

## APPELLATE CIVIL.

Before Monroe and Rangī Lal JJ.

1935  
Jan. 15.

BHAGWAN SINGH AND ANOTHER (DEFENDANTS)

Appellants

versus

BALBIR SINGH AND ANOTHER }  
(PLAINTIFFS), ATMA SINGH } Respondents.  
AND ANOTHER (DEFENDANTS) }

Civil Appeal No. 254 of 1934.

*Custom — Alienation — Mortgage of ancestral property — to raise money for purpose of manufacture of sugar — whether for legal necessity.*

*Held*, that the money borrowed by an agriculturist for the manufacture of sugar (an industry allied to agriculture) in his own village was a debt raised for legal necessity, and a mortgage of ancestral immovable property for that purpose can not, therefore, be challenged by the reversioners.

*Muhammad Hasan-ud-Din v. Saif Ali Shah* (1), *Taj Din v. Dula* (2), and *Natha v. Ganesh Singh* (3), relied upon.

*Santa Singh v. Waryam Singh* (4), distinguished.

*Second Appeal from the decree of Lala Devi Dayal, Dhawan, District Judge, Ludhiana, dated 13th November, 1933, affirming that of Bawa Daswandha Singh, Senior Subordinate Judge, Ludhiana, dated 28th April, 1933, granting plaintiff No. 2 alone a declaratory decree to the effect that the registered mortgage deed, dated 23rd August, 1927, shall not affect his reversionary rights.*

DEV RAJ SAWHNEY, for Appellants.

RAM LAL ANAND I, for (Plaintiffs) Respondents.

RANGI LAL J.

—This second appeal arises out of a suit to challenge a mortgage of ancestral land on the

(1) (1924) I. L. R. 4 Lah. 122. (3) (1932) I. L. R. 13 Lah. 524.  
(2) (1926) 95 I. C. 433. (4) 19 P. R. 1915.

usual ground of want of consideration and necessity. The plaintiffs are the sons of the mortgagors. The learned District Judge found that the mortgagors were engaged in the manufacture of sugar in the village and that the whole debt was raised for that purpose, but on the authority of *Santa Singh v. Waryam Singh* (1), he came to the conclusion that the debt could not be held to be raised for legal necessity. The decree of the trial Court granting the declaration prayed for by the plaintiffs was, therefore, confirmed. The mortgagees have filed a second appeal to this Court.

In *Santa Singh v. Waryam Singh* (1), the loan in question was raised for buying merchandise for a shop started in the village. The loan was not held to be for legal necessity, because the learned Judges were of opinion that "village custom would not look with favour upon the conversion of a *Jat* agriculturist into a shopkeeping trader and would not countenance an alienation of ancestral land in order to enable such agriculturist to carry on the business of his shop." This view, even if it was correct at that time, has not been adopted in the later decisions of this Court. In *Muhammad Hasan-ud-Din v. Saif Ali Shah* (2), an alienation of a *sarai* by an agriculturist for the purpose of raising money to engage in trade was upheld and it was remarked that *Santa Singh v. Waryam Singh* (1), could not have intended to lay down that under no circumstances could a member of an agricultural tribe alienate ancestral property for the purpose of engaging in trade. In *Taj Din v. Dula* (3), it was held that money borrowed by a *Jat* agriculturist for

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trading in cattle was for valid necessity and it was remarked that the application of *Santa Singh v. Waryam Singh* (1), must be restricted to the exact facts of that particular case. In *Natha v. Ganesha Singh* (2) Sir Shadi Lal, who was a party to *Santa Singh v. Waryam Singh* (1), himself remarked that the scope of the latter ruling must be restricted to its own facts and that no hard and fast rule could be laid down that ancestral property could never be alienated by an agriculturist for the purpose of providing funds for trade or business. In that case the alienor had for many years ceased to do the work of an agriculturist and had been living out of India carrying on trade and sending money to his sons. It was held that the money borrowed constituted a valid necessity for the sale of an ancestral house. In the present case it cannot possibly be said that the manufacture of sugar by an agriculturist in his own village would be looked upon with disfavour by village custom. It is a matter of common knowledge that most agriculturists grow sugarcane and manufacture *gur* for sale. It is admitted that the business has not resulted in any loss to the mortgagors. It would be ridiculous to suggest that an agriculturist should not improve his financial position by starting an industry allied to agriculture and which he can carry on in his own village. He is not thereby converting himself into a shopkeeper, as was the case in *Santa Singh v. Waryam Singh* (1). The finding of the learned District Judge that the debt was not raised for legal necessity cannot, therefore, be maintained. The finding that the whole debt amounting to Rs.4,448 was raised for the manufacture of sugar was not and could

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(1) 19 P. R. 1915.

(2) (1932) I. L. R. 13 Lah. 524.

not be challenged in second appeal. I would, therefore, accept the appeal and dismiss the suit with costs throughout.

MONROE J.—I agree.

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*Appeal accepted.*

### APPELLATE CIVIL.

*Before Tek Chand and Skemp JJ.*

MAHI AND ANOTHER (PLAINTIFFS) Appellants

*versus*

MST. BARKATE (DEFENDANT) Respondent.

Civil Appeal No. 1308 of 1932.

1935  
 Jan. 16.

*Custom — Succession — Self-acquired property — Kahlon Jats of Sialkot District — Daughters or Collaterals — Riway-i-am.*

*Held*, that the defendant (daughter) on whom the *onus* rested, had succeeded in proving that among *Kahlon Jats* of the Sialkot District, a daughter is entitled to succeed to self-acquired property of her sonless father in preference to his collaterals.

*Budha v. Mst. Fatima Bibi (1), Shahamad v. Mst. Muhammad Bibi (2), Said v. Said Bibi (3)* and other cases, relied upon.

*First Appeal from the decree of Lala Kishan Chand, Subordinate Judge, 1st Class, Lyallpur, dated 19th May, 1932, dismissing the plaintiffs' suit.*

GHULAM MOHY-UD-DIN and SHAUKAT RAI, for Appellants.

ZAFRULLAH KHAN and ASADULLAH KHAN, for Respondent.

TEK CHAND J.—One Faujdar, a *Kahlon Jat* of Sialkot District, was the grantee of two squares of

(1) (1923) I. L. R. 4 Lah. 99.

(2) (1929) I. L. R. 10 Lah. 485.

(3) (1929) I. L. R. 10 Lah. 489.