

restore the decree of the first Court. In the circumstances I order the parties to bear their own costs throughout.

Appeal partly allowed.

1935

ANANT
RAM
v.
SARJU
PRASAD

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava

PARMANAND MISIR (PLAINTIFF-APPELLANT) v. GUR PRASAD AND OTHERS (DEFENDANTS-RESPONDENTS)*

1935
July 15

Registration Act (XVI of 1908), section 60—Registration endorsement, evidentiary value of—Hindu Law—Alienation—Antecedent debt—Time-barred debt, whether can constitute antecedent debt.

Under section 60 of the Registration Act the certificate signed by the registering Officer is evidence of the fact that the payment of money referred to in the endorsement was made as therein mentioned. The mention in the endorsement of the executant as mortgagor does not prove the execution of the mortgage but it is certainly evidence of the payment of the sum mentioned as a loan.

A time-barred debt can constitute a valid antecedent debt. *Gajadhar v. Jagannath* (1), relied on.

Messrs. *Rajeshwari Prasad* and *Raj Bahadur Srivastava*, for the appellant.

Mr. Kashi Prasad Srivastava, for the respondents.

SRIVASTAVA, J.:—This is a plaintiff's appeal. It arises out of a suit on the basis of a mortgage deed, dated the 22nd of June, 1914, executed by defendant No. 1 in favour of Chandrabhukhan, the uncle and predecessor-in-interest of the plaintiff. Defendants 2 to 4 are the sons of defendant No. 1. They contested the plaintiff's claim and denied the mortgage deed. They also contended that it was not executed for legal necessity. The learned Munsif who tried the suit held that out of

*Second Civil Appeal No. 264 of 1933, against the decree of Babu Mahabir Prasad Varma, Subordinate Judge of Lucknow, dated the 10th of May, 1933, modifying the decree of Sayed Akhtar Ahsan, Munsif, Lucknow District, dated the 31st of March, 1932.

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Rs.300 forming the consideration of the deed, Rs.200 constituted an antecedent debt and was binding on the contesting defendants. He accordingly decreed the plaintiff's claim for Rs.200 against all the defendants but gave the plaintiff only a simple money decree for the remaining sum of Rs.100 against defendant No. 1 alone. On appeal the learned Subordinate Judge of Lucknow held that the genuineness of exhibit 3 which was alleged to constitute the antecedent debt had not been proved. As a result of this finding he dismissed the plaintiff's claim *in toto* against defendants 2 to 4 and gave the plaintiff a simple money decree for the entire sum of Rs.300 against defendant No. 1

The first contention urged on behalf of the plaintiff-appellant is that the defendant No. 1 had from time to time made certain admissions about the genuineness of exhibit 3 and the existence of the antecedent debt evidenced by the said deed and that the said admissions had been overlooked by the learned Subordinate Judge. Reference has been made to exhibits 2 and 4 in support of this argument. Exhibit 2 is a letter dated the 10th of January, 1929, and exhibit 4 a deed which was executed by defendant No. 1 after the death of Chandrabhukhan in favour of the latter's widow. There is a reference in both these documents to exhibit 1, but they do not make any mention of exhibit 3. It has been argued that the admission of exhibit 1 is tantamount to an admission of exhibit 3 the consideration of which was incorporated in exhibit 1. I do not think that in the circumstances the charge laid against the learned Subordinate Judge of his having ignored important evidence from his consideration has been made out. Nor am I prepared to agree that the so-called admissions are sufficient to shift the onus on the defendant so far as the question of the genuineness of exhibit 3 is concerned.

Next, reliance has been placed on the registration endorsement on exhibit 3. It shows that a sum of

Rs.200 was paid in cash before the Registrar to Musammat Jhabra, the mother of defendant No. 1 who executed the deed as guardian of her son. Under section 60 of the Registration Act the certificate signed by the registering Officer is evidence of the fact that the payment of money referred to in the endorsement was made as therein mentioned. I am not prepared to agree with the contention of the appellant that the mention in the endorsement of Musammat Jhabra as mortgagor proves the execution of the mortgage but it is certainly evidence of the payment of the sum of Rs.200 as a loan. Thus in my opinion even though the execution of exhibit 3 as a mortgage deed has not been established yet the fact of the advance of Rs.200 as a loan which is sufficiently made out by the registration endorsement is enough to establish the existence of an antecedent debt of Rs.200. It was treated as such by defendant No. 1 when after attaining majority he executed exhibit 1 and made the aforesaid amount of Rs.200 as part of the consideration of exhibit 1. It was obviously antecedent in point of time and altogether independent of the transaction of the mortgage in suit. It has been pointed out on behalf of the respondent that the execution of exhibit 3 as a deed of mortgage not having been established the debt of Rs.200 advanced in 1905 was long barred by time when the deed in suit was executed in 1914. But, as held by the Full Bench of the Allahabad High Court in *Gajadhar v. Jagannath* (1), a time-barred debt can constitute a valid antecedent debt. I am therefore of opinion that there being no suggestion about this sum of Rs.200 having been taken for any illegal or immoral purpose it constitutes a valid antecedent debt and the mortgage deed in suit is binding on defendants 2 to 4 to that extent.

The result therefore is that I allow the appeal with costs and setting aside the decree of the lower appellate Court restore the decree of the first Court.

Appeal allowed.

(1) (1924) I.L.R., 46 All., 775.

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