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MAULVI MUHAMMAD FARUQ v. AZIZUL HASAN

King, C. J. and Zia-ul Hasan, J.

that a party against whom an order of abatement has been made should get over that order under cover of order XLI, rule 20. In the case reported in *Maharaja Sri Manindra Chandra Nandi Bahadur* v. *Bhagabati Devi Chowdhurani* (1) referred to above, a similar argument appears to have been advanced and it was remarked that rule 20 of order XLI, of the Code of Civil Procedure is ordinarily intended to apply to cases where the Court finds that it cannot proceed with the suit without the presence of a party who was not made a party to the appeal and that it was not intended to override the provisions of order XXII of the Code. We notice that order XLI, rule 20 was relied on before the learned Judge of this Court against whose decree the present appeal has been filed and we think that the learned Judge rightly held that that rule had no application to the present case.

We, therefore, hold that the plaintiff's appeal cannot proceed against the respondents other than the legal representatives of Abul Mokarim and that therefore the entire appeal has abated.

The preliminary objection is allowed and the appeal dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice E. M. Nanavutty and Mr. Justice G. H. Thomas

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January, 29

BAJRANG SINGH AND OTHERS (DEFENDANTS-APPELLANTS) *v.* GOBIND PRASAD AND ANOTHER, PLAINTIFFS AND ANOTHER, DEFENDANT (RESPONDENTS)*

Hindu law—Widow—Mortgage by Hindu widow—Decree on foot of mortgage—Reversioner's suit challenging the alienation—Mortgagee, if to prove legal necessity—Burden of proof—

*Second Civil Appeal No. 116 of 1933, against the decree of Mr. H. J. Collister, I.C.S., District Judge of Lucknow, dated the 21st of January, 1933, confirming the decree of Babu Bhagwat Prasad, Subordinate Judge, Mohanlalganj, Lucknow, dated the 5th of December, 1931

(1) (1925) 90 I.C., 986.

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Suit to get decree set aside on ground of fraud or collusion, necessity of—Reversioner, whether to prove that decree was not fairly and properly obtained—Interest at high rate——Legal necessity for rate of interest—Debt contracted by minor, whether void or only voidable—Alienation by widow to pay debt not legally recoverable from her husband, validity of.

Where a person obtains a decree for sale on foot of a mortgage executed by a Hindu widow, in possession of her husband's property, and the reversioners then bring a suit for setting aside the mortgage, the burden lies on the mortgagees to prove legal necessity in respect of the consideration of their mortgage before they can contend that the reversioners are bound by that mortgage. It is not for the reversioners to prove that the decree obtained by the mortgagees has not been fairly and properly obtained. Nor is it necessary for the reversioners to have first sued for setting aside the decree in favour of the mortgagees on the ground of fraud or collusion. The principal test to apply to a transaction which is challenged by reversioners as an alienation not binding on them, is whether the alienee derives title from the holder of the limited interest or life tenant. If the claim is based on an alienation by the widow or on a contract by her the *onus* must be on the alienee to show that circumstances existed which entitled her to transfer her limited estate. *Tirupatiraju* v. *Venkayya* (1), and *Kunni Lal* v. *Govind Krishna Narain* (2), relied on. *Ganpat Pandey* v. *Bindeshari Partab Bahadur Singh* (3), *Katma Natchiar* v. *Rajah of Shivganga* (4), and *Risal Singh* v. *Balwant Singh* (5), distinguished.

It is incumbent on those who support a mortgage made by a Hindu widow in their favour to show not only that there was necessity to borrow but that it was not unreasonable to borrow at some such high rate and upon such terms as were entered in the deed in dispute; and if it is not shown that there was necessity to borrow at the rate and upon the terms contained in the mortgage that rate and those terms cannot stand. *Nazir Begam* v. *Rao Raghunath Singh*, (6), referred to and relied on.

A debt contracted by a minor is void *ab initio* and not merely voidable. A Hindu minor is not legally liable to pay

(1) (1921) I.L.R., 45 Mad., 504.
(2) (1911) I.L.R., 33 All., 356.
(3) (1926) I.L.R., 2 Luck., 133.
(4) (1863) 9 M.I.A., 539.
(5) (1918) I.L.R., 40 All., 593.
(6) (1919) I.L.R., 41 All., 571.

