Antecedent debt—Mortgage executed by father to complete purchase of immovable property at an execution sale, but executed after expiry of time for paying in the balance of the price—Property nevertheless remaining with the purchaser.*

An auction purchaser of immovable property paid in the amount required by law as a preliminary deposit, but, being unable to find the remainder of the auction price, borrowed it on the security of a mortgage comprising the property purchased at the auction sale and also some property of the joint family of which the auction purchaser was the head. This mortgage was, however, executed after the expiry of the time fixed by law for payment of the balance of the auction price. The executing court refused to accept payment of the balance, but the property remained with the purchaser, apparently in virtue of some arrangement with the judgement-debtor, by whom ostensibly the decree was satisfied.

*Held* that in the circumstances above described the mortgagee was entitled to recover on his mortgage, and that the sons of the mortgagor could not be heard to plead that the mortgage money was not borrowed to pay an antecedent debt, within the meaning of the Hindu law.

THIS was a suit for sale on a mortgage executed in circumstances described at length in the judgement of the High Court by the father of the joint Hindu family. The defendants were the sons of the mortgagor and pleaded that for various technical reasons they were not liable in respect of the mortgage debt.

The court of first instance decreed the claim and this decree was confirmed on appeal. The defendants thereupon appealed to the High Court.

Dr. Satish Chandra Banerji, for the appellants.

Munshi Gobind Prasad, for the respondents.

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\* Second Appeal No. 1522 of 1912 from a decree of F. D. Simpson, District Judge of Gorakhpur, dated the 30th of August, 1912, confirming a decree of Hidayat Ali, officiating Second Additional Subordinate Judge of Gorakhpur, dated the 12th of March, 1912.

1918

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KALPIDES  
v.  
THAKUR  
PRASAD.

RYVES and PIGGOTT, JJ :—This is a second appeal in a mortgage suit by two defendants, who are the minor sons of the original mortgagor. The last paragraph of the memorandum of appeal to this Court is apparently intended to attack the validity of the deed of transfer under which the plaintiffs are claiming, but it has not been pressed in argument and seems to have no force. The one substantial question in issue is whether under the particular circumstances of this case the appellants are bound by the mortgage executed by their father Kali Dat Pande. The latter had bid for certain immovable property at an auction sale, and had paid into court the preliminary deposit required by law. In order to complete the transaction he executed a mortgage-deed, hypothecating both the property he proposed to acquire at the auction-sale and other family property in his hands. That is to say, Kali Dat Pande had entered into an engagement by which he bound himself under penalty to deposit in court a certain sum of money by a certain date. In borrowing money in order to enable him to meet this engagement he was clearly discharging an “ antecedent debt,” and his sons cannot repudiate liability for a mortgage-debt thus incurred. There happens, however, to be in the present case one curious complication. The auction sale had been held on the 21st of May, 1907, and the mortgage-deed in suit was not executed until the 7th of June, 1907. The period of fifteen days, allowed by law within which Kali Dat Pande was bound to complete the transaction had, therefore, expired. It is accordingly contended on behalf of the appellants that the liability which Kali Dat had incurred on the 21st of May, 1907, was at an end; that the mortgagee should have been on his guard, and that if he had carefully examined the receipt for the preliminary deposit submitted by Kali Dat for his inspection, he would have seen that there was no longer any “ antecedent debt ” to satisfy and that the money advanced by him on the mortgage could no longer be applied to its ostensible purpose. As regards the subsequent proceedings in connection with the auction sale, we know that the court concerned did in fact refuse to accept Kali Dat’s tender of the balance of the purchase money, when this was made after the the expiration of the period prescribed by law. We know also that the property was not put up for sale a second time, as the decree was satisfied by payment into court of the full amount due,

ostensibly on behalf of the judgement-debtor : yet the property in question must have been acquired by Kali Dat Pande, for the plaintiffs are proceeding against it in the present suit. Presumably Kali Dat got out of the difficulty in which he found himself, in consequence of his failure to complete the auction-purchase according to law, by coming to terms with the judgement-debtor, and the money raised by means of the mortgage-deed in suit was actually applied to the acquisition of the property for the purchase of which it had all along been intended. The mortgagee seems to have acted in good faith : there is no necessity for presuming a mistake of law on his part (as suggested in the memorandum of appeal before us), for he may simply have failed to notice the date on the receipt shown him by Kali Dat Pande. The failure of the latter to take necessary action within the period limited by law did not relieve him from all liability towards the court executing the decree: his preliminary deposit was forfeited, and he was liable to make good any loss which might occur on a resale. This liability he seems to have met by some private arrangement with the judgement-debtor, and by applying the money borrowed under the deed in suit substantially for the purpose for which it was actually raised. Under all the circumstances it would not be just to hold that the mortgagee had failed to make reasonable inquiries as to the necessity for the loan, or permit the sons to retain the property acquired by means of the loan while repudiating all liability for the same. This appeal therefore fails, and we dismiss it with costs.

*Appeal dismissed.*

*Before Mr. Justice Byves and Mr. Justice Piggott.*

DAN PRASAD AND ANOTHER (DEFENDANTS) v. GOPI KISHAN AND OTHERS  
(PLAINTIFFS)\*

1913  
November, 18.

*Civil Procedure Code (1908), order XL, rule 1—Injunction—Receiver—Application for temporary injunction as to property in suit—Order putting each party in possession of part pending the suit.*

The defendants in a suit for partition made an application to the court touching the custody of the property the subject matter of the suit. The court thereupon directed that until the determination of the suit the plaintiffs should have the control and management of a portion of the property in suit, and the defendants of another portion. *Held* that the order was a legal order and a

\*First Appeal No. 110 of 1913 from an order of B. J. Dalal, District Judge of Samgarh, dated the 23rd of January, 1913.