

Before Sir Lal Gopal Mukerji, Acting Chief Justice, Mr.  
Justice King and Mr. Justice Niamat-ullah

1933  
January, 13

CHIRANJI LAL (PLAINTIFF) v. BANKEY LAL AND  
OTHERS (DEFENDANTS)\*

*Hindu law—Joint family property—Alienation by manager,  
not being the father—Legal necessity must be proved—  
Doctrine of antecedent debt not applicable.*

The question whether a debt is antecedent or not arises only when the father makes a transfer. It is the privilege of the father alone to burden the family estate by a mortgage for discharging an antecedent debt, which must be a debt of his own. A manager of the family, who is not the father, cannot bind the estate merely by discharging a pre-existing debt of the family.

S died leaving three sons, RP, RS and Z. Z then died leaving a son C, and the joint family then consisted of RP, RS and C. A mortgage of the joint family property was executed by RP and RS. *Held*, that in the absence of proof of legal necessity the mortgage was not binding on C or the family estate, even though the mortgage was made to pay off an earlier mortgage which had been executed by S and Z.

This appeal was referred by the Division Bench hearing it to a Full Bench with the following referring order :—

YOUNG and THOM, JJ. :—This is a second appeal from the decision of the Additional District Judge of Agra. The plaintiff in this case sued for a declaration that a usufructuary mortgage executed by his two uncles and his own mother as his guardian was not binding on him as there was no legal necessity for the loan. The lower appellate court found that the whole of the mortgage was good against the plaintiff as the money was borrowed to pay off antecedent debts which were binding upon him, that is, that the debts were the debts of his ancestors and that the money borrowed paid these debts off. The appellant's sole contention in this case is that two

\*Second Appeal No. 621 of 1931, from a decree of Gauri Prasad, Additional District Judge of Agra, dated the 20th of January, 1931, reversing a decree of Bhagwan Das, Additional Subordinate Judge of Muttra, dated the 29th of November, 1929.

of the items in the mortgage, namely items (a) and (f) mentioned on page 16 of the paper book, cannot be binding upon the plaintiff, and he quotes as his authority the case of *Anantu Kalwar v. Ram Prasad Tiwari* (1). Shortly it appears to us that that case was wrongly decided and is not in accordance with the well known principles of Hindu law, but as it is a Bench decision we refer this case to the Chief Justice for a Full Bench to be appointed in order to decide this matter.

The case was then laid before and heard by the Full Bench.

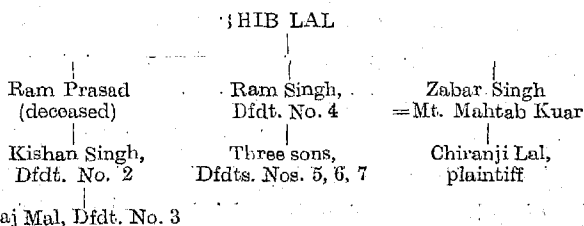
Mr. *B. Malik*, for the appellant.

Dr. *N. P. Asthana* and Messrs. *S. K. Dar* and *B. N. Sahai*, for the respondents.

MUKERJI, A. C. J., KING and NIAMAT-ULLAH, JJ. :— This appeal has been referred to a Full Bench, because the learned Judges before whom the appeal came thought that the case of *Anantu Kalwar v. Ram Prasad Tiwari* (1) had been wrongly decided.

The suit arose in the following circumstances. A pedigree at page 15 of the printed paper book will show the relationship that existed among the parties to the suit, except the defendant No. 1, who is a transferee.

[An extract from the pedigree is appended below.]



Ram Prasad, Ram Singh and Mt. Mahtab Kuar, mother of the plaintiff Chiranji Lal, executed a usufructuary mortgage for Rs.12,441 on the 15th of July, 1924. Chiranji Lal brought the suit, out of which this appeal has arisen, to obtain a declaration that the mortgage deed was not binding on him, and he also sued for recovery of possession to the extent of his third share.

(1) (1924) I.L.R., 46 All., 295.

1933  
 CHIRANJI LAL  
 v.  
 BANKEY LAL

The first court went into the question of legal necessity and came to the conclusion that there was none except to the extent of Rs.500-4, being a third share of the total amount binding on the whole family. It accordingly directed that the plaintiff should be put in possession of a third share of the property on payment of Rs.500-4.

The plaintiff filed an appeal, and it was heard by the learned Additional District Judge of Agra. The learned Judge came to the conclusion that the mortgage was binding on the plaintiff and he, accordingly, dismissed the suit.

In this Court it has been contended that the learned District Judge misunderstood the law relating to liability of Hindu families, especially that of a Hindu son and a grandson, and his decision is liable to be set aside.

On pages 16 and 17 of the paper book will be found a statement of the items which go to make up the entire consideration of Rs.12,441. As regards the items (b), (c), (d) and (e), it is conceded before us that the finding of the learned District Judge that these are sums for which the plaintiff is liable is binding on us. It has been found that certain lands were taken on lease from the creditor, Bankey Lal, by the adult members of the family, for the benefit of the entire family. The two decrees for arrears of rent, which went to make up Rs.757-8, item (b), were decrees for which the entire family was liable. Similarly, it has been found that for the arrears of rent amounting to Rs.380-12, item (d), the whole family was liable. It has also been found that the simple money bonds, which went to make up the amount of Rs.905, item (e), were executed in order to pay off arrears of rent due. As regards item (c), the decree of the Munsif was against the plaintiff, Chiranjil Lal, himself. It is, therefore, binding on him. The last item (h) has also been found to be binding. The item (g) was due on a decree which was binding on the plaintiff himself. Therefore, it is binding on the plaintiff, and he cannot go against it.