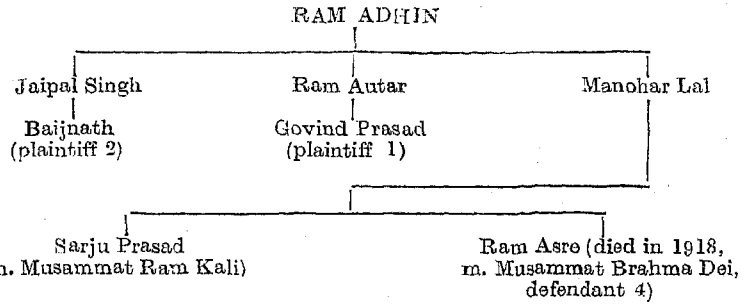
a debt which he contracted during his minority and his widow cannot discharge a debt which was not binding upon her husband so as to bind the reversioners of the estate of her husband by her conduct. *Bindeshri Bakhsh Singh* v. *Chandika Prasad* (1), *Jagdambika Prasad Singh* v. *Kali Singh* (2), and *Hanoomanpersaud Pandey* v. *Musammat Babooee Munraj Koonwaree* (3), referred to.

Messrs. *Lukshmi Shankar Misra* and *Sri Ram*, for the appellants.

Messrs. *M. Wasim*, *R. K. Bose* and *Bhagwati Nath Srivastava*, for the respondents.

NANAVUTTY and THOMAS, JJ.:—This is a defendants' appeal from an appellate judgment of the learned District Judge of Lucknow, dated the 21st of January, 1933, confirming the judgment and decree passed by the Subordinate Judge of Mohanlalganj, dated the 5th of December, 1931, partly decreeing the plaintiffs' suit.

The following pedigree will serve to show the relationship between the parties:



Ram Adhin died on the 24th of June, 1911, leaving as his heirs Jaipal Singh, Govind Prasad, plaintiff No. 1 and Ram Asre minor, his other heirs having died before him. These three persons divided the property amongst themselves and each became a separate owner of the property that fell to his lot. In this manner Ram Asre got a 10 pies $13\frac{1}{4}$ karants share in village Sheolar and a 1 anna 4 pies share in village Razakpur and another 1 anna 4 pies share in village Jamalpur and 3 biswas of under-proprietary land in village

(1) (1926) I.L.R., 49 All., 137. (2) (1930) I.L.R., 9 Pat., 843.
(3) (1856) 6 M.I.A., 393.

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Sithauli. On the 18th of July, 1912, Musammat Ram Kali applied to be appointed guardian of the minor Ram Asre. In her application she mentioned that Ram Asre was born in March, 1896. In 1914 Musammat Ram Kali died. On the 29th of June, 1914, one Mangal, the *uprohit* or family priest of the family of Ram Asre, got his name mutated in the revenue papers as guardian of Ram Asre. On the 17th of December, 1914, Ram Asre was declared a major by the revenue Court at the instigation of Mangal, and Ram Asre was removed from the guardianship of Mangal. On the 22nd of June, 1915, Ram Asre executed a bond (exhibit B27) for Rs.600 at 6 per cent. compound interest in favour of his quondam guardian Mangal on account of personal expenses connected with his marriage. Ram Asre married Musammat Brahma Dei, defendant No. 4, some time towards the end of 1915. On the 25th of May, 1917, Ram Asre executed a simple mortgage in favour of one Gajadhar for Rs.1,300 at 10 annas per cent. compoundable yearly, hypothecating his 10 pies $13\frac{1}{4}$ karants share in village Sheolar (exhibit B1). In March, 1918, Ram Asre died. A litigation ensued in the revenue Court as to who should get mutation of names in place of the deceased Ram Asre. Musammat Brahma Dei as the widow of Ram Asre applied for mutation in her favour and Jaipal Singh, claiming to be the heir of Ram Asre under a will, also applied for mutation. Ultimately the revenue Court ordered mutation in favour of Brahma Dei. On the 1st of October, 1918, Musammat Brahma Dei executed a *thekanama* or lease in favour of one Pitambar extending for a period of 20 years in respect of the whole of Ram Asre's property mentioned above. Pitambar was to pay Rs.200 annually to Brahma Dei and to appropriate the rest of the profits for himself and for payment of the costs of litigation. Musammat Brahma Dei not only won the mutation case but also the Civil suit filed by Jaipal on the basis of the will set up by him, which was decided on the 30th

