

It follows that the answer to question (c) must be "No, no suit would lie."

Let the record go back to the Ajmer Court with this expression of our opinion.

Under section 20 of the Ajmer Courts Regulation the costs of this reference ought to be costs in the appeal out of which the reference arose. We recommend accordingly.

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APPELLATE CIVIL.

Before Mr. Justice Tudball and Mr. Justice Sulaiman.

BHUP SINGH (DEPENDANT) v. JHAMMAN SINGH AND OTHERS (PLAIN-
TIFS) AND MUSAMMAT GURGA KUNWAR AND ANOTHER (DEPEND-
ANTS).*

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Hindu law—Hindu widow—Power of widow or other female limited owner to bind the estate—Legal necessity—Consent of reversioners.

When the alienation of the whole or part of the estate in possession of a Hindu widow or other such female owner has to be supported on the ground of necessity, then if such necessity is not proved *alimunde* and the alienee does not prove inquiry on his part and honest belief in the necessity, the consent of such reversioners as might fairly be expected to be interested to quarrel with the transaction will be held to afford a presumptive proof, which, if not rebutted by contrary proof, will validate the transaction as a right and proper one.

Where a widow or other such female owner of an estate borrows money for the purposes of the estate on a simple bond and subsequently gives the security of the estate for the payment of the debt, it is within her power to bind the estate.

Jugul Kishore v. Jotendro Mohun Tajor (1), *Debi Prasad Chowdhury v. Golap Bhagat* (2) and *Rangasami Gounden v. Nachiappa Gounden* (3) referred to.

THE facts of this case are fully set forth in the judgment of the Court.

Munshi Panna Lal, for the appellants.

Babu Piari Lal Banerji, for the respondents.

TUDBALL and SULAIMAN, JJ.:—This appeal is connected with F. A. 124 of 1919, as the mortgage which is the subject

* First Appeal No. 33 of 1919, from a decree of Muhammad Ali Ausaf, subordinate Judge of Aligarh, dated the 8th of November, 1918.

(1) (1884) I. L. R., 10 Cal., 985. (2) (1913) I. L. R., 40 Cal., 721.

(3) (1913) 17 A. L. J., 536.

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matter of this suit is also the subject matter of the other suit. The facts may be briefly stated:—

One Bhagirath Singh died in the year 1880 leaving a widow Musammat Pran Kunwar. He had property, a 5 biswa share in mauza Mahmudpur Jamalpur, mahal Bhagirath Singh, and a 3 biswa 2 biswansi odd share in mahal Ghair Khastgaran of the same village. The present revenues of these two properties are Rs. 530-7-0 and Rs. 593-7-0. What the revenues were in the year 1880 is not stated. The widow Pran Kunwar remained in possession of the estate until the year 1886, when she died. She was succeeded by her daughter Musammat Durga Kunwar, who was the wife of one Balwant Singh and the mother of the defendant appellant before us, Bhup Singh. Musammat Durga Kunwar had two sons and two daughters. The elder son Ram Singh died in January, 1917. The present suit was instituted on the 19th day of August, 1918. It is a suit brought by mortgagees on the basis of a mortgage-deed, dated the 5th day of June, 1912, for a sum of Rs. 5,200. The property which had come to Musammat Durga Kunwar from her father Bhagirath Singh was hypothecated. The deed was executed by Durga Kunwar for herself and as guardian of her minor son Bhup Singh, who was then about 14 years of age, and also by Ram Singh, her elder son. Ram Singh apparently carried through the transaction. He presented the document for registration and he admitted execution and completion and the receipt of the consideration. The consideration consisted of the following items:—

(1) Rs. 4,600 due by the mortgagors to the mortgagees on the basis of a registered simple mortgage deed of the 19th day of November, 1910, which had been executed to secure a sum of Rs. 6,400.

(2) Rs. 100 taken by the executant to meet the expenses of the deed.

(3) Rs. 400 taken in cash, Rs. 275 of which was to redeem certain ornaments which had been pawned by the lady, and Rs. 125 to pay off certain parol debts.

