

1896 negative. In this view of the case it becomes unnecessary to consider the second question.

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RAMDHONE SINGH.

The result in my opinion is that the rule should be discharged with costs.

s. C. G.

Rule discharged.

PRIVY COUNCIL.

MAHESHWAR BAKSHI SINGH (PLAINTIFF) v. RATAN SINGH AND OTHERS (DEFENDANTS.)

P. C. ²
1896
Feb. 18, 19
& March 20.

[On appeal from the Court of the Judicial Commissioner of Oudh.]
Hindu Law—Widow—Mortgage by—Burden of proof—Representative of mortgagee.

A Hindu proprietor's heirs, in possession after the death of his widow, who had mortgaged part of the inheritance, were sued by the mortgagee's heir, who represented him, to enforce the mortgage as binding on the land.

There was evidence that, after the mortgage was executed, previous mortgages made by the widow were paid off with the borrowed money; but there was no evidence connecting any of those securities with a debt of the husband; or that the mortgage was made for a legitimate purpose.

Held, that, although the suit was brought by the representative, and not by the original mortgagee, the burden of proving the money to have been advanced to the widow for a purpose justified by legal necessity was on the plaintiff; and that it was incumbent on him to adduce sufficient evidence of the nature of the transaction.

Held, that general evidence, to the effect that the husband died in debt and that the widow substituted new securities at reduced interest for former mortgages, was not sufficient to exempt the plaintiff from having to prove the particulars of the transaction and its justification.

Held, that the burden of proving that the estate left by the husband was sufficient to meet the claims upon the widow was not thrown upon the defendants.

Hanuman Pershad Panday v. Massumat Babooee Munraj Koonweree (1), discussed.

APPEAL from a decree (28th November 1890) of the Judicial Commissioner of Oudh, reversing a decree (4th January 1889) of the District Judge of Sitapur.

The object of this suit was to establish a mortgage of the village of Sadhopur in the District of Sitapur, part of the property

² Present: LORDS WATSON and DAWEY, and SIR R. COUCH.

of Mannu Singh who died childless in 1874, inherited from him by his widow for her widow's estate. She executed the mortgage on the 12th July 1884 to Pertab Rudr Singh, *talukdar* of Rampur, who died on the 18th October 1885, and she died in 1887. The present suit was brought by the mortgagee's brother and representative, Thakur Maheshar Baksh Singh, against the heirs, Mahipat Singh, Ranjit Singh and Drighibjai Singh, who had obtained *dakhil kharij* of the property on the 23rd March 1888 as next heirs of the last male owner.

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The Original Court decided that the mortgage was binding on the land. The Judicial Commissioner on appeal reversed that decision. The question on this appeal was whether the evidence had shown enough to support the conclusion of the first Court that the widow in mortgaging had acted under such a necessity as constituted a justifying cause, according to the Hindu law : a question both of law and fact.

On the 8th May 1885 the present appellant brought this suit against the heirs, alleging the mortgage, and that nothing, either of principal or of interest, had been paid. He claimed Rs. 10,071, the amount due with future interest added, a declaration of hypothecation, and an attachment and sale of the property, or possession thereof.

The mortgage secured the repayment of Rs. 7,000 with interest at 13 annas per cent. a month on the 12th July 1887. It was a simple mortgage, for three years, with an option to the mortgagee, on default in the payment, to make it usufructuary, by taking possession. The deed recited that the money was borrowed, "in order to liquidate the debts due to bankers," without specifying whether the debts were the mortgagor's debts or her husband's. It also stated that the property was in the widow's own proprietary possession, without a co-sharer, but made no further statement as to whether her intention was to mortgage her husband's estate absolutely, or only her right, title and interest as a widow therein.

The first two defendants filed separate written statements on the 4th September 1888 ; the third stated that his case was the same as that of the second. The effect of these statements was to deny the widow's power to mortgage more than her own

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interest in the land ; to deny the existence of any necessity for the mortgage ; and to deny that any debt of the late Mannu Singh had been paid out of the money borrowed by the widow. The issues raised questions whether she was legally authorized to mortgage the property inherited by her from her husband ; and with a view to determine this, whether the money was advanced to her for justifying necessities.