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of July, 1930. Before this Mangal had brought a suit to recover a sum of Rs.724-8 in respect of his bond exhibit B27 and he obtained a compromise decree in his favour on the 24th of January, 1919 (exhibit B5). Mangal then proceeded to execute this decree and put the 1 anna 4 pies share in village Razakpur to sale. Musammat Brahma Dei applied to the Court executing the decree for permission to mortgage the property under sale and to pay off Mangal's decree. On the 3rd of January, 1921, Musammat Brahma Dei executed a simple mortgage (exhibit B2) in favour of Mangal for Rs.500 at 37½ per cent. compound interest hypothecating an 8 pies share in village Razakpur and another 8 pies share in village Jamalpur. On the same date, the 3rd of January, 1921, Musammat Brahma Dei also executed another mortgage in favour of one Bihari for Rs.300 at the same exorbitant rate of interest and hypothecating the same property. In 1921 Musammat Brahma Dei sued Pitambar for cancellation of the *thekanama* in his favour and this suit was compromised on the 6th of April, 1921. Under the compromise Pitambar was to get Rs.2,550 within three months and then the lease was to be cancelled otherwise it was to stand and the suit of Musammat Brahma Dei would stand dismissed with costs. On the 17th of May, 1921, the mortgage deed in suit exhibit 4, was executed by Musammat Brahma Dei in favour of the defendants-appellants to pay off Rs.2,550 to Pitambar and also to clear off all other previous debts against Musammat Brahma Dei. This deed was in favour of Chhuttan Lal, Jagannath Prasad and Bajrang Singh for Rs.5,000 bearing interest at 12 per cent. compoundable half-yearly. The entire property of Ram Asre was hypothecated under this deed, half with possession and half without possession. The consideration of Rs.5,000 was made up as follows:

(1) Rs.1,515 to pay off Gajadhar's mortgage Ex. B1.

(2) Rs.517 to pay off Mangal's mortgage, B2.

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(3) Rs.310 to pay off Bihari's mortgage, B26.
(4) Rs.64-12 for purchase of stamps.
(5) Rs.2,588-4 to satisfy Pitambar's decree, B3.
(6) Rs.5 for ekka hire, etc.

Total Rs.5,000.

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In 1928 the mortgagees Chhuttan Lal, Jagannath Prasad and Bajrang Singh sued Musammat Brahma Dei to recover a sum of Rs.9,417-2-9 on foot of their mortgage exhibit 4 and on the 13th of July, 1928 the mortgagees obtained a decree for sale from the Subordinate Judge of Mohanlalganj. The judgment in that case is exhibit B21, and in it the true character of Mangal, the family priest of Ram Asre, is fully depicted. The decree of the 13th of July, 1928 was put in execution and the mortgaged property was put up for sale, but on the 6th of May, 1931, the present suit, which has given rise to this second appeal, was filed by Govind Prasad and Baijnath, as the reversioners of Ram Asre for setting aside the mortgage deed in question exhibit 4.

Upon the pleadings of the parties the learned Subordinate Judge of Mohanlalganj in whose Court the suit was filed, framed the following issues:

(1) Was the mortgage deed executed for legal necessity?

(2) Were the debts alleged to have been satisfied by the mortgage deed in suit incurred during Ram Asre's minority?

(3) Are plaintiffs estopped from raising the plea of the minority of Ram Asre as alleged?

(4) To what relief are the plaintiffs entitled?

The learned Subordinate Judge held that the mortgage deed in suit exhibit 4 was binding on the plaintiffs-reversioners in respect of Gajadhar's mortgage exhibit B21. He held that it was not binding on them in respect of Mangal's mortgage exhibit B2, nor in respect of Bihari's mortgage exhibit B26. The item of Rs.64-12

for purchase of stamps was held to be binding to the extent of half, namely Rs.32-6. With regard to Pitambar's decree, exhibit B3, for Rs.2,588-4 the mortgage deed, exhibit 4, was held binding on the plaintiffs only to the extent of Rs.600. The items held to be binding on the plaintiffs were to carry interest at 12 per cent. per annum compoundable yearly. The last item of Rs.5 cash for ekka hire, etc. was also held binding on the plaintiffs and was also to carry interest at the same rate.

Issue No. 3 framed by the trial Court was not pressed and was therefore answered in the negative. On Issue No. 2 the learned Subordinate Judge held that the date of the birth of Ram Asre given by Musammat Ram Kali in her application to be appointed as his guardian, namely the month of March, 1896, was the correct date. Ram Asre therefore attained majority in March, 1917, and the learned Subordinate Judge held that the deed exhibit B27 executed by Ram Asre in favour of Mangal on the 22nd of June, 1915, was executed during the minority of Ram Asre, while the mortgage deed exhibit B-1 executed by Ram Asre in favour of Gajadhar on the 25th of May, 1917, was executed after the latter had attained his majority. The Subordinate Judge accordingly partially decreed the plaintiffs' suit in terms of the findings set forth above.

