

1922  
 Gbota  
 Nagpur  
 Banking  
 Association  
 Ltd.  
 vs.  
 Bhagwat  
 Bux Rai.

All that I can say is that this reasoning does not convince me at all. If this reasoning be correct, then it might be said that whenever a person is in need of money, the creditor is in a position to dominate the will of the debtor. A case under section 16 is not made out by the finding arrived at by the learned Subordinate Judge in this case.

Das, J.

I would allow the appeal, modify the decree passed by the learned Subordinate Judge and allow interest at 12 *per cent.* with yearly rests.

The mortgage decree must be drawn up by the office in accordance with this decision. Period of grace 3 months from the date of this decree.

The appellant Bank is entitled to the costs of this appeal.

ADAMI, J.—I agree.

*Appeal allowed.*

### APPELLATE CIVIL.

*Before Das and Adami, JJ.*

DEBI LAL SAH

v.

NAND KISHORE GIR. \*

*Hindu Law—Mitakshara—joint family—mortgage by karta to meet marriage expenses of male member of the family, whether binds the members.*

A debt incurred by the *karta* of a joint Hindu family for the purpose of meeting the marriage expenses of a male member of the family is binding on the members of the family

*Govindarazulu Narasimham v. Devarabhotla Venkatanarasayya* (1), not followed.

\*Appeal from Original Decree No. 39 of 1919, from a decision of Mr. Sheikh Ahmad Hussain, Subordinate Judge of Muzafferpur, dated the 28th November, 1919.

*G. Gopalkrishnam Razu v. S. Venkatararasa Razu* (1), *Bhagirathi v. Jokhu Ram Uppadhai* (2) and *Sundarbai Juraji Daglu Perdeshi v. Shivnarayana Ridkarna* (3), followed.

1922

Debi Lal Sah  
vs.  
Nand Kishore  
Gir.

The facts of the case material to this report were as follows:—

On the 1st August, 1902, a mortgage for Rs. 7,900 was executed in favour of the plaintiffs by Bholanath, the *karta* of a joint family, and two of his sons Nandkishore and Bir Gir. The bond recited that Rs. 7,600 was due to two persons on previous registered bonds of 1893, 1896, and 1898 and unregistered bonds of 1897 and 1898, and that Rs. 300 was required for household expenses. On the 15th September, 1902, the same three persons executed another mortgage for Rs. 989 in favour of the plaintiffs, the bond reciting that Rs. 983 was due to the same previous mortgagees. On the 10th of August, 1904, Bholanath alone executed a mortgage for Rs. 1,141 in favour of the plaintiffs. It recited that Rs. 859-1-3 was due to the plaintiffs on three simple bonds executed by Bholanath in 1311 F., and that Rs. 282 was required for the purchase of a plough, bullocks and other accessories for agricultural purposes. On the 6th April, 1906, Bholanath, Nandkishore and Bir Gir executed a further mortgage for Rs. 925 in favour of the plaintiffs. The bond recited that the money was required to meet the marriage expenses of a son and daughter of Bholanath. The same three persons executed a fifth mortgage in favour of the plaintiffs on the 7th April, 1906. The bond recited that the money was necessary in order to enable the mortgagors to pay certain creditors of Bholanath.

The plaintiffs instituted the present suit on the five bonds and impleaded all the sons and grandsons of Bholanath the last named having died before the institution of the suit. The trial court held that marriage was not a legal necessity and that therefore none of the defendants were liable on the bond of 1906 and that only the shares of Bholanath, Nandkishore and Bir Gir were liable on the other bonds.

(1) (1914) I. L. R. 87 Mad. 278.

(2) (1910) I. L. R. 32 All. 575.

(3) (1908) I. L. R. 32 Bom. 81

1922

The plaintiffs appealed to the High Court.

Debi Lal Sah  
vs.  
Nand Kishore  
Gir.

*K. P. Jayaswal* (with him *Janak Kishore*), for the appellants :—This is a suit on five mortgages, executed by the *karta* who is now dead, and his two sons. They are questioned by sons and grandsons of the *karta*. Most of the debts are antecedent. This point has not been considered by the Subordinate Judge. He finds consideration proved in each case. The mortgage decree against the executants only is worthless on the authority of the Privy Council *Sahu Ram Chandra v. Bhup Singh* (1). Marriage is declared to be a luxury by the learned Judge. Refers to evidence on legal necessity.

*Abani Bhusan Mookherji, Lachmi Kant Jha.* and *H. P. Sinha*, for the respondents :—Marriage of a male member is not a necessity. *Govindarazulu Narasumham v. Devarabhotta Venkatanarasayya* (2) and *Sundari Ammal v. Subramania Ayyar* (3) referred to.

