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Sada Ram, at any rate a sum which will be a reasonable indemnification to the plaintiff for the costs and expenses which he must have incurred in bringing the present suit. The sum awarded against Biddhi Chand ought to be in our opinion a much smaller amount.

We allow the appeal, set aside the decree of the court below and grant the plaintiff a decree against the defendant Sada Ram for Rs. 1,500, with full costs in all courts; by this we mean that he shall receive the full costs incurred in the court below and in this Court, and not merely costs proportionate to the amount decreed. The plaintiff will also have a decree against the defendant Biddhi Chand for the sum of Rs. 100 and costs as if he had recovered a decree for this amount. This will apply to costs in both courts. We dismiss the suit as against the defendant Meghraj and Fakir Chand, but direct that they and the other defendants do bear their own costs in all courts.

Appeal allowed and decree modified.

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October, 22.

Before Mr. Justice Zudall and Mr. Justice Muhammad Rafiq.
BAL KRISHNA DAS AND ANOTHER (PLAINTIFFS) v. HIRA LAL AND OTHERS
(DEFENDANTS).*

Hindu Law—Mitakshara—Sale by daughter of entire house inherited by her to discharge debt of father—House not saleable piecemeal—Legal necessity—Suit by reversioner to recover house from vendees.

To pay off an antecedent debt of her father, the daughter of a separated Hindu sold a house which had been the property of her father in his life-time and had been previously mortgaged by herself and her mother jointly as security for the same debt. The debt at the time of the sale amounted to Rs. 7,775, and the house was sold for Rs. 19,500. On the other hand, it was found that the house was not one which could have been divided and sold piecemeal.

Held that the reversioner to the last male owner was not in the circumstances entitled to recover the house from the vendees.

THE facts of the case are fully set forth in the judgment; but for the purpose of explaining the arguments they may be briefly stated as follows:—

One Ramjas died in 1853, leaving a house in Calcutta and certain movable property. His widow succeeded him, and

*First Appeal No. 11 of 1916, from a decree of Udit Narain Singh, Subordinate Judge of Benares, dated the 17th of May, 1915.

after her death in 1869, his daughter Musammat Lakhi Bibi. It appeared that Ramjas died indebted to the extent of about Rs. 8,000. The house was mortgaged by the ladies in order to pay off that debt. Musammat Lakhi Bibi made from time to time certain payments towards the mortgage money, but the debt nevertheless went on accumulating; and on the mortgagee pressing for payment she sold the house in 1878 for Rs. 19,500, out of which Rs. 7,775 was paid in discharge of the mortgage. There was a recital in the sale deed that the money was required to pay off the debt of Ramjas. It appeared that the vendees had made inquiry and had satisfied themselves that the debt existed. Musammat Lakhi Bibi died in 1906. In 1911 the plaintiff, as reversioner of the estate of Ramjas, brought a suit, *inter alia*, for recovery of the house, on the allegation that the sale by Musammat Lakhi Bibi was not made for legal necessity and was invalid. The court of first instance held that the sale was for legal necessity and dismissed the suit. The plaintiff appealed to the High Court.

Babu *Sital Prasad Ghosh* (with him Babu *Lalit Mohan Banerji*), for the appellant, contended that it lay on the vendees to establish that the sale by Musammat Lakhi Bibi was for legal necessity. Assuming for the purposes of argument that there was a debt due from Ramjas' estate to the extent of Rs. 7,775 in 1878, there was no legal necessity for the sale of the entire house for Rs. 19,500; and equity demanded that the vendees should be called upon to pay the plaintiff reversioner the difference between these two sums, as there was no evidence of any legal necessity for the raising of an amount to the extent of the entire sale consideration. The recital in the sale deed itself contained particulars such as to affect the vendees with notice of the precise amount which the lady had to raise in order to discharge Ramjas' debt. They were, therefore, bound to show that there was legal and justifiable necessity for the raising of the excess amount by an out-and-out sale of the whole of the immovable property; and they had failed to do so. He further contended that the court would be pleased to consider and give effect to the equities of the case as between the reversioner and the vendees, and relied on the principle of the following rulings;

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Gobind Singh v. Baldeo Singh (1) and *Deputy Commissioner of Kheri v. Khanjan Singh* (2). On the questions of legal necessity and of the vendee's duty to ascertain and to prove how far the necessity was justified and reasonable having regard to the income and the means in the hands of the lady making the alienation, he cited the cases of *Ravaneshwar Prasad Singh v. Chandī Prasad Singh* (3) and *Mandil Das v. Megh Narain Dubey* (4).

