

APPELLATE CIVIL.

Before Das and Adami, J.J.

LADU NARAIN SINGH

v.

GOBARDHAN DAS.*

1925.

Jan., 22.

Transfer of Property Act, 1882 (Act IV of 1882), section 43—Principle of section, application of, where there is no representation in transferor—Hindu Law—Grandson, liability of—whether liable for interest on grandfather's debt.

The principle enunciated in section 43 of the Transfer of Property Act, 1882, is an extension of the rule of estoppel; therefore, it does not apply unless there is a representation made by the transferor which is believed by the transferee.

T was the holder of an impartible estate which was attached under the provisions of the Chota Nagpur Encumbered Estates Act, 1876, but which was released on the 2nd October, 1915. After the death of *T*, plaintiff sued the grandson of *S*, who was the son of *T*, to enforce a mortgage executed by *T* and *S* on the 10th of October, 1915. This mortgage was void, but it was executed for consideration and there was valid legal necessity to support the transaction.

Plaintiff claimed to be entitled to a mortgage decree by virtue of section 43 of the Transfer of Property Act. It was admitted by plaintiff that he induced *S* to join in the execution of the mortgage because *T* was an old man and *S* would become the proprietor after his death. *Held*, (i) that section 43 did not apply to the facts of the case but, (ii) the debt having been contracted for legal necessity, the defendant was liable to satisfy it out of the family property of *S* in his hands, and (iii) that he was also liable for interest.

Lachman Das v. Khunnu Lal(1), followed.

Appeal by defendant no. 1.

This was a suit to enforce a mortgage executed by Sukhnath Singh and his father Tikait Tulsī Narayan

* Appeal from Original Decree no. 21 of 1923, from a decision of B. Phanindra Lal Sen, Additional Subordinate Judge of Hazaribagh, dated the 10th November, 1922.

(1) (1897) I. L. R. 19 All. 26.

Singh against the defendant who was the grandson of Sukhnath. Tikait Tulsi Narayan Singh was the holder of an impartible estate known as Gadi Chakmanju. The estate was attached under the provisions of the Encumbered Estates Act; but it was released on the 2nd October 1915. On the 10th of October, 1915, the bond which was sought to be enforced in this suit, was executed in favour of the plaintiff. The Subordinate Judge came to the conclusion that the mortgage was void under the provision of sub-section (1), clause (b), read with sub-section (3) of section 12A of the Encumbered Estates Act.

Susil Madhab Mullick and Narendra Nath Sen,
for the appellants.

Naresh Ch. Sinha and Nitai Ch. Ghose, for the respondents.

DAS, J.—The view taken by the lower court is obviously right and no attempt has been made before us to combat this view. The learned Subordinate Judge, however, found that the mortgage bond was executed for consideration and that there was valid legal necessity to support the transaction. It was contended before him that there was nothing to prevent Sukhnath from executing the mortgage and that the plaintiff was entitled to a mortgage decree by virtue of section 43 of the Transfer of Property Act. This view did not find favour with the learned Subordinate Judge who however gave the plaintiff a money decree for the amount claimed as against the defendant. The defendant appeals to this Court and he contends, firstly, that the learned Subordinate Judge should not have passed any decree as against him, and secondly, that the decree should have been for the principal sum claimed and not for interest. The plaintiff has presented a cross appeal and he contends that he was entitled to a mortgage decree as against the defendant.

It will be convenient to dispose of the cross objection. Mr. *Naresh Chandra Sinha* relies upon

1925.

LADU
NARAIN
SINGH
v.
GOBAR-
DEAN DAS.

1925.

section 43 of the Transfer of Property Act which is as follows:—

LADU
NARAIN
SINGH
v.
GOBAR-
DHAN DAS.

“Where a person erroneously represents that he is authorized to transfer certain immoveable property, and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property, at any time during which the contract of transfer subsists.

DAS, J.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.”

Now the rule of law which underlies section 43 of the Transfer of Property Act is that, as between the transferor and the transferee the transferor cannot plead subsequent title to the land transferred if he had induced the transferee to pay money for the transfer. As has been pointed out the principle is an extension of the well-known rule of estoppel.