The District Judge found that the latter existed, that the mortgage was effectively made according to Hindu law and was sufficient to bind the land ; and gave his reasons as follows :—

“ There is enough evidence to show that the deceased Mannu Singh was largely in debt at the time of his death, and that Mannu Singh had agreed to pay high interest to his creditors. Therefore his widow was legally justified in contracting fresh loans at a lower rate of interest to pay off the debts bearing the higher rate. She was bound to do this to pay her husband’s debts and to protect and save the estate for her husband’s reversionary heirs. There is no evidence to the effect that the profits which Umrai Singh obtained from the estate sufficed to meet the claims upon her ; on the other hand, the evidence has certainly shown that the loans were at a low rate of interest, especially the loan secured by the mortgage of 12th July 1884, the subject of the present suit.”

The claim was accordingly decreed with costs. One of the defendants, Ranjit Singh, alone appealed.

On his appeal the decree of the first Court was reversed, and the suit was dismissed with costs.

The Judicial Commissioner found that there was no evidence showing the particular circumstances under which the mortgage loan was raised ; that there was no evidence of a claim upon the inheritance to which debts of Mannu Singh, if existing, would have given rise ; and no evidence of pressure upon the widow, or of her being under legal necessity to pay any particular debt incurred by her late husband. He did not consider that evidence of the general indebtedness of the husband, at his death, was sufficient to make up for the absence of evidence of a particular debt which the widow intended to pay on behalf of her late husband. Nor did he find that there was any evidence that

the deceased lender of the money, Pertab Rudr Singh, made enquiry, or attempted to satisfy himself that the widow was under a legal necessity to pay any such debt. He also found that the facts in evidence were plainly insufficient to connect this mortgage loan of the year 1884 with any debt contracted by Mannu Singh many years before. That there therefore appeared to be no reason why he should hold that the estate of inheritance was bound in the possession of the heir, after the widow's death. Reference was made to *Hunooman Persaud Panday v. Mussumat Babooee Munraj Koonveree* (1) and to *Rao Kurun Singh v. Fyz Ali Khan* (2).

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After this decree had been made Ranjit Singh died, and the suit was revived against his four heirs, the present defendants, Ratan Singh and others.

The plaintiff, Maheshwar Baksh Singh, appealed from this decision.

Mr. J. D. Mayne, for the appellant, argued that the judgment of the first Court was correct. Referring to the judgment in *Hunooman Persaud Panday v. Mussumat Babooee Munraj Koonveree* (1), which dealt with the rule as to the burden of proof when alienations by persons having limited authority are contested, he pointed out that in that judgment the case of a party other than the original mortgagee was mentioned. The representative of the mortgagee would hardly in all cases have as complete a knowledge of the transaction as the mortgagee himself. But accepting the rule established in that case that the person who has advanced the money may reasonably be expected to allege and prove facts presumably better known to him than to the heir, as he sets up a charge in his favour made by one whose title to alienate he certainly knew to be limited and qualified, the contention was that the burden of proof had in this case been sufficiently discharged by the plaintiff's evidence. The lender was bound to enquire into the necessities of the borrowing widow, but here they had been established beyond reasonable doubt. The question, on whom lies the burden of proof in such a case, founded on a mortgage by a widow, whose authority was limited, was not to be answered by

(1) 6 Moore I. A., 393.

(2) 14 Moore I. A., 196, 200.

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a general and inflexible rule. The presumption proper to be made would vary with the circumstances. The mortgagee, however, must show, either legal necessity, or grounds for inferring it, and that he gave credit on reasonable grounds. *Amar Nath Sah v. Achan Kuar* (1). Here the widow's position was a needy one. The evidence showed what were her necessities. The evidence went beyond that point, and had shown that debts of the husband's had been cleared off. At his death, in 1874, he was indebted to the extent of about Rs. 65,000. The Court of Wards had taken the management of the estate for seventeen months, and it was said that they had paid off some of his debts. The creditors obtained decrees and attached property in the widow's possession. To ward off judicial sales, she borrowed money, and executed several mortgages before that of 1884. All her husband's debts bore interest at 24 per cent. Umrai substituted loans bearing no higher interest than ten per cent. There was no specific evidence as to the representations on which the *talukdar* of Rampur made advances, amounting to more than half a lakh, but debts were paid off by his agents. The Judicial Commissioner had estimated the income of the estate at a sum between the estimate of the appellant, and that given by the respondent, and at about Rs. 8,000 or Rs. 9,000 per annum. After paying the interest due on her husband's debts, besides paying some of them off, the margin left for the widow must have been small. No suggestion of extravagant living on her part had been made; and the fair inference was that the mortgage debt now in question was contracted under the pressure of necessity, it being an act of duty on the part of a widow to pay her husband's debts if she could. The requirements mentioned in the judgment in *Hunooman Persaud's* case had been satisfied in this. [In regard to payment of Government revenue by a widow being necessary, *Muteecoolah v. Radhabinode Missur* (2) and *Radhamohun Ghosal v. Giridhareelal Roy* (3) were cited.]

