

no doubt allows the plaintiff to sue the members of a firm not in their individual capacity but as a firm but it does not in the slightest degree affect the right of the plaintiff to bring on the record the different members of the firm. The Civil Procedure Code of 1908 merely provides a new procedure. It does not affect the law on the subject which is to the effect that a plaintiff bringing a suit against a firm may implead all the members of the firm as defendants in that suit.

I would, therefore, allow the appeal, set aside the judgment and the decree passed by the court below and give the plaintiff a decree for Rs. 1,000 with interest thereon at six per cent. per annum from the 24th August, 1922, until realization. The decree as against the minors will be limited to the extent of the assets of those minors in the partnership firm. The appellants are also entitled to her costs throughout.

JAMES, J.—I agree.

Appeal allowed.

APPELLATE CIVIL.

Before Ross and Wort, J.J.

KAMLA PRASAD SINGH

v.

LALJI PRASAD.*

1929.

MUSAMMAT
BIBI
KAZMI
v.
LACHHMAN
LAL
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Hindu Law—limited owner, alienation by, for marriage expenses of her daughter—transaction, whether for legal necessity.

Where a limited owner, being a married woman, alienated certain property in her hands to pay off a prior

*Appeal from Original Decree no. 78 of 1927, from a decision of Babu Suresh Chandra Sen, Subordinate Judge of Muzaffarpur, dated the 5th of February, 1927.

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debt being incurred for the marriage expenses of her daughter and the finding was that her husband was a man of no substance and could not afford to have his daughter married.

Held, that the transaction was for legal necessity.

Rustom Singh v. Moti Singh(1) and *Rajagopalachariar v. Sani Reddi*(2), followed.

Musummat Narainbati Kumari v. Ramdhari Singh(3), distinguished.

Appeal by the defendants 1st party.

The facts of the case material to this report are stated in the judgment of Ross, J.

Sarangdhar Sinha, for the appellants.

A. B. Mukharji (with him *Harihar Prasad Sinha* and *Bhagwan Prasad*), for the respondents.

Ross, J.—This was a reversioner's suit calling in question certain alienations made by a limited owner. There were three conveyances in question; but this appeal is only concerned with one and with only a part of the property affected thereby, viz., 15 gandas share in Rasulpur. One anna share was sold to three persons; and the 15 gandas now in dispute were sold, as to 10 gandas for Rs. 825, to Ishwar Singh and, as to 5 gandas for Rs. 412-8-0, to Parmeshwar Singh. The appeal is by the son of Ishwar Singh and by a transferee from Parmeshwar Singh. The learned Subordinate Judge, while holding that the sale was for legal necessity, directed a re-conveyance on payment of the price of the property. It is contended by the appellant that if the sale was for legal necessity there can be no direction to re-convey. This proposition is not disputed by the respondents; but it was contended on their behalf that the finding of the learned Subordinate Judge as to legal necessity was wrong.

(1) (1896) I. L. R. 18 All. 474.

(2) (1926) 50 Mad. L. J. 221.

(3) (1916) 1 Pat. L. J. 81.

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It appears that this conveyance was executed to pay off three bonds, one of which was for Rs. 826, the debt being incurred for the marriage expenses of the daughter of the limited owner who was a married woman. The other two bonds were admittedly executed for legal necessity. The dispute is about the expenses of the marriage of the daughter of the limited owner. Reference was made to a decision of this Court in *Musammatt Narain Bati Kumri v. Ramdhari Singh*⁽¹⁾; but that was a case of a daughter's daughter. On the other hand, there are two decisions which recognize that the marriage of a daughter may in certain circumstances be a necessity of her maternal ancestor's estate. In *Rustom Singh v. Moti Singh*⁽²⁾ it was so held. There the father was unable out of his resources to effect the marriage of his daughter, and thereupon the mother of the girl was obliged to have recourse to the property that came from her father to her. It was held that the money was taken for a necessary purpose. This judgment was considered by Devadoss, J., in *Rajagopalachariar v. Sami Reddi*⁽³⁾; and that learned Judge observed that this was quite in consonance with the principle of Hindu law that a daughter should be married before she comes to age and that it was the duty of the father to see that she was married, and if the father was too poor to do this duty, the mother could, under the circumstances, alienate her property for the purpose of getting the girl married. It is argued that this is contrary to principle because the daughter will confer no spiritual benefit upon her maternal ancestors, as after marriage the daughter goes into her husband's family. It may be that strictly in principle, this is so; but this is recognized by an eminent Hindu Judge as a duty upon the mother in certain circumstances entitling

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her to alienate property that came to her from her father. The finding of fact in this case is that the father, Kabir Prasad, the husband of the limited owner, was a man of no substance and that he could not afford to have his daughter married; and this finding is not questioned. In these circumstances it seems to me that it would be going too far to impugn the conveyance on this ground, especially when the other two items which amount to almost half the consideration are admitted to be legal necessity. In these circumstances I am of opinion, looking at the whole transaction, that this was a sale for legal necessity.

Other points were taken; viz., that it was not shown that the lady was in need at the time or that the daughter was married at the time when this money was taken. But the transaction was remote in time, the money having been borrowed in 1871, and it is impossible that evidence should be forthcoming on these points now. The recitals coupled with the circumstances of the case are in my opinion good evidence after that lapse of time. It was also argued that the property had been sold improvidently, because the defendants' own evidence shows that it must be worth Rs. 3,000. But property which is now worth Rs. 3,000 might well have been worth much less more than fifty years ago.

I think on the whole that the judgment of the learned Subordinate Judge on the point of legal necessity is right. That being so, no reconveyance should have been ordered and the appeal must succeed and the suit be dismissed with proportionate costs throughout with regard to 15 gandas share of the property in suit.

WORT. J.—I agree.

Appeal allowed.