

The *Rwaj-i-Am* affords her no assistance, inasmuch as it is silent as to this question and the evidence on the record does not, in our opinion, prove the custom set up. We accordingly dismiss this appeal with costs.

A. R.

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Mr. Justice Scott-Smith and Mr. Justice Fforde.*

RODHA RAM (DEFENDANT) Appellant,

*versus*

AMAR CHAND (PLAINTIFF) } Respondents.  
MAYA MAL (DEFENDANT) }

Civil Appeal No. 180 of 1920.

*Joint Hindu Family—Alienation by Manager—Necessity—what enquiries alienee should make—Onus probandi.*

*Held*, that in the case of an alienation by the Manager of a joint Hindu family the alienee is bound to enquire into the necessities for the loan and to satisfy himself as well as he can that the Manager is acting in the particular instance for the benefit of the estate. If he does so inquire and acts honestly, the real existence of an alleged sufficient and reasonably-credited necessity is not a condition precedent to the validity of his charge and under such circumstances he is not bound to see to the application of the money.

*Hanooman Persaud Panday v. Mst. Babooee Munraj Koonweree* (1), followed.

*Held also*, that the burden of proving that he acted *bona fide* and without knowledge that the necessity was fictitious lies upon the alienee.

*Charanjit Singh v. Telu Mal* (2), followed.

*Second appeal from the decree of Lt.-Col. B. O. Roe, District Judge, Jullundur, dated the 28th October 1919, affirming that of Lala Devi Das, Munsif, 1st Class, Jullundur, dated the 2nd April 1919, decreeing the plaintiff's claim.*

DIWAN MEHR CHAND, for Appellant.

H. D. BHALLA and FAQIR CHAND, for Respondents.

The judgment of the Court was delivered by—

FFORDE J.—The suit out of which this appeal arises was brought for a declaration that a certain sale deed,

(1) (1856) 6 Moo. I. A. 393.

(2) 152 P. R. 1888.

dated the 20th October 1916, should be held not to affect the reversionary rights of the plaintiff.

The deed in question was for the sale of certain ancestral lands by Maya Mal, the father of the plaintiff, to one Rodha Ram.

Both the Courts below have held that the plaintiff is entitled to the declaration prayed for. The grounds relied upon by the plaintiff in his suit were that the lands being ancestral, and the family being a joint Hindu one governed by Hindu Law, the sale can only be valid as against the plaintiff if made for consideration and for valid necessity. The main point in issue was whether or not there was valid necessity. The necessity alleged by the defence was the requirement of the purchase money for payment of the expenses of the plaintiff's marriage.

It was found, however, by the Court below that it was not proved that the money was in fact raised for the purposes of the marriage. It appeared that the alienor was possessed of considerable property, and was in no need to raise funds.

On behalf of the alienee, defendant No. 2, it was argued that even upon these findings the transaction could not be impeached unless it could be shown that he had knowledge of these facts. It was concluded that the alienee was not bound to inquire into the actual necessities for the sale, and still less was he under any duty to inquire into the actual application of the purchase money.

In support of this proposition, counsel for the defendant cited the case of *Hanooman Persaud Panday v. Mussamat Eabooee Munraj Koonweree* (1) and relied upon the following passage in the judgment delivered by Knight Bruce, L. J. :—

“ Their Lordships think that the lender is bound to enquire into the necessities for the loan, and to satisfy himself as well as he can, with reference to the parties with whom he is dealing, that the manager is acting in the particular instance for the benefit of the estate. But they think that if he does so inquire, and acts honestly the real existence of an alleged sufficient and reasonably-credited necessity is not a condition precedent to the validity of his

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charge, and they do not think that, under such circumstances, he is bound to see to the application of the money.”

The principles there expressed, however, when applied to the facts before us instead of supporting the appellant's case are entirely in favour of the respondent. The burden of proving that he acted *bonâ fide* and without knowledge that the necessity was fictitious lay upon the alienee. This has been very definitely established in *Charanjit Singh v. Telu Mal* (1) where it was held that a person who takes a mortgage of ancestral property from a father in consideration of a present advance, as opposed to an antecedent debt, is bound to establish in a suit brought by a son to challenge the validity of the alienation so far as it affects his interests, that the advance was made by him—

“After a reasonable and fair inquiry which satisfied him, as a prudent man, that the money was required for the legal necessities of the family.”

In the present case it has been proved that the money was not required for the necessities of the family, and, moreover, the alienee has entirely failed to show that he made any inquiry whatsoever as to the necessity for the alienation. Not only has he not discharged this *onus* of proof, but it is quite obvious upon the indisputable facts before us that the smallest inquiry would have shown him that the alleged necessity was a pure fiction. The two defendants lived in adjoining villages within 200 *karams* of one another, and the vendee must have known perfectly well that the vendor was a man in excellent financial circumstances.

We are satisfied that the alienation was not for legal necessity, and that the decisions of the Courts below are correct, and we accordingly dismiss the appeal with costs.

But as the plaintiff and his father are members of a joint Hindu family, we amend the decree and make it one for a declaration that the alienation in question does not affect his rights.

A. N. C.

*Appeal dismissed.*