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whether or not the mortgagee recovered the rent for those years from the defendants.

The appeal has no force and is dismissed with costs. The cross-objection was not pressed and it is also dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge,
 and Mr. Justice G. H. Thomas*

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 October 1

RAI BAJRANG BAHADUR SINGH AND ANOTHER (DEFENDANTS-APPELLANTS) v. RAMESHAR BUX-SINGH AND OTHERS (PLAINTIFFS-RESPONDENTS)*

Family settlement, validity of—Existence of disputes, if necessary—Settlement made to prevent anticipated disputes, whether valid—Hindu. Law—Widow—Alienation—Nearest reversioner joining widow of a deceased owner in executing sale-deed—Presumption of existence of legal necessity.

In order to have a valid family settlement it is not necessary that there must be disputes in existence at the time when such settlement is arrived at. It may be that the members of the family may anticipate disputes likely to arise thereafter and if in order to prevent the arising of such disputes and to maintain amity and peace in the family they arrive at a settlement among themselves, the settlement arrived at must be deemed to be valid. *Ameer Hasan v. Mohammad Ejaz Husain* (1), relied on.

If the nearest reversioner of a deceased owner of property joins the deceased's widow in executing a sale-deed, it shows the reversioner's consent and his consent must be regarded as presumptive proof of the existence of legal necessity. The presumption no doubt is a rebuttable one but it stands where there is not an iota of evidence to show that there was no necessity for the alienation. *Pokhar Singh v. Dulari Kunwar* (2), relied on.

*First Civil Appeal No. 52 of 1934, against the decree of Babu Avadh Behari Lal, Civil Judge of Rae Bareilly, dated the 19th of January, 1934.

(1) (1929) 6 O.W.N., 51.

(2) (1930) I.L.R., 52 All., 716.

Mr. P. N. Chaudhri, for the appellants.

Messrs. Ram Bharose Lal and Raj Narain Shukla, for the respondents.

SRIVASTAVA, C.J. and THOMAS, J.:—This is an appeal by defendants Nos. 13 and 14 against the judgment and decree, dated the 19th of January, 1934, of the learned Civil Judge of Rae Bareilly. It arises out of a suit for possession of the property of one Lal Bahadur Singh who died about 45 years ago. He left two widows Musammat Abhairaj Kuar and Sheoraj Kuar who came in possession of the property after his death. Musammat Abhairaj Kuar died in 1908 and Sheoraj Kuar on the 5th of November, 1920. Udit Narain Singh, father of the plaintiffs, was the nearest reversioner of Lal Bahadur Singh at the time of Musammat Sheoraj Kuar's death. He died about two years before the institution of the suit. The plaintiffs Nos. 1 to 4 are the sons of Udit Narain Singh. They transferred a 10 annas share out of the estate of Lal Bahadur Singh to plaintiff No. 5 who undertook to finance the litigation. The parties before us are in agreement as regards the facts stated above.

The defendants-appellants are transferees of part of the property in suit. The details of these transactions are that on the 9th of April, 1904, Musammat Sheoraj Kuar and Musammat Abhairaj Kuar jointly with Bishnath Singh, brother of Lal Bahadur Singh, and Musammat Menda Kuar, the widow of Sheopal Singh, a brother's son of Lal Bahadur Singh, executed a sale-deed (exhibit J-2) in favour of one Mata Din in respect of a 10 pies 13 krants 3 jau share in village Kotia Chatra. The defendants-appellants obtained possession of this share under a pre-emption decree (exhibit J-11) dated the 24th of May, 1905. On the 1st of June, 1906, Sheoraj Kuar and Abhairaj Kuar along with the afore-said Bishnath Singh and Menda Kuar executed another sale-deed (exhibit J-9) in respect of a 10 pies 13 krant 3 jau share in the same village Kotia Chatra in favour of the defendants-appellants. The plaintiffs claimed a 9

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pies 9 krants $5\frac{2}{3}$ jau share in Kotia Chatra as representing the share of Lal Bahadur Singh which had been sold by Musammat Abhairaj Kuar and Sheoraj Kuar under the two deeds (exhibits J-2 and J-9). The suit was resisted by the defendants-appellants on several grounds of which only two are material for the purpose of this appeal. One of them is that Musammat Abhairaj Kuar and Sheoraj Kuar were absolute owners of the property under a deed of family settlement (exhibit J-1) dated the 6th of July, 1903 and the other that both the aforesaid sales having been consented to by Bishnath Singh who was the nearest reversioner of Lal Bahadur Singh at that time, it should be presumed that the sales were justified by legal necessity. The learned Civil Judge has disallowed both these pleas and decreed the plaintiffs' claim in full against the defendants-appellants.