In appeal the learned District Judge of Lucknow agreed entirely with the findings of the trial Court and dismissed the appeal as well as the cross-objections filed by the plaintiffs with costs. Dissatisfied with the judgment of the lower appellate Court the defendants-appellants have filed the present appeal.

We have heard the learned counsel of both parties at great length and have taken time to consider our judgment.

The first contention raised on behalf of the appellants is that as the plaintiffs filed a suit to set aside the mortgage deed in respect of which a decree had already

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been passed by a competent Court in favour of the defendants-appellants as against the widow Musammat Brahma Dei representing the estate of her deceased husband, the lower Courts were wrong in entertaining the suit of the reversioners in the absence of any proof that the decree obtained by the defendants-appellants had not been fairly and properly obtained. This contention that the plaintiffs-respondents could not succeed in their present suit without first suing for setting aside the judgment and decree passed by the Subordinate Judge of Mohanlalganj in favour of the defendants-appellants has been raised for the first time in this second appeal. No such plea was taken before the trial Court and no issue was therefore framed in respect of this contention, nor was this plea taken in the lower appellate Court. The learned counsel for the defendants-appellants has argued that a decree cannot be set aside except upon the ground of fraud or collusion, and in support of his contention he relied upon the rulings reported in *Ganpat Pandey* v. *Bindeshari Partab Bahadur Singh* (1), *Katma Natchiar* v. *Rajah of Shivganga* (2) and *Risal Singh* v. *Balwant Singh* (3). In our opinion these rulings have no applicability to the facts of the present case. In the rulings cited above the widow was held to represent the estate of her deceased husband, whereas in the present case it is clear that Musammat Brahma Dei could not be said to represent the estate of her husband so as to bind her husband's estate in order to pay off her debts, unless those debts were proved to have been incurred for legal necessity. It was admitted by the learned counsel for the plaintiffs-respondents that if the decree against the widow obtained by the defendants-appellants on the 13th of July, 1928 (exhibit B-21), had been against the estate of the widow's husband, then it would have been binding upon the reversionary heirs of her husband, but the decree of the

(1) (1926) I.L.R., 2 Luck., 133. (2) (1863) 9 M.I.A., 539.
(3) (1918) I.L.R., 40 All., 593.

13th of July, 1928, was only against the widow in her personal capacity and not as representing the estate of her husband, and therefore the plaintiffs-respondents, as the reversionary heirs of Ram Asre, were not bound by that decree. The learned counsel for the plaintiffs-respondents has cited the Full Bench ruling of the Madras High Court reported in *Tirupatiraju* v. *Venkayya* (1), in which it was held that, where a Hindu widow who had mortgaged her husband's estate for a debt contracted by her was sued by the mortgagee and compromised the suit by purporting to make over the property to the mortgagee absolutely, the burden of proving that the compromise was valid and binding on the reversioners was on the mortgagee purchaser. In the course of his judgment in that case the learned Chief Justice of the Madras High Court made the following observations:

> "But in the present case, she (the widow) was not, in fact, sued in her representative capacity. She was sued as a mortgagor on the second mortgage, that is, to enforce a contract made by her, and she compromised that suit by purporting to make over the property to the mortgagee absolutely. This, in my judgment, she cannot do except subject to the rule stated above for the protection of the reversioners . . . But what I do hold is that in an action against the widow on a contract made by the widow, a compromise by which she makes over the estate stands on no different footing from a conveyance by her of the property."

Mr. Justice COUTTS TROTTER in his separate judgment in this very case agreeing with the Chief Justice made the following observations:

> "I think, that the rule that a widow as representing the estate can effectually settle claims arising out of the acts of others, is a salutary one '*ut sit finis litium*'. But to give her the same power in

(1) (1921) I.L.R., 45 Mad., 504.

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relation to her own acts would be to make her, as it were, a judge in her own cause: she is not solely concerned with her duty to the estate, as may be supposed in the former case, but is obviously liable to a bias in favour of attempting to validate her own acts. Such a conclusion would obviously deprive the reversioners of the very protection which the Hindu law endeavours to give them, and would unquestionably lead to endless collusive compromises, as the present one may well have been."