Mr. H. Cowell, for the respondents, argued that the evidence fell short of the requirements pointed out in *Hanuman Pershad's* case. The rule was expressed in a recent decision that, in order to bind the inheritance, the mortgagee taking from a widow is

(1) I. L. R., 14 All. 423; L. R., 13 I. A., 196.

(2) S. D. A. of 1856, p. 596.

(3) S. D. A. of 1857, p. 460.

bound to show the nature of the transaction, and that in advancing he gave credit on reasonable grounds that the money was wanted for some, or one, of the necessities recognized by Hindu law as justifying such alienation. *Kameswar Pershad v. Run Bahadur Singh* (1). There had been no proof here of the particular purpose for which the money was advanced. Nor had it been shown that the mortgagee had advanced *bona fide* in the belief, after enquiry by him on the subject, that the money was required for one of the necessities justifying such a transaction on the part of the widow. The absence of such evidence could not be supplied by inferences drawn from the general circumstances of the case. The widow's agent, who, it was to be presumed, would know her affairs, had been called, but had not given evidence showing the particular facts. None of the witnesses had given the details of the transaction resulting, as the Courts had been asked to infer, in the payment of some of the husband's debts, or at least applied to averting loss, from some cause or other, to the inheritance. It had not been established that the widow intended to do that which the law allowed her to do.

Mr. *J. D. Mayne* replied.

Their Lordships' judgment was delivered by

SIR R. COUCH.—The suit in this appeal was brought upon a mortgage of a village called Sadhopur in the District of Sitapur, part of the property of Thakur Mannu Singh who died childless in 1874, leaving Umrai (or Umrao) Kunwar his widow. On his death she succeeded to his estate as his heir. The mortgage is dated the 12th July 1884 and was executed by Umrai Kunwar. It states that she had borrowed Rs. 7,000 from Thakur Pertab Rudr Singh, *talukdar* of Rampur, at an interest of 13 annas per cent. per mensem payable in three years in order to liquidate the debts due to bankers, and in lieu thereof had hypothecated the entire village Sadhopur which was in her proprietary possession and enjoyment without a co-sharer. The mortgagee Pertab Rudr Singh died on the 18th October 1885; and the appellant, the plaintiff in the suit, is his heir and representative. Umrai Kunwar died on the 14th February 1887, and an order for

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(1) L. R., 8 I. A., 8 ; I. L. R., 6 Calc., 843.

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mutation of names having been made in favour of the defendants, one of whom is represented by the present respondents, as the heirs entitled on her death, they entered into possession of the estate. The question in this appeal is whether, after the death of Umrai Kunwar, the mortgage is a valid charge upon the village against the next heirs of her husband.

The terms of it are consistent with its being such a charge, but they are also consistent with its having effect only during the widow's life. The District Judge decided this question in the appellant's favour, and made a decree that the sum due should be realized by attachment and sale of the village. This decree has been reversed by the Additional Judicial Commissioner, and the suit has been dismissed.