The deed of the 19th day of November, 1910, was also executed in the same way by Musammat Durga Kunwar and Ram Singh. Bhup Singh pleaded in defence that his mother

had no right whatsoever to mortgage the estate, that she had no legal necessity for the loan and that he as the reversioner was not bound to pay. The suit was brought in the lifetime of Musammat Durga Kunwar. She was made a party to the suit. Bhup Singh was impleaded because on the 15th day of August, 1918, Musammat Durga Kunwar had executed a deed under which she gave up the whole of her life-estate in the property in favour of her son Bhup Singh. Musammat Durga Kunwar pleaded that she had relinquished her life-estate and put Bhup Singh in possession, she had now no longer any right in the property, that all the debts which she had incurred were her personal debts, and she generally supported her son. Musammat Bhagwati Kunwar merely pleaded that she had no interest whatsoever in the property and had been wrongly impleaded. The court below has decreed the plaintiff's suit in full and Bhup Singh has appealed. In the connected suit Bhup Singh came into court on the basis of the deed of relinquishment of the 15th of day August, 1918. Certain persons, Thakur Das and Gulab Singh, had obtained simple money decrees against Durga Kunwar, in execution of which they had attached some of the immovable property. The attachments were prior to the deed of relinquishment. Musammat Durga Kunwar, on the 17th day of November, 1896, had created a usufructuary mortgage of certain property in favour of the predecessor in title of Sannu Lal and Hira Lal. Bhup Singh asked the court for a declaration that the debt borrowed under the mortgage-deed of the 17th day of November, 1896, was the personal debt of Musammat Durga Kunwar and that by reason of the relinquishment all rights of the mortgagees under the mortgage had ceased to exist. He, therefore, asked to be placed in possession of the property as against those mortgagees. In regard to the mortgage-deed of the 5th day of June, 1912, he asked for a declaration that that mortgage was no longer binding upon the estate, inasmuch as Musammat Durga Kunwar had relinquished her rights. In regard to the attachments carried out in execution of the simple money decrees he asked for a declaration that they were no longer of any force and were void and ineffective against him. It will thus be seen that

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the mortgage-deed of the 5th day of June, 1912, was involved in the two cases. It is in the present appeal that we propose to deal with it at length. It is urged on behalf of the appellant that the plaintiffs have failed to prove legal necessity and that, therefore, they have failed to establish the fact that the mortgage is binding upon the estate: that the debts incurred by Musammat Durga Kunwar were all her personal debts. On these grounds it is urged that the suit ought to have been dismissed. Pending the decision of this appeal Musammat Durga Kunwar has died.

The point for our decision, therefore, is whether or not the debt due under this mortgage is one that is binding upon the estate and as such recoverable from it by the plaintiffs. It will be seen that the major part of the sum of Rs. 5,200 was a sum of Rs. 4,600 due on the mortgage-deed of 19th day November, 1910, which was executed by Musammat Durga Kunwar and Ram Singh, her elder son. An examination of this latter bond shows that it consisted of 5 items. The first item is of Rs. 475 due by Musammat Durga Kunwar on the basis of three simple unregistered bonds of the 18th day of July, 1909, and two, dated the 6th day of July, 1909. Of these three sums, that due under the bond of the 18th day of July, 1909, is said to have been borrowed for the payment of Government revenue, whereas the debts due on the two simple bonds were due on three old bonds of 1906. The second item is one of Rs. 650-6, also due on three simple unregistered bonds executed by Musammat Durga Kunwar in favour of one Thakur Das on the 25th day of February, 1910, 22nd day of November, 1907, and 20th day of September, 1909, and a sum of Rs. 230 lent with the creditor for satisfaction of the principal and interest of a parol debt. The third item is a sum of Rs. 925 lent with the creditor for payment on a simple unregistered bond in favour of one Dwarka Das. The fourth item was the sum of Rs. 4,300 due on a mortgage-deed for Rs. 1,800 executed by Musammat Durga Kunwar in favour of the mortgagee on the 23rd day of March, 1900. An examination of this last mortgage deed, dated the 23rd day of March, 1900, shows that the consideration consisted of three sums, *viz.*, Rs. 750 due on a bond, dated the 5th day of May, 1901, Rs. 700 due on a bond, dated the 23rd day of July, 1902, and Rs. 350 taken for the purposes of paying Government

revenue. The last item was one of Rs. 50 on account of costs of execution and registration of the deed itself.

