

## APPELLATE CIVIL.

*Before Bhide J.*

RALLA RAM AND ANOTHER (DEFENDANTS)

Appellants

*versus*ATMA RAM (PLAINTIFF)  
PURAN CHAND (DEFENDANT) } Respondents.

Civil Appeal No. 1284 of 1932.

*Hindu Law—Joint family property—Alienation by co-parcener of his undivided share—without consent of other co-parcener—validity of—in the Punjab.*

*Held*, that in the Punjab it is not open to a co-parcener to alienate his undivided share in joint family property under Hindu Law, without the consent of other co-parceners and if he alienates joint family property, the alienation is liable to be set aside as a whole.

*Churanji Lal v. Kartar Singh (1), Lachhman Parshad v. Sarnam Singh (2)*, followed.

Mulla's Principles of Hindu Law, paras. 258 and 269, relied on.

*Jai Narain v. Mahabir (3)*, referred to.

*Mohabeer Pershad v. Ramyad Singh (4) and Dharam Chand v. Mst. Karam Devi (5)*, not followed.

*Second Appeal from the decree of K. B. Sheikh Din Mohammad, District Judge, Jhelum, dated the 21st April, 1932, reversing that of Faqir Sayad Said-ud-Din, Senior Subordinate Judge, Jhelum, dated the 17th June 1931, and decreeing the plaintiff's suit with costs throughout.*

NAND LAL, for Appellants.

RAM LAL and MEHR CHAND MAHAJAN, for Plaintiff-Respondent.

(1) 1925 A. I. R. (Lah.) 130.

(3) (1927) I. L. R. 2 Luck. 226.

(2) (1917) I. L. R. 39 All. 500 (P.C.). (4) (1873) 20 W. R. 192.

(5) 6 P. R. 1893

BHIDE J.—The plaintiff Atma Ram and his elder brother Puran Chand were members of a joint Hindu family. The plaintiff sued for a declaration that a mortgage of the joint family property effected by Puran Chand during plaintiff's minority was without any legal necessity and should not affect the property. The suit was dismissed by the trial Court but was decreed on appeal by the learned District Judge. From this decision the present appeal has been preferred.

The learned counsel for the appellants has sought to challenge the learned District Judge's finding that the alienation in question was without any valid necessity. The finding is one of fact. It is true that even a finding of fact on the question of necessity may be challenged in certain circumstances, for example, when there is no evidence to support it or when it proceeds on erroneous principles of law; but the finding in the present case does not appear to me to be vitiated by any error of law. The learned counsel for the appellants has urged that the learned District Judge has not specifically referred to certain witnesses produced by his clients; but it does not appear whether any particular reliance was placed on those witnesses before the learned District Judge. I have, however, referred to the evidence of the witnesses on whom the learned counsel for the appellants sought to rely, and after considering the same I do not see any adequate ground for dissenting from the conclusion arrived at by the learned District Judge.

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The only other point urged by the learned counsel for the appellants was that, at any rate, the share of Puran Chand in the family property should have

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been held to be liable. The learned District Judge has considered this point also and has held the whole mortgage to be void in view of *Churanji Lal v. Kartar Singh* (1), which was based on a Privy Council ruling reported as *Lachhman Parshad v. Sarnam Singh* (2). In the Punjab it is not open to a co-parcener to alienate his undivided share in joint family property under Hindu Law, without the consent of other co-parceners, and if he alienates joint family property, without such consent, the alienation is liable to be set aside as a whole (*cf.* Mulla's Principles of Hindu Law, paras. 258 and 269). The learned counsel for the appellants referred to *Mohabeer Pershad v. Ramyad Singh* (3), and *Dharam Chand v. Mussammat Karam Devi* (4), but these rulings have been considered in *Churanji Lal v. Kartar Singh* (1), and it is pointed out therein that they cannot be considered to be good law now in view of the later decision of their Lordships of the Privy Council in *Lachhman Parshad v. Sarnam Singh* (2). *Jai Narain v. Mahabir Prasad* (5), a more recent ruling, on which the learned counsel for the respondents relies, also supports the view taken by the learned District Judge.

I dismiss the appeal with costs.

A. N. C.

*Appeal dismissed.*

(1) 1925 A. I. R. (Lah.) 130.

(3) (1873) 20 W. R. 192.

(2) (1917) I. L. R. 39 All. 500 (P.C.); (4) 6 P. R. 1893.

(5) (1927) I. L. R. 2 Luck. 226.