

1932

ABDUL HAQ  
v.

SHIROMANI  
GURDWARA  
PARBANDHAK  
COMMITTEE.

sale of the house property mortgaged at the same time and by the same deed. The costs of the petitioner will be paid throughout by the respondent.

*N. F. E.*

*Appeal accepted.*

### APPELLATE CIVIL.

*Before Harrison and Addison JJ.*

1932

March 16.

HANS RAJ AND ANOTHER (PLAINTIFFS) Appellants:

*versus*

KHUSHAL SINGH AND ANOTHER (DEFENDANTS)

Respondents.

Civil Appeal No. 2404 of 1928.

*Hindu Law—Alienation of joint family property by father—in order to redeem a mortgage on the estate of a separated brother—whether binding on sons.*

H.S. a separated grandson of K.C. a retired Hindu District Judge, having mortgaged land, which came to him from his grandfather, for Rs. 4,000, K.R. a brother of his father in order to maintain the integrity of the estate mortgaged his own land for Rs. 4,500 out of which the Rs. 4,000 mortgage of H.S. was redeemed. K.R.'s sons, one a major and the other a minor, thereupon brought the present suit for a declaration that the mortgage for Rs. 4,500 being without necessity was not binding on them.

*Held*, that to repurchase or acquire mortgage-rights in the estate of a separated brother can never be for the benefit of the family and that the mortgage was therefore not binding on the sons of K.R.

*Sheo Den Singh v. Habbi Ullah Khan* (1), relied upon;  
*Jagat Narain v. Mathura Das* (2), distinguished.

*Second appeal from the decree of Mr. J. D. Anderson, District Judge, Gurdaspur, dated the 15th*

June, 1928, reversing that of Lala Deoki Nandan, Subordinate Judge, 2nd class, Gurdaspur, dated the 29th August, 1927, and dismissing the plaintiffs' suit with costs.

M. C. MAHAJAN, for Appellants.

MOHAMMAD AMIN, for C. L. GULATI, for Respondents.

The judgment of the Court was delivered by—

HARRISON J.—The facts of this case are that *Rai Sahib* Karam Chand, a retired District Judge, left ten and a half squares in the colony and some other landed property in the Batala *Tahsil*. He had three sons of whom Kirpa Ram pre-deceased him, leaving a son Hari Shankar. At the time this litigation started Hari Shankar's age was between 18 and 25. He was married but had no son, and so far as he was concerned, at any rate, the family had been disrupted. He is of extravagant habits and his share in the squares has now been recorded in the name of his wife. There was some idea of doing the same with the Batala property but before the plan was put into operation he mortgaged it to Khushal Singh for Rs. 4,000. Inspired by a sentimental idea of maintaining the integrity of the estate left by *Rai Sahib* Karam Chand, Khushi Ram, another brother, mortgaged his own land to the same mortgagee for Rs. 4,500. With Rs. 4,000 of the money he redeemed the mortgage effected by Hari Shankar, and by a family arrangement it was then entered in the name of Hari Shankar's wife and expressly provided that she had a life interest only and could not alienate it. Khushi Ram's sons—one a major and the other a minor—now challenge the mortgage effected by him and claim that it was not for

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necessity as understood in Hindu Law. The trial Court decreed the suit. The District Judge, however, has accepted the appeal and dismissed it, holding that the mortgage constituted good management.

On second appeal it is contended that to re-purchase or acquire mortgagee rights in the estate of a separated brother can never be for the benefit of the family and reliance is placed on *Sheo Den Singh v. Habhi Ullah Khan* (1), where the facts were precisely similar to those of the present case. Counsel for the respondents relies on *Jagat Narain v. Mathura Das* (2), which does not deal with similar facts and lays down the law as to what is the meaning of the words "benefit of the family." From whatever aspect the transaction is viewed, it cannot be held that the action of Khushi Ram was sound or prudent or conferred any benefit upon his own family, as opposed to that of his nephew Hari Shankar. Not only did he mortgage his own land for more than the amount required to redeem the previous mortgage, but he was compelled, as the District Judge has pointed out, to make a very hard bargain and to take a lease for three years at the heavy rental of Rs. 810 a year of the land mortgaged. All that he obtained was the possible reversion after the death of *Mussammatt Widya Wanti*, a young woman, and after the property had passed through the hands of Hari Shankar, an extravagant and thriftless man, and has escaped the clutches of his creditors. For this he has given up his own land of similar value, has rendered himself liable to pay Rs. 2,430 in the course of three years as rent, and has merely dropped the substance for the shadow. It has been held that there was collusion over the transaction, but anyhow

(1) 1924 A. I. R. (All.) 721. (2) (1928) I. L. R. 50 All. 969 (F.B.).

in the absence of definite proof involving the minor son, this would not affect his rights.

The appeal, therefore, must be accepted and the decree of the trial Court restored. The parties to bear their own costs throughout.

A. N. C.

*Appeal accepted.*

### APPELLATE CIVIL

*Before Harrison and Addison JJ.*

SAT BHARAI AND OTHERS (PLAINTIFFS) Appellants

*versus*

JAMIAT RAI AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 316 of 1927.

*Civil Procedure Code, Act V of 1908, Schedule II, paragraph 16 (2)—Arbitration—Decree on award—impeached on ground that appellant was not a party to the reference—Appeal or Revision—whether competent.*

*Held* that a limited appeal only, as defined in paragraph 16 of Schedule II, of the Civil Procedure Code, is allowed from the decree following upon an arbitration award; and questions as regards the invalidity of a reference to arbitration from whatever cause, including the failure of a party to sign, cannot form the subject matter of an appeal either to the District Judge or the High Court. Certain points can be agitated before the trial Court and the decision of such as fall within the ambit of paragraph 15 (1) (c) is final.

*Guran Ditta and others v. Pokhar Ram and another (1), Balkishan v. Sohan Singh (2), Mussammat Wiran Wali v. Hira Nand (3), and Ralla Ram-Walaiti Ram v. Bansi Lal-Jaggan Nath (4), followed.*

(1) (1927) I. L. R. 8 Lah. 693.

(3) (1931) I. L. R. 12 Lah. 408.

(2) (1929) I. L. R. 10 Lah. 871.

(4) (1932) 33 P. L. R. 163.

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