There remain now the two items (a) and (f), which require consideration. These are two mortgages, executed by Shib Lal, the grandfather of the plaintiff, and Zabar Singh, the father of the plaintiff. The learned District Judge held that as they constituted antecedent debts it was open to the uncles of the plaintiff Chiranji Lal to execute a mortgage to pay off those debts. The learned District Judge did not consider whether the mortgages (a) and (f) were or were not supported by legal necessity.

The question whether a debt is antecedent or not arises only when the father makes a transfer. Their Lordships of the Privy Council, in the well known case of *Brij Narain v. Mangal Prasad* (1) laid down five propositions of law which would be found printed at page 104. The first proposition is as follows: "The managing coparcener of a joint undivided estate cannot alienate or burden the estate *qua* manager, except for purposes of necessity." This rule applies equally to all members of the family, even where the managing member is the father. In the case of the father, there are certain special privileges which we shall notice later on. In the case before us the transferors, who professed to act on behalf of the family, were two uncles of Chiranji Lal, and they can bind the estate only by proving legal necessity.

The second proposition laid down by their Lordships of the Privy Council is as follows: "If he is the father and the reversionaries are the sons, he may, by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceeding upon a decree for payment of that debt." This relates to the case of a simple debt incurred by the father.

The third proposition is as follows: "If he" (father, who is alienating the property) "purports to burden the estate by mortgage, then unless that mortgage is to discharge an antecedent debt, it would not bind the estate."

(1) (1923) I.L.R., 46 All., 95.

1933

CHIRANJI LAL  
v.  
BANKAY LAL

It will be noticed that it is the privilege of the father alone to burden the family estate by a mortgage, by discharging an antecedent debt, which must be a debt of his own. A manager of the family, who is not the father, cannot bind the estate merely by discharging a pre-existing debt of the family.

In the case before us it is not the father of Chiranji Lal, nor the grandfather of Chiranji Lal, who made the alienation impeached, namely the mortgage of the 15th of July, 1924, and, therefore, the adult male members, namely Ram Prasad and Ram Singh, could not create a valid mortgage binding on the estate, simply because there existed a debt incurred by Shib Lal or Zabar Singh. In this view the ground on which the learned Judge based his decision cannot be upheld.

It becomes necessary to find out whether the mortgages of the 12th of July, 1919, item (a), and of the 1st of September, 1916, item (f), were executed for legal necessity binding on the family. We shall have to remit issues on this point.

Before we part with the case and direct the issues to be remitted, we might say a few words about the decision in *Anantu Kalwar v. Ram Prasad Tiwari* (1), because the learned Judges, before whom this case came initially, doubted the correctness of that decision. In that case the sale in question was executed by two persons, Sahadeo and Ram Das. It was executed on the 30th of June, 1910. Sahadeo and Jagat were brothers. Jagat's sons were Ram Das and Ram Prasad, and Sahadeo's sons were Ram Rup and Lalji. The two sons of Sahadeo and Ram Das's brother Ram Prasad brought a suit to obtain a declaration that the sale of the 30th of June, 1910, was not binding on them, it not having been executed for legal necessity. This Court found that the transfer by Sahadeo and Ram Das had wiped out a mortgage executed previously by Sahadeo and Jagat, and, therefore,

(1) (1924) I.L.R., 46 All., 295.

the sale by Sahadeo was to pay off his antecedent debt. It was accordingly held that the transfer, so far as Sahadeo was concerned, was binding on his sons, Ram Rup and Lalji. As regards the transfer by Ram Das, it was held that Ram Das was bound by his own transfer, but Ram Prasad was entitled to have his fourth share recovered for himself. It was pointed out that, although there was a pre-existing debt incurred by Jagat, Ram Das or Sahadeo could not make a transfer without establishing a case of legal necessity. This view is quite in accordance with the view which we have expressed above. We are, therefore, of opinion that the decision as regards the binding character or otherwise of the transfer of the 30th of June, 1910, is not incorrect.

We send down the following issues to the court below for a decision. Parties will be allowed to adduce fresh evidence, and 10 days will be allowed to file objections :—

- (1) Whether the mortgage of the 12th of July, 1919, was executed for legal necessity.
- (2) Whether the mortgage of the 1st of September, 1916, was executed for legal necessity.

### MISCELLANEOUS CIVIL

*Before Sir Lal Gopal Mukerji, Acting Chief Justice, and  
Mr. Justice Rachhpal Singh*

SURAJPAL SINGH (PLAINTIFF) v. JAWAHAR SINGH  
(DEFENDANT)\*

1933  
January, 17

*Agra Tenancy Act (Local Act III of 1926), section 3(4)—  
"Sayar"—Weighment dues—Agra Tenancy Act (III of  
1926), section 267(2)—Reference to High Court—Procedure  
—Jurisdiction—Civil and revenue courts.*

Weighment dues,—i.e. money paid by the person who is licensed by the landholder or the lambardar to exercise his profession of weighing the goods of the tenants within the zamindari of the licensor and who in plying his profession uses the land of the zamindar and has, therefore, to pay this money for

\*Miscellaneous case No. 562 of 1932.