It must be admitted that the evidence as to these old debts and the grounds on which they were incurred is by no means clear or satisfactory. It is urged on behalf of the appellant that, as they were nearly all on unregistered simple bonds, they must have been clearly the personal debts of Musammat Durga Kunwar, and that, therefore, they cannot be binding upon the estate. It is furthermore contended that, even if Musammat Durga Kunwar had executed those simple money bonds and borrowed the money for the purposes of the estate, still she had no legal power subsequently to bind the estate by a mortgage to cover the payment thereof. For this latter proposition Mr. *Panna Lal* has to admit that he has no authority. He has quoted certain cases before us, namely, *Dhiraj Singh v. Manga Ram* (1) and *Kalbu v. Faiyaz Ali Khan* (2); but the former of these is a case in which the creditor had sued the reversioner after the widow's death, and the second is a case where a suit was brought against the widow, a simple money decree obtained against her and the property sold in execution of that decree. It was held that what was sold in that case was merely her life-estate and nothing more. We would call attention to the case of *Jugul Kishore v. Jotendro Mohun Tagore* (3). There it was held, that even in the case of a simple debt incurred by a widow, if she be sued as representing the estate and the property is sold the whole interest would pass and not only her life-estate. We do not think it possible to hold that where a widow or a female owner borrows money for the purposes of the estate on a simple bond and subsequently gives the security of the estate for the payment of the debt, it is beyond her power to bind the estate in this way. In the present case, assuming for a moment that all these old prior debts were incurred by Musammat Durga Kunwar for the purposes of the estate, we think that she had full power to give the security of the estate to secure the payment of those debts. The present case, we think, may be decided on a different principle. There are certain facts which

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(1) (1897) I. L. R., 19 All., 300. (2) (1908) I. L. R., 30 All., 894.

(3) (1884) I. L. R., 10 Cal., 965.

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are established by the evidence and which we think ought to be set forth. Even some of the appellant's witnesses had to admit that on the death of Bhagirath Singh Musammat Pran Kunwar's attempt to obtain mutation of names in her own favour was resisted by the agnates of Bhagirath Singh; that later on when Pran Kunwar died Musammat Durga Kunwar was similarly resisted and resisted with a good deal of force. It appears that the male relatives of Bhagirath Singh descended upon the house and practically removed all the movable goods from it. They contested Durga Kunwar's attempt to obtain mutation of names. The witness Umrao Singh had to admit that he on her behalf spent at least Rs. 600 or Rs. 700 in securing mutation. He does indeed say that he never claimed payment of what he had spent for her, but this we do not for an instant believe. One of the documents on the record also discloses the fact that a decree had been obtained against Musammat Pran Kunwar in her life-time, which Musammat Durga Kunwar had to satisfy. There is also the fact that the estate was small. It is true that the appellant's witnesses tried to make out a somewhat exaggerated income of this estate. The Government Revenue at the present time is only about Rs. 1,000. A good portion of the property has for years been in the hands of usufructuary mortgagees. At the time Musammat Durga Kunwar got possession of the estate, which was about the year 1886, the profits of this estate must have been considerably less than they now are. It is also proved by the evidence that Musammat Durga Kunwar's husband Balwant Singh resided with his wife at the house of her mother. There is not a scrap of evidence to show that Balwant Singh had any property of his own, and it is clear that the husband and wife and the whole family lived on the property left by Bhagirath Singh. There were two daughters and two sons and both these daughters and sons were married. The family was Thakur family, and Rajputs as a class are notoriously given to excessive expenditure on the occasions of marriages. One witness has made the absurd statement that the gifts at the time of marriage were equal to the expenditure incurred. Such evidence is valueless and is manifestly untrue. The circumstances, therefore, of this estate were such as to show good