The learned counsel for the appellants has confined his arguments in the appeal to the two pleas mentioned above. The deed of settlement (exhibit J-1) was executed soon after the death of Sheopal Singh, the brother's son of Lal Bahadur Singh and Bishnath Singh. The parties to the agreement are Bishnath Singh, Sheoraj Kuar and Abhairaj Kuar, widows of Lal Bahadur Singh, and Menda Kuar, widow of Sheopal Singh. The reason stated for their arriving at the agreement in the preamble of the document is that after the death of Sheopal Singh, who was the lambardar, disputes had arisen amongst them with the result that there was an apprehension of disaster in future. The argument also shows that there was some dispute in a mutation case relating to the estate of two collaterals which was pending at the time. The result of the settlement was that the share of Sheoraj Kuar and Abhairaj Kuar, of Menda Kuar and of Bishnath Singh in all the properties possessed by them as well as the properties of the collaterals about which the mutation case was pending were fixed by agreement amongst them and it was provided that each person was liable in proportion to his share

for all the debts taken up to that time irrespective of the fact that the deed for the debt was executed on behalf of one person only or on behalf of all. It was further provided that "each person shall be competent to transfer in proportion to his share." The learned Civil Judge has disregarded the family settlement on the ground that there was no *bona fide* or real dispute between the parties about the property already in their possession and that the dispute at that time was confined to property which had been acquired by Sheopal Singh under a deed of relinquishment (exhibit A-3). There is not one word in the document exhibit J-1 in support of this remark of the Civil Judge. The learned counsel for the plaintiffs is also unable to refer us to any evidence to show that the dispute was confined to the property acquired by Sheopal Singh under exhibit A-3. On the contrary the recital contained in the preamble of exhibit J-1 is quite general and to the effect, as stated above, that on the death of Sheopal Singh disputes had arisen amongst them which led to the making of the agreement. It should also be noted that under the terms of the settlement Musammat Sheoraj Kuar and Abhairaj Kuar got a 1 anna 8 krant share out of 1 anna 8 krant 8 jau share which they had inherited from their husband (*vide* exhibit J-18) or in other words the share which was given to them was slightly less than the full share of their husband.

In *Ameer Hasan v. Mohammad Ejaz Husain* (1), it was held that in order to have a valid family settlement it is not necessary that there must be disputes in existence at the time when such settlement is arrived at. It may be that the members of the family may anticipate disputes likely to arise thereafter and if in order to prevent the arising of such disputes and to secure peace and happiness in the family they arrive at a settlement among themselves the settlement arrived at must be deemed to be valid. Similarly in *Pokhar Singh v.*

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Dulari Kunwar (1), it was held that a family dispute to be settled was not essential to the validity of a family arrangement and that such an arrangement to be valid need not necessarily be a compromise of doubtful rights or claims. The plaintiffs have given no evidence to show that the recital about dispute contained in the deed is false. On the contrary, as has been said, the existence of dispute at least with regard to the property acquired under exhibit A-3 is admitted. No suggestion has been made about the *bona fides* of the arrangement. In the circumstances we are satisfied that the adjustment of the dispute made by means of this settlement was with a view to maintain amity and peace in the family and that the document satisfies all the requirements of a valid family settlement.

It was also faintly argued that the power of transfer given under this deed of settlement should be construed in the same sense as the power of transfer possessed by Hindu widows under the Hindu Law. We cannot accede to the argument. No distinction has been made in the clause between the powers of transfer possessed by Bishnath Singh and the powers of transfer possessed by the widows. Moreover reference to the power of transfer is to be found in the same clause which deals with the liability of all the parties for payment of debts. It seems evident that as all the parties were made proportionately liable for the debts they were given equal power of transfer. We are therefore of opinion that Abhairaj Kuar and Sheoraj Kuar were competent to make the transfers in question under the terms of the deed of family settlement, exhibit J-1.

As regards the second point admittedly Bishnath Singh joined Abhairaj Kuar and Sheoraj Kuar in executing the sale-deeds in dispute. It is also admitted that Bishnath Singh was the nearest reversioner of Lal Bahadur Singh at the time when these transfers were made. It has been suggested on behalf of the respon-

(1) (1930) I.L.R., 52 All., 716.

dents that Bishnath Singh was interested in prompting the transaction as he was also selling his own share; but there was nothing to prevent his making a sale in respect of his own share by means of a separate deed. The fact that he joined the widows of Lal Bahadur in executing the sale-deeds in dispute seems to show clearly that the transfers were made by these widows with his consent. In the circumstances we think that the consent of Bishnath Singh must be regarded as presumptive proof of the existence of legal necessity. In *Rangasami Gounden v. Nachiappa Gounden* (1), it was held by their Lordships of the Judicial Committee that when an alienation of the whole or part of the estate is to be supported on the ground of necessity, then if 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 dispute the transaction will be held to afford presumptive proof that the transaction was a proper one. This presumption no doubt is a rebuttable one but the plaintiffs have not given an iota of evidence to show that there was no necessity for the alienation. We regret that this aspect of the case also does not seem to have received due consideration at the hands of the lower court.

We accordingly allow the appeal and dismiss the plaintiffs' suit in respect of 9 pies 9 krants $5\frac{2}{3}$ jau share in village Kotia Chatra against the defendants-appellants with costs in both the courts.

Appeal allowed.

(1) (1918) L.R., 46 I.A., 72.

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