APPELLATE CIVIL.

1934

Nov. 14.

Before Addison and Din Mohammad JJ.

GOPAL DAS (PLAINTIFF) Appellant

versus

TOPAN DAS AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 145 of 1932.

Hindu Law—Joint family—Sale by father—prior mortgage being part consideration—whether antecedent debt and binding on sons.

Held, that under Hindu Law a previous mortgage debt, neither illegal nor immoral, secured on the family property, is as much an antecedent debt, if it is independent of the second transaction, as a personal debt of the father is.

Brij Narain v. *Mangal Prasad* (1), *Armugham Chetty* v. *Muthu Koundan* (2), and *Ram Rekha Singh* v. *Ganga Prasad Mukaraddhwaj* (3), followed.

Other cases referred to and discussed.

First Appeal from the decree of Mian *Ghulam Ali Khan, Senior Subordinate Judge, Multan, dated 14th October, 1931, dismissing the plaintiff's suit.*

M. L. PURI and S. R. SAWHNEY, for Appellant.

AMAR NATH CHONA and ANANT RAM KHOSLA, for Respondents Nos. 2 to 7.

The judgment of the Court was delivered by—

ADDISON J.—On the 26th February, 1923, Topan Das, defendant 1, on his own behalf and on behalf of his minor brother Chela Ram, executed a mortgage deed in favour of Kanhya Lal, the predecessor-in-interest of defendants 2 to 7, hypothecating land in lieu of a sum of Rs.7,500. The consideration was made up as follows:—Rs.500 were given for the

(1) (1923) I. L. R. 46 All. 95 (P.C.). (2) (1919) I. L. R. 42 Mad. 711 (F.B.).

(3) (1926) I. L. R. 49 All. 123 (F.B.).

purpose of repaying a previous bond debt, Rs.6,900 were paid before the Sub-Registrar, while Rs.100 were for expenses of the deed. The mortgagors took the mortgaged land on lease from the mortgagee. Kanhya Lal died and his successors, defendants 2 to 7, sued Topan Das and Chela Ram for recovery of Rs.4,970 as rent. They obtained a decree on the 12th December, 1929, against Topan Das, alone, the claim against Chela Ram, who was a minor when the lease was executed, being given up. The successors of Kanhya Lal also brought a suit against the mortgagors on the footing of the original mortgage deed of the 26th February, 1923. In this suit, one Rana Mohammad Ali intervened, and his decision, as arbitrator outside the Court, was accepted. The claim was given up as against Chela Ram, while Topan Das agreed to pay the mortgagees the principal mortgage money as well as the amounts decreed as rent, for which purpose he executed a sale deed, dated the 22nd April, 1930, Exhibit D.3, for Rs.14,911. By this deed certain land was conveyed to the mortgagees. The present suit was instituted by Gopal Das, the minor son of Topan Das, to set aside this sale. It was claimed that the property was ancestral property of the joint Hindu family, consisting of the plaintiff, his father and grandfather, and that the sale was invalid as it was without consideration and valid necessity, and the money was taken for immoral purposes. The suit has been dismissed and the plaintiff has appealed.

It is clear that the sale was for antecedent debts, in the sense that the debts were in existence before the sale. A considerable portion of the money had been advanced on a previous mortgage, while there were outstanding decrees for the remaining amount.

The only point argued before us was that as the money advanced on the mortgage of the 26th February,

1934

GOPAL DAS v. TOPAN DAS.

1923, was secured by hypothecation of the family property, it could not be held to be an antecedent debt for the purpose of the subsequent sale. This argument was founded upon *Sahu Ram Chandra* v. *Bhup Singh* (1) and *Chet Ram* v. *Ram Singh* (2). These rulings, however, have since been explained by their Lordships of the Privy Council. The question came before a Full Bench of the Madras High Court, which held [see *Armugham Chetty* v. *Muthu Koundan* (3)] that :—

"An independent debt, neither illegal nor immoral, contracted by a Hindu father on the security of the joint family estate, antecedent to the mortgage sued on, is an 'antecedent debt' so as to support a charge on the sons' shares also to the extent of the sums secured on the prior mortgage."