The Hon'ble Dr. *Tej Bahadur Sapru* (with Mr. *B. E. O'Connor* and Babu *Harendra Krishna Mukerji*) for the respondents :—

There was only one item of property out of which the lady could raise money to pay off the debts of her father, and that property was of such a nature that it could not have been sold piecemeal. As was laid down in the case of *Baboo Luchmeedhur Singh v. Ekbal Ali* (5), the rule that only a part of the property commensurate with the amount of the actual necessity is to be sold can have no application to cases in which the property is such that it cannot be alienated in parts, so that the money really required cannot be raised otherwise than by the sale of the property as a whole. In that case too, a surplus was left over out of the purchase money after paying off the necessary debts, and it was not shown how that surplus was applied, and yet the sale of the whole property was upheld. The appellant has not even attempted to show that the house could have been sold in bits and parts. The mortgage which already existed on the house was going on mounting up instead of being reduced. A further mortgage would, therefore, have been a very inadvisable course to adopt. The vendees have proved that they made honest inquiry and *bonâ fide* satisfied themselves that there was legal necessity for the sale. They are not bound to prove more than that. They were not bound to inquire into the primary origin of the necessity, or the reasonableness thereof. Reference was made to the case of *Banga Chandra Dhur Biswas v. Jagat Kishore Acharjya Chowdhuri* (6). The judgment of ATKINSON, J., in the case in *Mandil Das v. Megh Narain Dubey* (4) relied on by the appellant is in reality in favour of the respondent.

(1) (1903) I. L. R., 25 All., 330.

(2) (1907) I. L. R., 29 All., 331.

(3) (1911) I. L. R., 83 Cal., 721, affirmed

(4) (1916) 1 Pat. L. J., 39.

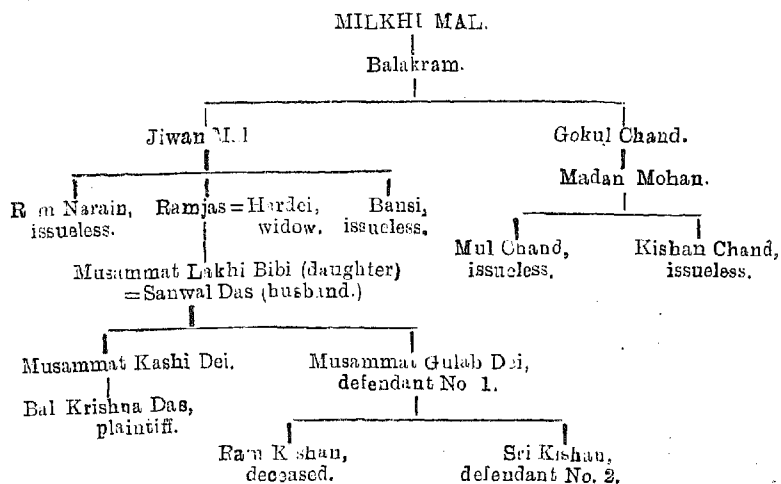
(5) (1867) 8 W. R., C. R., 75.

(6) (1916) I. L. R., 44 Cal., 136,

by the P. C. in I. L. R., 43 Cal., 417.

Babu *Sital Prasad Ghosh*, in reply, distinguished the cases cited by the respondents, and submitted that the present case was to be decided on its own facts, with reference to general principles which were not disputed.

TUDBALL and MUHAMMAD RAFIQ. J.J.:—The following pedigree will explain the right under which the plaintiff has come into court for the reliefs that he seeks:—



Ramjas was the maternal great grandfather of the plaintiff. Ramjas died in 1853 leaving him surviving a widow, Musammat Hardei Bibi, and daughter, Musammat Lakhi Bibi. He left no male issue. According to the evidence in the case he died possessed of a house in Cotton Street, Calcutta, and certain movables. Soon after his death his widow and daughter left Calcutta and took up their residence in Benares. Musammat Hardei Bibi died on the 15th of June, 1869. In 1888, the village Mahrani was mortgaged to Musammat Lakhi Bibi by Sadanand Misra. Ten years afterwards, on the 7th of July, 1898, the village was sold to Musammat Lakhi Bibi. On the 6th of May, 1900, she mortgaged it to one Nur Muhammad in lieu of Rs. 20,000. The money was ostensibly raised to help Gopi Nath, a friend of her husband Sanwal Das. The mortgage to Nur Muhammad was a simple mortgage. He sued on foot of the mortgage to recover the money due on it. The claim was brought against both Musammat Lakhi Bibi and her husband, Sanwal Das. The latter, it may be mentioned here, pleaded,