Now Mr. *Naresh Chandra Sinha* concedes that at the date of the transfer Sukhnath had no title to the properties mortgaged; but he contends that inasmuch as he did acquire a title to it subsequently, it was obligatory on him to make good the representation made by him to the mortgagee. But if the principle underlying section 43 of the Transfer of Property Act be an extension of the well-known rule of estoppel, it must be established that there was a representation made by Sukhnath which was believed by the plaintiff and that the plaintiff relying on the truth of that representation changed his position to his detriment. But in this case the plaintiff has given his evidence and he admits that he asked Sukhnath to join in the mortgage as Tulsi was an old man and his son Sukhnath would become the *malik* after his death. The evidence of the plaintiff shows that there was no representation made by Sukhnath and that in any event the plaintiff could not have been misled by any representation that might have been made by Sukhnath. In my opinion the learned Subordinate Judge was right in holding that section 43 of the Transfer of Property Act has no application to the facts of this case. I must accordingly dismiss the cross-objection.

Coming now to the appeal, the first contention raised by Mr. *Susil Madhab Mullick* is to the effect that the defendant took the property by survivorship and that the properties which are now in his hands cannot be regarded as assets of his grand-father Sukhnath. He accordingly invites us to hold that the learned Subordinate Judge should not have passed a decree against him. The question whether the property which once belonged to Sukhnath and which is now in the possession of his grand-son can be regarded as assets of Sukhnath in the hands of the defendant is a difficult one and I do not propose to express any opinion on it; for I am satisfied that the plaintiff is entitled to a decree as against the defendant. The debt was undoubtedly contracted by Sukhnath. It is found by the learned Subordinate Judge and not disputed before us that the debt was contracted for a legal necessity. The defendant is accordingly bound to discharge that debt. There is no doubt that the defendant is in possession of the family property which was once in the possession of Sukhnath. That being so, he must satisfy the debt of Sukhnath out of the family property in his hands.

It was then contended that he is not liable for interest; and reliance is placed on the text of Brihaspati which is to the following effect :

" The father's debt must be first paid, and next a debt contracted by the man himself; but the debt of the paternal grand-father must even be paid before either of these. The sons must pay the debt of their father, when proved, as if it were their own, or with interest; the son's son must pay the debt of his grand-father, but *without interest*; and his son shall not be compelled to discharge it."

It was contended before us that as the Hindu Law which imposes on the grand-son the obligation to pay the debts of his grand-father limits that obligation to the principal amount of the debt only, the Courts in enforcing the obligation should not give the creditor a decree for interest. It is conceded by Mr. *Mullick* that there is no case to support his view; but he contends that we are bound by the text of Brihaspati and that he is clearly entitled to succeed on

1925.

LADU
NARAIN
SINGH
v.
GOBAR-
DHAN DAS.

DAS, J.

1925.

LADU
NARAIN
SINGH
v.
GOBAR-
DHAN DAS.

DAS, J.

this point. But as has been pointed out by Banerji, J. in *Lachman Das v. Khunnu Lal*⁽¹⁾, the text of Vishnu and Yajnavalkya do not place any such limit on the extent of a grand-son's liability, but treat the liability of the son and the grand-son to discharge the debt of their ancestor as co-extensive. In my opinion, whatever the text of Brihaspati may mean, that text has not been adopted in the decisions of our Courts and I am not prepared to accept it for the decision of this case. This is the conclusion at which Banerji, J., arrived in the case to which I have referred and with which I agree.

The result is that this appeal is dismissed with costs.

ADAMI, J.—I agree.

APPELLATE CIVIL.

Before Ross and Kulwant Sahay, J.J.

EAST INDIAN RAILWAY COMPANY

v.

SAGAR MAL.*

1925.

Jan., 23.

Limitation Act, 1908 (Act IX of 1908), Schedule 1, Articles 31 and 115—Non-delivery by carrier, suit for damages for.

A suit against a railway company for damages for non-delivery of goods is governed by Article 31 of the Limitation Act, 1908, and not by Article 115.

Radha Sham Basak v. Secretary of State for India in Council (2), not followed.

Gobind Ram Marwari v. East Indian Railway Company (3), and *Mali Ram v. East Indian Railway Company* (4), referred to.

* Appeal from Appellate Decree no. 495 of 1922, from a decision of B. Shiva Nandan Prasad, Additional Subordinate Judge of Arrah, dated the 17th of January, 1923, reversing a decision of B. Satya Ranjan Prasad Sinha, Munsif of Arrah, dated the 14th of March, 1921.

(1) (1897) I. L. R. 19 All. 26.

(3) S. A. 985 of 1921.

(2) (1915-16) 20 Cal. W. N. 790.

(4) (1923) 4 Pat. L. T. 331.