Sahu Ram Chandra v. *Bhup Singh* (1), was discussed in great detail and explained. It was remarked by Wallis, C. J. :—

"It would certainly be a novel proposition unsupported by any previous authority to lay down at the present time that an alienation for an antecedent debt, not otherwise open to objection, was invalid because the antecedent debt was incurred on the security of the joint family property. Having regard to their Lordships' express statement [in *Sahu Ram Chandra* v. *Bhup Singh* (1)], that the enunciation of the principle in these terms was intended as a guide to the decision of the controverted question before them, I do not think we should be warranted in extending its application to a case which was not before them and involves considerations which are not referred to in their judgment, especially when such an application of the principle would have the effect of disturbing what

(1) (1917) I. L. R. 39 All. 437 (P.C.). (2) (1922) I. L. R. 44 All. 368 (P.C.).
(3) (1919) I. L. R. 42 Mad. 711 (F.B.).

has long been regarded as settled law and would give rise to great uncertainty as to existing titles."

It was also pointed out by Sadasiva Ayyar J. :— " In the old Hindu Law texts relating to the son's pious obligation which form the foundation on which the present law has been broadened from precedent to precedent, there is no distinction made between a mortgage debt and a personal debt of the father."

Their Lordships of the Privy Council had opportunity to review their previous decisions, in *Brij Narain* v. *Mangal Prasad* (1). In that case, the managing member of a joint Hindu family governed by the *Mitakshara*, and consisting of himself and his two minor sons, mortgaged in 1908 part of the ancestral property, the mortgage being expressed to have been executed in order to discharge mortgages of 1905 and 1907 upon the same property and the whole of the money advanced being applied to discharge those mortgages, which were not found to have been executed for an immoral purpose. In a suit by the sons against their father and the mortgagees, it was held that the liability under the earlier mortgages was an " antecedent debt " so as to render the mortgage of 1908 binding upon the sons. As to what an antecedent debt was their Lordships approved of the decision of the Full Bench in *Armugham Chetty* v. *Muthu Koundan* (2).

The subject also came before a Full Bench of the Allahabad High Court. [See *Ram Rekha Singh* v. *Ganga Prasad Mukaraddhwaj* (3)]. It was held there that where a previous mortgage deed of joint family property was renewed in favour of the same mortgagee and the consideration for the subsequent

(1) (1923) I. L. R. 46 All. 95 (P.C.). (2) (1919) I. L. R. 42 Mad. 711 (F.B.).
(3) (1926) I. L. R. 49 All. 123 (F.B.).

1934

GOPAL DAS v. TOPAN DAS.

deed was the amount due on the earlier one, the alienation could be deemed to be in lieu of an " antecedent debt " so as to be binding on the sons, unless they could establish immorality or illegality, and that the true test to apply, in order to ascertain the antecedency of the debt, was whether the first debt was independent of the second and the two transactions were dissociated in time as well as in fact. This latter proposition was taken from the decision of their Lordships of the Privy Council in *Brij Narain* v. *Mangal Prasad* (1).

The law is, thus, no longer in doubt, and the previous mortgage debt, in the present case, can be held to be an antecedent debt, if it was truly antecedent and not part of the transaction impeached, that is, the sale. From the history of the case, already given, it is clear that the two transactions were absolutely independent. At the time when the first was entered into, there was no thought of any subsequent sale. The argument advanced on behalf of the appellant has, therefore, no weight and we hold that it has been established that the whole amount which formed the consideration of the sale attacked, consisted of antecedent debts. In fact, the mortgagees have been very considerate, for the market price of the land sold, as estimated by a commissioner, comes to Rs.8,742-14-3, instead of the sum of Rs.14,911.

It was not contended before us that any portion of the consideration was advanced for immoral or illegal purposes. As already stated, the only point contested was as to the antecedency of the mortgage debt of the 26th February, 1923.

For the reasons given we dismiss the appeal with costs.

A. N. C.

Appeal dismissed.

(1) (1923) I. L. R. 46 All. 95 (P.C.).