Mr. Justice KOMARSWAMI SASTRI in his separate judgment agreeing with the learned Chief Justice in the same case made the following observation:

> "It is also clear that the widow's action in alienating her husband's estate for her private debt or for a purpose which under Hindu law would not amount to necessity is beyond her powers, and she cannot take advantage of her representative capacity to validate a purely personal transaction. The interposition of a decree by consent would not, in my opinion, make any difference as to the onus of proof in such cases."

As pointed out by their Lordships of the Privy Council in *Kunni Lal* v. *Govind Krishna Narain* (1), the principal test to apply to a transaction which is challenged by reversioners as an alienation not binding on them, is whether the alienee derives title from the holder of the limited interest or life tenant. If the claim is based on an alienation by the widow or on a contract by her the *onus* must be on the alienee to show that circumstances existed which entitled her to transfer her limited estate. The rulings relied upon by the learned counsel for the defendants-appellants in support of his contention that the decree obtained by the defendants-appellants on the 13th of July, 1928, could not be set aside except on the ground of fraud or collusion are therefore inapplicable to the present case. The defendants-mortgagees

(1) (1911) I.L.R., 33 All., 356.

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obtained their title from the widow under a mortgage executed by the widow herself, and therefore it was their duty to prove legal necessity in respect of the consideration of that mortgage before they could contend that the reversioners of Ram Asre were bound by that mortgage.

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The first ground taken in the memorandum of appeal, therefore, fails and in our opinion in the circumstances of the present case the defendants were bound to prove legal necessity for the mortgage executed by Musammat Brahma Dei in their favour.

We will now take up each item of the consideration for the sum of Rs.5,000 entered in the mortgage deed exhibit 4.

As regards the first item of Rs.1,515 set apart to pay off Gajadhar's mortgage exhibit B-1, the lower courts have allowed Rs.1,300 principal with interest at 7½ per cent. per annum. In our opinion the defendants-appellants have got no legitimate grievance in respect of that item. No legal necessity for the higher rate of interest and for encumbering the entire property of the deceased Ram Asre has been made out by the defendants-appellants. In *Nazir Begam* v. *Rao Raghunath Singh* (1), it was held by their Lordships of the Privy Council that it was incumbent on those who support a mortgage made by the manager of a joint Hindu family to show not only that there was necessity to borrow but that it was not unreasonable to borrow at some such high rate and upon such terms as were entered in the deed in dispute; and that if it was not shown that there was necessity to borrow at the rate and upon the terms contained in the mortgage that rate and those terms could not stand. The proposition of law propounded by their Lordships of the Judicial Committee fully supports the action of the lower courts in only allowing the defendants the principal sum of Rs.1,300 with interest at 7½ per cent. compoundable yearly.

(1) (1919) I.L.R., 41 All., 371.

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As pointed out by both the lower courts, Mangal the *uprohit*, or the family priest of Ram Asre, was the agent of Raja Ram, father of the mortgagee Bajrang Singh, and Bihari Lal is the father-in-law of Raja Ram, who is a client of Babu Ram Charan, Vakil. The mortgagees Chhuttan Lal and Jagannath Prasad are brothers and Chhuttan Lal is the clerk of Babu Ram Charan. Babu Ram Charan was the pleader of Musammat Brahma Dei in the mutation case and in the suit filed by Jaipal on the basis of the will as also in the suit brought by Musammat Brahma Dei for cancellation of the lease against Pitambar. It was on the advice of Babu Ram Charan that the compromise with Pitambar was made and it was on his advice that the mortgage deed in suit was executed; in the suit brought by the defendants-appellants against Brahma Dei on the basis of their mortgage deed Babu Ram Charan appeared as their counsel, and in the present suit he has been examined as their witness as D. W. 6. We entirely agree with the strictures passed by both the lower courts as to the unscrupulous manner in which Musammat Brahma Dei, a *pardah-nashin* lady, has been overreached by those who were round about her, and who wanted to fleece her of her husband's property. Babu Ram Charan has himself admitted in cross-examination that if he had known—what he should have known—that Musammat Brahma Dei had no means of paying to Pitambar the sum of Rs.2,550 within three months, then he would never have suggested to her to enter into the compromise with Pitambar. There can be no doubt whatsoever that on the face of it the compromise was most prejudicial to the interests of Musammat Brahma Dei, and that she should have entered upon such an unfair and inequitable compromise under the advice of her own lawyer proves to our satisfaction that she was the victim of unscrupulous men. It is difficult to prove fraud by direct evidence but the circumstances of the case, in our opinion, justified the lower courts in coming to the conclusion that there

was a conspiracy to cheat the young widow Musammat Brahma Dei. The conduct of those round about the latter speaks for itself, and we do not wish to say anything further in the matter.

