

## APPELLATE CIVIL.

*Before Justice Sir Pramada Charan Bamerji and Mr. Justice Piggott.*

RAM KHELAWAN KASAUNDHAN AND ANOTHER (PLAINTIFFS) v.

RAM NARESH SINGH AND OTHERS (DEFENDANTS). \*

*Hindu law—Mitakshara—Joint Hindu family—Money borrowed by manager at high rate of interest—Legal necessity—Burden of proof.*

1919  
April 23.

When money is borrowed by the manager of a joint Hindu family on the security of the family property at a very high rate of interest, it is for the lender seeking to enforce his claim to prove not only that there was necessity for borrowing the money, but also that there was necessity for borrowing it at an exorbitant rate of interest. Failing such proof as regards the rate of interest, it is competent to the court to reduce the rate. *Nazir Begam v. Rao Raghunath Singh* (1), *Harro Nath Rai Chowdhri v. Randhir Singh* (2) and *Nand Ram v. Bhupal Singh* (3) r-ferred to.

THIS was a suit to enforce payment of a mortgage, dated the 27th of August, 1890. The plaintiffs were the legal representatives of the mortgagees. Some of the defendants were mortgagors, others the legal representatives of the other mortgagors. The principal amount secured was Rs. 900. Interest was payable at the rate of 24 per cent. per annum and compound interest with half-yearly rests. The amount claimed was Rs. 6,745-0-0, after giving credit for Rs. 2,600 admitted to have been received. Some of the defendants denied the mortgage, and also asserted that there was no family necessity for incurring the loan. The court of first instance found that the loan was incurred for payment of past debts secured on family property, but was of opinion that the plaintiffs had failed to prove that there was any necessity for borrowing money at the high rate of interest provided for in the mortgage. It accordingly reduced the rate of interest to simple interest at 18 per cent. per annum, and, finding that the amount paid back to the plaintiffs was sufficient to cover the principal and interest at the rate above mentioned, dismissed the suit.

The plaintiffs appealed to the High Court.

The Hon'ble Dr. Tej Bahadur Sapru and Munshi Iswar Saran, for the appellants.

\* First Appeal No. 217 of 1916, from a decree of Lal Gopal Mukerji, Subordinate Judge of Gorakhpur, dated the 4th of April, 1916.

(1) (1919) I. L. R., 41 All., 571. (2) (1890) I. L. R., 18 Calc., 311; L.R., 18 I.A., 1.

(3) (1911) I. L. R., 34 All., 126.

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RAM  
KHELAWAN  
KASABUNDHAN  
v.  
RAM NARESH  
SINGH.

Pandit *Uma Shankar Bajpai* (for *Babu Piari Lal Banerji*),  
for the respondents.

BANERJI and PIGGOTT, J.J. :—This appeal arises out of a suit for enforcement of a mortgage, dated the 27th of August, 1900. The plaintiffs are the legal representatives of the mortgagees, and some of the defendants are mortgagors and the rest are the legal representatives of the other mortgagors. The principal amount secured was Rs. 900. Interest was payable at the rate of 24 per cent. per annum and compound interest with half-yearly rests. The amount claimed is Rs. 6,745-4-0, after giving credit for Rs. 2,600 admitted to have been received. Some of the defendants denied the mortgage, and also asserted that there was no family necessity for incurring the loan. The court below has found that the loan was incurred for payment of past debts secured on family property, but it was of opinion that the plaintiffs had failed to prove that there was any necessity for borrowing money at the high rate of interest provided for in the mortgage. It accordingly reduced the rate of interest to simple interest at 18 per cent. per annum, and, finding that the amount paid back to the plaintiffs was sufficient to cover the principal and interest at the rate above mentioned, dismissed the suit. The plaintiffs have preferred this appeal. The only contention raised on their behalf relates to the question of necessity for borrowing the money at the high rate of interest mentioned in the mortgage deed. It has been held by their Lordships of the Privy Council, and their decision has been followed in this Court, that a mortgagee must not only prove the existence of family necessity but he must also prove that there was necessity for borrowing at an onerous rate of interest. The latest pronouncement of their Lordships is contained in their judgment in *Nazir Begam v Rao Raghubath Singh* (1), in the following terms :—“It is incumbent on those who support a mortgage made by the manager of a joint Hindu family to show not only that there was necessity to borrow but that it was not unreasonable to borrow at some such high rate and upon such terms, and if it is not shown that there was necessity to borrow at the rate and upon such terms contained in the mortgage, that rate and those terms cannot stand.”

(1) Since reported, *Supra* page 571.

This judgment was delivered on the 18th of February last and does not appear to have been reported. Their Lordships adhered to the view expressed by them in *Harro Nath Rai Chowdhri v. Randhir Singh* (1), and approved of the decision of this Court in *Nand Ram v. Bhupat Singh* (2). It is true that no evidence was given on the point by either party in this case, but, as their Lordships observed in the case to which we have referred, "the thing spoke for itself." There can be no doubt that the rate of interest agreed upon by the manager of the family was inordinately high. The property was amply sufficient to secure repayment of Rs. 900, with reasonable interest, and the fact that the plaintiffs seek to recover more than Rs. 6,000, by sale of the mortgaged property, is sufficient to show that the security was ample. Under these circumstances, we think the learned Subordinate Judge was right in reducing the rate of interest to simple interest at Rs. 18 per cent. per annum. Allowing interest at that rate, the plaintiffs have not only recovered from the defendants the principal amount, but also interest at that rate. The suit was, therefore, rightly dismissed, and we dismiss this appeal with costs.

*Appeal dismissed.*

*Before Mr. Justice Piggott and Mr. Justice Walsh.*

CHAHLU (DEFENDANT) v. PARMAL (PLAINTIFF)\*

*Act No. IV of 1882 (Transfer of Property Act), section 6—Compromise of claim to possession of property of deceased person—Such compromise not a transfer of reversionary rights.*

Of four separated Hindu brothers, Hazari, the second, died first, leaving a widow, Musammat Mulo, who married the eldest brother, Parmal. Next, another brother, Fransukh, died, without issue, leaving a widow, Musammat Indo. A question having arisen as to the legal effect of the remarriage of Musammat Mulo, the two surviving brothers, Parmal and Gokul, entered into an arrangement by which, in consideration of his being allowed to retain the property of Hazari, Parmal agreed to make no claim against Gokul to the property of Fransukh on the death of his widow Musammat Indo.

\* Second Appeal No. 272 of 1917, from a decree of W. T. M. Wright, District Judge of Budaun, dated the 18th of December, 1916, reversing a decree of Gauri Shankar Tewari, Munsif of Budaun East, dated the 5th September, 1916.

(1) (1890) I. L. R., 18 : Calc., 311 :

(2) (1911) I. L. R., 34 All., 123.

L. R., 18 I. A., 1.

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