According to Hindu law Umrai Kunwar, on the death of her husband, became the full owner of the estate for her life, but she had not the same power of alienation as a full owner has. Her power was a limited and qualified one, to alienate against the next heirs of her husband only for certain purposes which the law authorizes, and the question to be decided is whether it has been proved that the mortgage was made for a legitimate purpose. It has been seen that in the present case the suit is brought by the heir of the mortgagee, and therefore what is laid down in *Hunooman Persaud Panday v. Mussumat Babooee Munraj Koonweree* (1) which has been held to apply to the case of a widow and the next heir of her husband, is not directly applicable. It is that where the mortgagee, with whom the transaction took place, is himself setting up a "charge in his favour made by one whose title to alienate he necessarily knew to be limited and qualified, he may be reasonably expected to allege and prove facts presumably better known to him than to the infant heir, namely, those facts which embody the representations made to him of the alleged needs of the estate, and the motives influencing his immediate loan." But what is said in the next page that, if a charge "be created by substitution of a new security for an older one, where the consideration for the older one was an old precedent debt of an ancestor not previously questioned, a presumption, in favour of the charge, would be reasonable," may have

(1) 6 Moore I. A., 419.

to be considered with reference to some of the evidence in this case. As it only applies to part of the loan it will be noticed afterwards.

Although the suit here is not brought by the original mortgagee, the affirmative of the question whether the money was borrowed for a legitimate purpose is on the plaintiff who seeks to have the mortgage enforced, and in proof of this he ought to produce sufficient evidence of the nature of the transaction. The evidence given was to the effect that when Mannu Singh died he was deeply indebted, and his estate being taken into the charge of the Court of Wards, claims by *mahajans* to the amount of Rs. 65,000 were registered. The estate was under the management of the Court of Wards for seventeen months and was then given up to the widow. No evidence was produced from the Court of Wards of the value of the estate or of the incumbrances upon it, nor did it appear that any endeavour had been made to obtain such evidence. One witness said that Mannu Singh's revenue from his estate was Rs. 6,500, and that debts which carried interest at the rate of 24 per cent. per annum were paid by borrowing money at 10 per cent. Other witnesses also spoke to this, and said that the estate was improved by the widow's management. Bhawani Singh, the brother of Umrai Kunwar, and said by one of the witnesses to have been her principal agent, was examined for the plaintiff. He said that during Mannu Singh's lifetime he assisted in the management of the estate; that Mannu Singh was indebted in his lifetime at a guess, he should say, in about Rs. 65,000; the Thakurain paid off debts borrowing from Rampur (meaning Pertab Rudr Singh); that by her management the estate was improved; that she borrowed at reduced interest to pay off debts carrying heavier interest; that the creditors were attaching property in execution of decrees against her, and she therefore borrowed; and that the debts were incurred by the Thakur. On cross-examination he said that without looking at accounts he could not give the total of revenue; he could not state the Thakurain's monthly expenses; he could not give any idea of what should be her monthly expenses; attachment was made in his presence, he could not say for how much. Their Lordships are unable to believe that the witness could not give more precise evidence of the condition of the estate and the nature of the various loan

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transactions. There was no explanation of the non-production of the accounts. There was evidence of other witnesses that two or three days after the mortgage sued upon was executed mortgages to the amount of Rs. 5,000 were paid with the borrowed money. All these mortgages appear to have been made in 1883, and in the four, which are in the record, Umrai Kunwar is stated to have borrowed the money and brought the same to her own use. There is no evidence connecting any of these mortgages with a debt of her husband, and so no ground for presuming that they were made for a legitimate purpose.

The *District Judge*, in coming to a decision in the appellant's favour, appears from his judgment to have been influenced by the defendants not having proved that the profits which Umrai Kunwar obtained from the estate suffice to meet the liabilities upon it. The defendants were not bound to prove this. His decision about the mortgage sued upon seems to be founded on general evidence that Mannu Lal was heavily indebted at the time of his death, that he had agreed to pay heavy interest, and that the widow had contracted fresh loans at a lower rate of interest to pay off the old ones, the loan on this mortgage being one of them. But it is said in the judgment of the Additional Judicial Commissioner that on the hearing of the appeal it was admitted by the Counsel for the then respondent, now the appellant, that he was unable to connect this mortgage loan of 1884 with any debt of Mannu Singh, or to show the particular purpose for which it was contracted. The appellant is not the original mortgagee, but that does not exempt him from proving the nature of the transaction, and their Lordships cannot infer from the facts proved that the money was borrowed for a legitimate purpose. They will therefore humbly advise Her Majesty to affirm the decree of the Judicial Commissioner and to dismiss this appeal. The appellant will pay the costs of it.

Appeal dismissed.

Solicitor for the appellant: Mr. *J. F. Watkins*.

Solicitors for the respondents: Messrs. *Barrow & Rogers*.

C. D.