*Jayaswal* :—*Govindarazulu Narasumham v. Devarabhotta Venkatanarasayya* (2) has been overruled by a Full Bench, [See *G. Gopalakrishnam Razu v. S. Venkatanarasa Razu* (4)], *Sundari Ammal v. Subramania Ayyar* (3) is bad law. *Sundarabai Jawaji Dagdu Pardeshi v. Shimarayana Riddkarna* (5), and *Bhagirathi v. Johhu Ram Upadhaia* (6), referred to.

**DAS, J.**—This was a suit by the appellants to enforce five mortgage bonds executed by Bholanath, the *karta* of the joint family, and by Nandkishore and Bir Gir his sons. One of these bonds, namely, the bond, dated the 10th August, 1904, was executed only by Bholanath, but it appears from the subsequent bond, dated the 6th April, 1906, that Nandkishore and Bir Gir accepted the bond of the 10th August, 1904, as binding on them.

The learned Subordinate Judge found that the consideration money was advanced by the mortgagees to the mortgagors. But taking the view that there was no legal necessity in respect of the advances made by the plaintiffs to the defendants, he has given a mortgage

(1) (1917) I L R. 39 All. 457

(2) (1904) I. L. R. 27 Mad. 206.

(3) (1908) I. L. R. 26 Mad. 505.

(4) (1914) I. L. R. 37 Mad. 278.

(5) (1908) I. L. R. 82 Bom. 81.

(6) (1910) I. L. R. 32 All. 575.

decree to the plaintiffs to the extent of the shares of Bholanath, Nandkishore, and Bir Gir in the properties : he has dismissed the suit as against those members of the family who were not parties to the mortgage bonds.

1922

Debi Lal Sahu  
v.  
Nand Kishore  
Gir.

Das, J.

On the facts, as found by the learned Subordinate Judge, the decree was far too favourable to the plaintiffs. He found that there was no legal necessity in respect of the bonds, and yet he gave the plaintiffs a mortgage decree to the extent of the shares of the executants of the mortgage bonds in the properties. Apparently the learned Subordinate Judge was not aware of the celebrated decision of the Judicial Committee in the case of *Sahu Ram Chandra vs. Bhup Singh* (1). That case establishes the proposition that where a mortgage is granted by one coparcener on his own account over the joint family properties, it is invalid ; the estate is wholly unaffected by it and its entirety stands free of it. But it has been urged on behalf of the plaintiffs-appellants that the decision of the learned Subordinate Judge on the question of legal necessity is erroneous. Mr. *Jayaswal*, indeed, argues that most of these bonds are binding upon the entire joint family on the doctrine of antecedent debt which was recognised and affirmed by the Judicial Committee in the case to which I have already referred. It is necessary therefore to consider the evidence which has been adduced by the plaintiffs in regard to the different bonds which were executed in their favour.

The first of these bonds is dated the 1st August, 1902. That was a bond for Rs 7,900 and was executed by Bholanath, Nandkishore, and Bir Gir. The document recites that Rs 7,600 was due by the executants to Gopal Sahu and Motilal Sahu on previous registered bonds, dated the 13th December, 1893, 24th May, 1896, 28th June, 1898, and unregistered bonds, dated the 25th March, 1898, and 22nd September, 1897. All these bonds have been produced in the case and Mr. *Abani Bhusan Mukerji* does not dispute that money was in fact due to Gopal Sahu and Motilal Sahu on

1922  
 Debi Lal Sahu  
 v.  
 Nand Kishore  
 Gir.  
 Das, J.

the foot of these bonds. If that be so there was clearly a debt due by Bholanath to Gopal Sahu and Motilal Sahu on the date of the execution of the bond, *Ex. 1*. In my opinion Rs. 7,600 was clearly an antecedent debt and was binding upon the family. The bond further recites that Rs. 300 was paid in cash to the executants for household expenses. The evidence establishes that enquiry was made on behalf of the plaintiffs as to the necessity for this sum of money and that upon enquiry it was found that the necessity was a real necessity. There is no reason to doubt that Rs. 300 was in fact required by the executants for household expenses. In my opinion the bond, dated the 1st August, 1902, is binding upon the entire joint family.

I now come to the bond, dated the 25th September, 1902, *Ex. 2*. This bond was again executed by Bholanath, Nandkishore, and Bir Gir. The bond recites that the money was required in order to pay off Gopal Sahu and Motilal Sahu. There is no dispute that money was in fact due to Gopal Sahu and Motilal Sahu on the date of the execution of this bond. If that be so, then Rs. 983 out of Rs. 989 which was borrowed on the 25th September, 1902, constituted an antecedent debt. So far as Rs. 6 is concerned it is a very small sum of money and may be left out of account. In my opinion the bond, dated the 25th September, 1902, is binding upon the joint family.