cause for Musammat Durga Kunwar running into debt. She must have started her possession of the property with a load of debt upon her, incurred by her for the purposes of protecting the estate and in securing it for herself and her sons. We then have the fact that in the year 1910, when she created the mortgage for Rs. 6,400, she had two sons, one of whom was a minor and the other was of age. The two sons were immediate reversioners to the estate and the only one of them that was able in law to express consent actually combined with his mother in the execution of the mortgage-deed. When, later on in the year 1912, the mortgage-deed now in suit was executed, it was similarly executed by the mother and the elder son Ram Singh. An examination of the deed shows that it was Ram Singh who presented it for registration and who carried it through. It is, therefore, clear that the only next reversioner who was able to give consent took an active part in the transaction and joined in the execution of the deed. It was held in the case of *Debi Prosad Chowdhury v. Golap Bhagat* (1) that "alienation by way of mortgage by a Hindu widow as heiress of a portion of the estate of her deceased husband without proof either of legal necessity or of reasonable inquiry and honest belief as to its existence, but with the consent of the next reversioner for the time being, will be valid and binding on the actual reversioner, if the presumption of legal necessity or of reasonable inquiry and honest belief raised by such consent is not rebutted by more cogent proof". In the present case there is clearly no rebutting evidence whatsoever.

In the case of *Rungasami Gounden v. Nachiappa Gounden* (2) their Lordships of the Privy Council expressly laid stress upon and showed approval of the decision in *Debi Prosad Chowdhury v. Golap Bhagat* (1). We quote the following from that decision:—
 "When the alienation of the whole or part of the estate is to be supported on the ground of necessity, then if such necessity is not proved *aliunde* and the alienee does not prove inquiry on his part and honest belief in the necessity, the consent of such reversioners as might fairly be expected to be interested to quarrel with the transaction will be held to afford a presumptive

(1) (1913) I. L. R. 40 Cal., 721.

(2) (1918) 17 A. L. J., 586.

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proof which, if not rebutted by contrary proof, will validate the transaction as a right and proper one. These propositions are substantially the same as those laid down by JENKINS, C. J., and MUKERJI, J., in the case of *Debi Prasad**.

We think that this principle applies to the present case. There is no rebutting evidence. The origin of the debt is lost in the dim past. There are facts which go to show that the lady, Musammat Durga Kunwar, had good reason to incur debt for and on behalf of the estate and we have the sole next reversioner (her own son) capable of consenting, joining with her in executing the mortgage. It must be remembered that she was not without advice or help, she had her husband as well as her adult son. There was no incentive for her to destroy the estate or to encumber it without good cause. Her natural affection alone would have made her strive to protect the estate for her son. This is not the case where the next reversioner is a distant relative of a deceased husband, but one in which the next reversioner is actually the own son of the female owner. We think, therefore, that, applying the principle laid down in the cases mentioned above, we must in the circumstances draw the clear inference that the mortgage was executed for the purposes of the estate and is therefore a legal and binding one. Under these circumstances we think that the decree granted by the court below is a proper decree and the appeal therefore fails. We dismiss it with costs.

Appeal dismissed.

Before Mr. Justice Lindsay and Mr. Justice Stuart.

KANNU MAL AND ANOTHER (PLAINTIFFS) v. INDARPAL SINGH AND OTHERS (DEFENDANTS)*.

Act No. IV of 1882 (Transfer of Property Act, sections 83, 84 and 108—Mortgage—Deposit of mortgage money—Procedure necessary when the mortgagee is a minor.

On a construction of sections 83 and 84 of the Transfer of Property Act, 1882.

*Second Appeal No. 1187 of 1919, from a decree of A. Hamilton, Second Additional Judge of Aligarh, dated the 15th of August, 1919, modifying a decree of Hanuman Prasad Varma, Second Additional Subordinate Judge of Aligarh, dated the 9th of April, 1919.

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