Item No. 2 for Rs.517 to pay off Mangal's mortgage exhibit B-2, has been disallowed by both the lower courts and the defendants-appellants have acquiesced in the decision of the lower courts.

As regards item No. 3 to pay off Bihari's mortgage, this was admittedly executed at a time when Ram Asre was a minor and a debt contracted by a minor is void *ab initio*. In *Bindeshri Bakhsh Singh* v. *Chandika Prasad* (1), it was held by a Bench of the Allahabad High Court that a person who had executed a bond whilst he was a minor could not when he attained majority by executing a second bond to the same effect ratify or confirm the former bond. It was held in that case that all transactions entered into by a minor are void and not merely voidable. Similarly in *Jagdambika Prasad Singh* v. *Kali Singh* (2), it was held by a Bench of the Patna High Court that a time-barred debt constituted a valid antecedent debt binding on the son for the purpose of supporting an alienation by the father of joint ancestral property of the family, provided that the debt was legally recoverable from the father had he been alive.

In the present case since Ram Asre was not legally liable to pay the debt of Bihari which he contracted during his minority, his widow Musammat Brahma Dei could not discharge a debt which was not binding upon her husband so as to bind the reversioners of the estate of her husband by her conduct. Since the debt was not legally recoverable from Ram Asre Musammat Brahma Dei was not acting in good faith in paying it. It is also to be noted in this connexion that the appellants were not strangers to the family and they knew the whole truth and themselves brought about a situation which

(1) (1926) I.L.R., 49 All., 137. (2) (1930) I.L.R., 9 Pat., 843.

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resulted in the execution of the mortgage deed in suit, exhibit 4. It seems to be that Raja Ram with the help of Chhuttan Lal, who is the clerk of Babu Ram Charan, Vakil, engineered the whole scheme to ruin the young widow Musammat Brahma Dei and the appellants cannot in our opinion be deemed to be persons who advanced money to Musammat Brahma Dei in good faith. In *Hanoomanpersaud Pandey* v. *Musammat Babooee Munraj Koonwaree* (1), their Lordships of the Privy Council laid down the following proposition of law:

> "The power of the Manager for an infant heir to charge an estate not his own, is, under the Hindu law, a limited and qualified power. It can only be exercised rightly in a case of need, or for the benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make, in order to benefit the estate, the *bona fide* lender is not affected by the precedent mismanagement of the estate."

In the present case we are clearly of opinion that the defendants-appellants were not *bona fide* lenders and that they knew exactly that the whole object was to ruin the estate held by the widow of Ram Asre.

The findings of the lower courts on items 4 and 6 have not been challenged before us and we need not say anything in respect of these two items.

Item No. 5 is in respect of a sum of Rs.2,588-4 which was set apart to satisfy Pitambar's decree, Exhibit B-3. In respect of this item we entirely agree with the reasoning of the two lower courts and the conclusion arrived at by them. We have shown above that the appellants were not *bona fide* lenders and that the only sum out of this item of Rs.2,588-4 which can be held to be for legal necessity is the amount of Rs.600 which the lower courts have held to be binding on the plaintiffs' reversioners. We endorse that finding. The evidence

(1) (1856) 6 M.I.A., 393 (423).

of D. W. 6, Babu Ram Charan itself goes to show that the defendants-appellants were not *bona fide* lenders. Babu Ram Charan has deposed in cross-examination that the benefit which defendant No. 4 Musammat Brahma Dei was to derive from the compromise with Pitambar was that she would get possession of her husband's estate. This is not correct in view of the terms of the compromise. Babu Ram Charan has also stated that if he had known that Musammat Brahma Dei was not able to raise the money for paying Pitambar, he cannot say what advice he would have given to her. In our opinion the transaction speaks for itself, "*res ipsa loquitur.*"

The lower courts have given very good reasons for holding that the compromise with Pitambar was absolutely disastrous to Musammat Brahma Dei, and ought never to have been entered into by her, and once having entered into the compromise with Pitambar she would have been well-advised not to have kept to it and to have allowed her suit against Pitambar to be dismissed rather than have entered into the mortgage deed, exhibit 4, with the defendants-appellants.

For the reasons given above we are in complete agreement with the findings and conclusions arrived at by both the lower courts. The result is that this appeal fails and is dismissed with costs.

Appeal dismissed.