Now the third bond is dated the 10th August, 1904, and has been marked *Ex. 3* in the case. This bond was executed by Bholanath alone, the bond recites that Rs. 859-1-3 was due to the plaintiffs on the foot of three simple bonds which had been executed by Bholanath in favour of the plaintiffs. These three simple bonds are, dated the 6th *Aghan*, 1311, 28th *Sawan*, 1311, and 15th *Jeth*, 1311. All these documents have been produced in the case and the sum of Rs. 859-1-3 undoubtedly constituted an antecedent debt. As regards the balance the evidence is that Rs. 282 was required to buy a plough bullock and other accessories for agricultural purposes. The evidence as to the enquiry

conducted by the plaintiffs in my opinion is sufficient to establish the debt as against the joint family.

1922  
Debi Lal Sah  
v.  
Nand Kishore  
Gir.  
Das, J.

The fourth bond is dated the 6th April, 1906, and has been marked as *Ex. 4* in the case. This bond was executed by Bholanath, Nand Kishore, and Bir Gir. The document recites that Rs 925 was necessary for the marriage expenses of a son and a daughter of Bholanath Gir. The evidence on this point establishes that one Shewjas Singh on behalf of the plaintiffs went to the defendants' house to make an enquiry and he found that the money was required for certain marriage ceremonies in the family. Shewjas Singh has given evidence in the case and he says that he enquired from several people in the village about the necessity. The money was borrowed for marriage of one of the defendants and his sister. This evidence receives strong corroboration from the evidence of Mahabir Puri who was examined on behalf of the defendants. He says that the *barat* came from Bhagvanpur 12 years ago and that Bholanath's daughter was married there. Now this witness was giving evidence in 1918. This supports the case of the plaintiffs that there was a marriage in the family of the defendants in 1906.

The learned Subordinate Judge apparently does not disbelieve the case of the plaintiffs that Rs. 925 was required for the marriage expenses in the family, but he has come to the conclusion that marriage being a luxury and not a necessity, the debt did not bind the joint family properties. Now the authorities on this point are all one way. It is quite true that some of the earlier decisions in the Madras High Court took the view that the marriage of any of the sons by the father is not according to Hindu Law a family purpose because there is no moral or religious obligation on either the father or the coparcener to bring about the marriage; see the case of *Govindaarazulu Narasumham v. Devarabhotla Venkatanarasayya* (1). But this case has been overruled by a Full Bench decision of the Madras High Court in *G. Gopalakrishnam Razu v. S. Venkatanarasa Razu* (2). In that case the Madras High

(1) (1904) I. L. R. 27 Mad. 206.

(2) (1914) I. L. R. 37 Mad. 273.

1922  
 ———  
 Debi Lal Sah  
 v.  
 Nand Kishore  
 Gir.  
 ———  
 Das, J.

Court held that "marriage is obligatory on Hindus who do not desire to adopt the life of a perpetual *Brahmachari* or of a *Sanayasi* and debts reasonably incurred for the marriage of a twice-born Hindu male are binding on the joint family properties." The same view has been adopted both in Bombay and in Allahabad [see the case of *Bhagirathi v. Jokhu Ram Upadhaia* (1) and *Sunderbai Jivaji Dagdu Pardeshi Shivanarayana* (2). The decision of the Bombay High Court is a very careful one and was arrived at on a critical study of the text on the subject. I am of opinion that the view of the learned Subordinate Judge is entirely erroneous and ought to be overruled.

It follows therefore that the bond dated the 6th April, 1906, is binding upon the joint family properties.

The last bond is dated the 7th April, 1906, and was executed by Bholanath, Nandkishore, and Bir Gir. The document recites that the money was necessary in order to enable them to pay off prior debts incurred by Bholanath to certain other creditors. There was therefore an antecedent debt binding on Bholanath on the 7th April, 1906. This bond accordingly binds the joint family properties.

I must allow the appeal, modify the decree passed by the learned Subordinate Judge and give the plaintiffs a mortgage decree in terms of the prayers in the plaint. The period of redemption is three months from the date of this judgment. The plaintiffs are entitled to their costs in this court as well as in the court below.

ADAMI, J.—I agree.

*Appeal allowed.*

(1) (1910) I. L. R. 32 All. 575.

(2) (1908) I. L. R. 32 Bom. 81.