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inter alia, that his wife had no interest in the village of Mahrani and could not create a valid mortgage on it. He claimed the village as his own property. The case was, however, compromised, and a decree was passed on the 2nd of May, 1905, under which Nur Muhammad was put into possession of the village as a usufructuary mortgagee. Musammat Lakhi Bibi died on the 23rd of April, 1906. Ram Kishan, the cousin of the plaintiff, died on the 17th of April, 1910, and Sanwal Das, the maternal grandfather of the plaintiff, died in 1909. Musammat Lakhi Bibi had before her death sold the Calcutta house of her father on the 7th of March, 1878, to Musammats Dhani Bibi and Soni Bibi for Rs. 19,500. According to the recital in the deed and the pleas in defence, the house was sold to pay off the debt of Ramjas. On the 16th of January, 1911, the plaintiff, Bal Krishna Das, instituted the suit out of which this appeal has arisen for the recovery of $\frac{1}{2}$ of the house and village on the allegation that the sale of the house by Musammat Lakhi Bibi was invalid and made for no legal necessity and that the village Mahrani had been purchased by her out of the funds left by Ramjas and that the mortgage created on it by Musammat Lakhi Bibi was also of no validity as against him, inasmuch as it was not created for legal necessity. He impleaded, as defendants in the case, the representatives of the original vendees of the house and Nur Muhammad the mortgagee, as also his aunt Musammaat Gulab Dei and his surviving cousin Sri Kishan. The claim against his aunt and against his cousin was for movables and a grove alleged to have belonged originally to Ramjas. During the pendency of the suit a compromise was entered into between him on the one side and Musammat Gulab Dei and Sri Kishan on the other. Under the said compromise the plaintiff withdrew his claim as to the movables and the grove against Gulab Dei and Sri Kishan and they on their side relinquished their right in the $\frac{2}{3}$ of the Calcutta house and the village Mahrani in favour of the plaintiff. The latter then applied to the lower court for amendment of the plaint, asking that his claim should be extended to the entire house and the village against the other defendants. The lower court disallowed his prayer, but on appeal to this Court the plaintiff was permitted to amend his plaint. The case therefore went to

trial as against the other defendants in respect of the entire house and the village. After carefully considering the evidence produced by the parties before it, the lower court held that the Calcutta house had been sold by Musammat Lakhi Bibi for legal necessity and that the village of Mahrani was purchased by her out of her own funds and not out of any left by Ramjas. The claim was accordingly dismissed. The plaintiff has come up in appeal to this Court and challenges the findings of the court below against him. The other appellant Har Krishna Das is a transferee of a portion of the interest of the plaintiff and hence appears on the record. It is said that he purchased a portion of the interest of the plaintiff subsequent to the decree of the lower court but before the filing of the appeal to this Court. It is contended on behalf of the appellants that there is no evidence, or at least no evidence worth the name, which can be relied upon to prove that there was any legal necessity for Musammat Lakhi Bibi to sell the Calcutta house in 1878. On the other hand, there is ample evidence on behalf of the appellants to show that Ramjas was a man very well off, who left cash, jewellery and furniture that Musammat Lakhi Bibi eventually inherited, and it was out of the moneys inherited from her father that she purchased the village of Mahrani. Further it is urged that, even if it be conceded that Ramjas died leaving a debt of about Rs. 8,000 and that he left no other property than the Calcutta house, Musammat Lakhi Bibi should not have sold the house but paid off the debt by leasing or mortgaging the house or raising the money in some other way. The evidence of the witnesses that is printed in the appeal before us and which bears on the question of the position of Ramjas, consists of the statements of seven men including the plaintiff himself. Most of them say that Musammat Lakhi Bibi inherited wealth from her mother Musammat Hardei Bibi who in her turn had got it from Ramjas, but almost all of them had to admit in cross-examination that their knowledge is not first hand and is based on hearsay. It is in evidence that Ramjas kept account-books. The persons who would presumably be in possession of those books would be the descendants of Ramjas. They must be in the possession of the plaintiff himself, or of his aunt, or his cousin, with whom he has

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compromised. He could easily have produced those books or called for their production to prove what property was left by Ramjas other than the Calcutta house. They would have also been of importance as rebutting the evidence against the defence about the debt alleged to have been left by Ramjas. It would serve no useful purpose by reproducing here at length the evidence of each witness and showing that none of the witnesses purports to give first hand evidence. We have, therefore, no reliable evidence before us that Ramjas died a wealthy man and left considerable cash and jewellery in addition to the Calcutta house. The village Mahrani was mortgaged by Musammat Lakhi Bibi in 1888, 35 years after the death of her father and 19 years after the death of her mother. It is in evidence on behalf of the plaintiff himself that Musammat Lakhi Bibi had money and that her husband Sanwal Das made and lost lakhs of rupees. We would particularly refer to the evidence on this point of Raja Muashi Madho Lal and of Jewa Nand Misir. The latter is the *purohit* of the plaintiff and his family. He would be a person in a position to know the family affairs of the plaintiff. It is quite conceivable that Sanwal Das, though an extravagant man, gave money to his wife to provide for her in case he came to grief. Anyhow the *onus* was on the plaintiff to prove that the village Mahrani was purchased by Musammat Lakhi Bibi out of the funds left by her father, which *onus* in our opinion has not been discharged. If the village was not bought out of the funds left by Ramjas, it is immaterial to speculate as to where she got money from to buy it. As the plaintiff has not proved that the village Mahrani was purchased out of the funds left by Ramjas, his claim to it must fail. The next question is as to the validity of the sale of the Calcutta house. The evidence for the defence proves beyond a shadow of doubt that Ramjas at the time of his death was indebted to the extent of about Rs. 8,000 to one Moti Chand. The latter pressed for his money and Musammat Lakhi Bibi and her mother raised the money by executing a mortgage on the house and paid off Moti

