

APPELLATE CIVIL.

Before Tek Chand and Abdul Rashid JJ.

BUDHA SINGH (DEFENDANT) Appellant

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*versus**June 12.*

BHAN SINGH (PLAINTIFF)	} Respondents.
INDAR SINGH AND ANOTHER	
(DEFENDANTS)	

Civil Appeal No. 1172 of 1929.

Custom—Alienation—amount due on time-barred bond—whether ‘just antecedent debt.’

Part of the consideration for a mortgage for Rs.2,000 made by S.S. on 18th March, 1926, was a bond for Rs.500 in favour of the mortgagee executed by S.S. himself on 24th May, 1921, but time-barred when the mortgage was made, and the question was, whether the sum of Rs.900 due on the time-barred bond with interest was a ‘just antecedent debt.’ It was found that the Rs.500 of the bond was actually advanced to the mortgagor and that the sum was spent by him in celebrating his own marriage.

Held, that the debt due on the time-barred bond was still a debt that was due by S.S., though the remedy for its recovery was barred, and could constitute a ‘just antecedent debt’ as a consideration for the mortgage in suit, which would be binding on the reversioners of the mortgagor.

Gajadhar v. Jagannath (1), relied upon.

Second Appeal from the decree of Pandit Devi Dayal Joshi, Additional District Judge, Amritsar, dated 26th February, 1929, affirming that of Sayed Zulfiqar-ud-Din, Subordinate Judge, 2nd Class, Amritsar, dated 31st October, 1928, decreeing the plaintiff’s suit.

GOBIND RAM KHANNA, for Appellant.

ACHHRU RAM, for (Plaintiff) Respondent.

ABDUL RASHID J.—On the 18th March, 1926, one Sham Singh executed two registered mortgage deeds

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in favour of Budha Singh with respect to an area of 31 *kanals* 1 *marla* of land situate in *Mauza* Sultanwind in the Amritsar District. The consideration of the first mortgage was Rs.2,000, Rs.1,100 being due to the previous mortgagees and Rs.900 being due to Budha Singh himself on account of principal and interest on a bond for Rs.500, dated the 24th May, 1921. The consideration for the second mortgage deed was Rs.500 and consisted of various items, the details of which it is unnecessary to mention. The mortgagee was placed in possession of the land in dispute.

On the 28th November, 1927, the plaintiff Bhan Singh, a reversioner of Sham Singh, the mortgagor, brought the present suit for possession of the mortgaged property on the allegations that the mortgages, dated the 18th March, 1926, were without consideration and necessity and that as the property in dispute was ancestral *qua* the plaintiff he was entitled to a decree for possession. The trial Court held that the mortgage for Rs.500 was without consideration and necessity. With respect to the mortgage for Rs.2,000 it was held that Rs.1,100 had been paid to the previous mortgagees, and that this sum was, therefore, due on account of 'just antecedent debts.' The plaintiff was awarded a decree for possession of the land in suit on payment of Rs.1,100 to the mortgagee. The mortgagee preferred an appeal to the learned Additional District Judge who confirmed the decision of the trial Court. It was held by the lower appellate Court that the sum of Rs.500 was actually advanced to the mortgagor on the 24th May, 1921, and that this sum was spent by him in celebrating his marriage. The debt on the bond was, therefore, incurred for a necessary purpose. It was, however, held by the learned Judge

that on the 18th March, 1926, the debt due on the bond amounting to Rs.900 had become barred by limitation and that, therefore, so far as the mortgage-deed, dated the 18th March, 1926, for Rs.2,000 was concerned, the debt due on the bond could not be regarded as a just antecedent debt. The mortgagee has preferred a second appeal to this Court.

The only question that was argued on behalf of the appellant was that the debt due on the bond, dated the 24th May, 1921, was a ' just antecedent ' debt and that, therefore, the mortgage-deed, dated the 18th March, 1926, for Rs.2,000 must be held to be valid in its entirety. It was observed in *Sardari Mal v. Khan Bahadur Khan* (1) that a ' just debt ' is one which is (1) really due, and (2) has been contracted for a purpose other than one that is immoral or forbidden by law or opposed to public policy, and (3) can be recovered from his person or property generally. In a Full Bench ruling of this Court reported as *Devi Ditta v. Saudagar Singh* (2), it was laid down that the words ' just debts ' as used in connection to the debts of a male proprietor are :—(a) debts which are actually due and are not immoral, illegal or opposed to public policy, and (b) debts not contracted as an act of reckless extravagance or of wanton waste or with the intention of destroying the interests of reversioners. In the Privy Council ruling reported as *Kirpal Singh v. Balwant Singh* (3) the definition of a ' just debt ' as given in *Devi Ditta v. Saudagar Singh* (2) was fully approved. In a recent ruling of this Court reported as *Daim Shah v. Wir Bhan* (4) it was observed that a ' just debt ' must be held to mean a

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(1) 11 P. R. 1899.

(3) 26 P. R. 1913 (P.C.).

(2) 65 P. R. 1900 (F.B.).

(4) 1930 A. I. R. (Lah.) 1058.

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debt which is actually due and which is not tainted with immorality and had not been recklessly incurred. It appears that in using the words " can be recovered from his person or property generally " the learned Judges in *Sardari Mal v. Khan Bahadur Khan* (1) were not dealing with the question of time-bar, and therefore this observation cannot be used in support of the appellant's contention. A time-barred debt is undoubtedly a debt that is due though the remedy for its recovery may be barred. It was contended on behalf of the appellant that the debt due on the bond, dated the 24th May, 1921, having been held to have been incurred for a necessary purpose, the lower Courts had erred in holding that it could not be regarded as a just debt because it was barred by limitation on the day when the mortgage deed, dated the 18th March, 1926, was executed. It was maintained that the debtor having himself included this debt in the mortgage deed in question it must be held to be a ' just antecedent debt ' for the purposes of this mortgage. It has been laid down in a Full Bench ruling of the Allahabad High Court reported as *Gajadhar v. Jagannath* (2) that a time-barred debt can constitute a valid antecedent debt as a consideration for the sale-deed executed by a father of a joint Hindu family alienating joint ancestral family property. Moreover it is clear that under section 25 (3) of the Indian Contract Act a debtor can enter into an agreement in writing to pay, wholly or in part, a debt of which the creditor might have enforced payment but for the law for the limitation of suits. In my judgment, therefore, it was open to the debtor to undertake to pay the debt due on the bond, dated the 24th May, 1921, even though it had become

(1) 11 P. R. 1899.

(2) (1924) 1. L. R. 46 All. 775 (F.B.).

barred by limitation on the day of the execution of the mortgage deed, dated the 18th March, 1926. The learned Additional District Judge was of the opinion that this debt was incurred for a necessary purpose, and I would, therefore, hold that it is a 'just antecedent debt' which would be binding on the reversioners of the mortgagor.

Both the lower Courts have held that the second mortgage for Rs.500 was not for necessity. This finding, being one of fact, cannot be interfered with in second appeal.

For the reasons given above I would accept the appeal, and in modification of the decree of the learned Additional District Judge grant the plaintiff a decree for possession of the land in suit on the condition of his depositing in Court a sum of Rs.2,000 for payment to the mortgagee within a period of six months from the date of this order. The parties shall bear their own costs throughout. If the plaintiff fails to deposit the sum of Rs.2,000, as indicated above, his suit shall stand dismissed with costs throughout.

TEK CHAND J.—I agree in the order proposed by my learned brother and the reasons given by him in support thereof.

C. H. O.

Appeal accepted in part.

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