Chand. One Ganga Prasad advanced the money. He transferred the mortgage to Ram Kishan. In the meantime Musammat Lakhi Bibi, it seems, kept the mortgage-debt down by paying off portions of the principal and some interest. Ram Kishan, however, was not satisfied, and he pressed for payment. In March, 1878, Musammat Lakhi Bibi sold the house to Musammats Dhan Bibi and Soni Bibi for Rs. 19,500, out of which Rs. 7,775 were paid in discharge of the mortgage to Ram Kishan. These facts are proved by the evidence of Nobin Chandar and Kaniram and some documents. It is also in evidence that the purchasers of the house made inquiry as to the alleged debt of Ramjas through their solicitor, one Mr. Pitter. Mr. Pitter after making regular inquiries came to the conclusion that the allegation of Musammat Lakhi Bibi that her father had died indebted was correct and that she was selling the house to enable her to pay off that debt. The debt at the time was at least 25 years old and at the time of the sale the debt was increasing. We have, therefore, no hesitation in holding on the evidence in the case that the sale of the house by Musammat Lakhi Bibi was for legal necessity. It is, however, urged on behalf of the appellants that she need not have sold the house but should have resorted to some other measure to raise the money and pay off the debt of her father. For example, it is suggested that she should have either mortgaged or leased the house for a long term and thus raised the money. There is no force in the argument. She had mortgaged the house and found that the debt was increasing and she was not in a position to pay it off. Had the mortgage continued, the house would have gone to the mortgagee by the swelling of the interest. As to the lease for a long term of years, we have no *data* to go upon, nor is there any ground for us to say that she could have made a better bargain by selling a portion of the house in Calcutta. As far as we can judge from the evidence in the case the house was an indivisible parcel of property that could not be sold piecemeal. It has not been shown to us that the sale of the house was for an inadequate price. The present value of the house after it had been added to and built upon by the purchasers is no indication of its value in 1878. Even if no additions had been made, the value of the house would have actually been much

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more now than it was in 1878, for it is a well-known fact that the price of immovable property has gone up enormously all over the country, particularly in a town like Calcutta. In the circumstances of the present case, considering that Musammat Lakhi Bibi had no other means of paying off the debt of her father, the course adopted by her was a perfectly legitimate one. We would also remark here that the plaintiff has brought his suit after a lapse of a number of years, nearly 33 years. He waited until the persons who were in a position to throw light on the transaction were all dead. His maternal grandfather, Sanwal Das, died only two years prior to the suit. Had he been alive he would have given us more detailed information about the sale of the house. The plaintiff was questioned on the point and he replied that he could not sue earlier because Sanwal Das always put him off by saying that he, Sanwal Das, would bring about a compromise with the vendees and the mortgagee Nur Muhammad. The explanation on the face of it is absurd. We think that the court below came to a correct finding with regard to the sale of the Calcutta house. The claim of the plaintiff was rightly dismissed. The appeal fails and we dismiss it with costs. The two sets of respondents will be entitled to their separate costs.

Appeal dismissed

1918
 November, 8.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

CHUNNI LAL (PLAINTIFF) v. BIRI SINGH AND OTHERS (DEFENDANTS)*
Ex-proprietary holding—Holding sold in execution of money decree—Formal possession obtained—Subsequent suit for recovery of actual possession—Execution of decree.

In execution of a simple money decree certain plots of land which formed part of the ex-proprietary holding of the judgment-debtor were sold by auction, and were purchased by the decree-holder. The decree-holder obtained formal possession of the plots purchased, but not actual possession. Within twelve years after the date of the order giving formal possession the decree-holder filed the present suit to obtain actual possession of the plot purchased by him.

Held that, inasmuch as the land in suit was part of an ex-proprietary holding the plaintiff's suit must be dismissed.

* Second Appeal No. 1354 of 1916, from a decree of A. G. P. Pullan, District Judge of Mainpuri, dated the 26th of July, 1916, confirming a decree of Vishnu Ram Mehta, Munsif of Shikohabad, dated the 25th of May, 1916.