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the suit had abated, and remit the case to the learned Subordinate Judge with the direction that he will proceed to dispose of the application presented by Bhagat Ram, appellant, in the light of the observations made above. Parties will bear their own costs in this Court.

A. N. C.

Revision accepted.

APPELLATE CIVIL.

Before Addison and Abdul Rashid JJ.

KESAR SINGH (DEFENDANT) Appellant

versus

SANTOKH SINGH AND ANOTHER
 (PLAINTIFFS)
 PARTAP SINGH AND ANOTHER
 (DEFENDANTS)

} Respondents.

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 April 21.

Civil Appeal No. 99 of 1936.

Hindu Law—Joint family ancestral business—Mortgage of ancestral immoveable property by the manager—for money required for the business—whether mortgagee bound to make further inquiry into the actual necessity.

Held, that in order to establish a valid necessity for the mortgage of ancestral immoveable property by the manager of a joint Hindu family, it was sufficient for the mortgagee to prove that the mortgagor had been carrying on the ancestral joint family business, and that the loan was advanced on his representation that the money was required for that purpose. It was not necessary for the mortgagee to make any further enquiry regarding the actual necessity for the mortgage debt.

Mussammat Champa v. Official Receiver, Karachi (1), *Ram Nath v. Chiranji Lal* (2), *Ramkrishna Muraji v. Ratan Chand* (3), *Niamat Rai v. Din Dayal* (4), and *Raghunathji Tarachand v. Bank of Bombay* (5), relied upon.

(1) (1934) 149 I. C. 693.

(3) (1931) 132 I. C. 613 (P.C.).

(2) (1935) I.L.R. 57 All. 605 (F.B.). (4) (1927) I.L.R. 8 Lah. 597 (P.C.).

(5) (1909) I. L. R. 34 Bom. 72.

Girdhari Lal v. Kishen Chand (1), *Ganpat Rai v. Murali Lal* (2), and *Gangadhar Naryan Pandit v. Ibrahim Bawa Dingankar* (3), dissented from.

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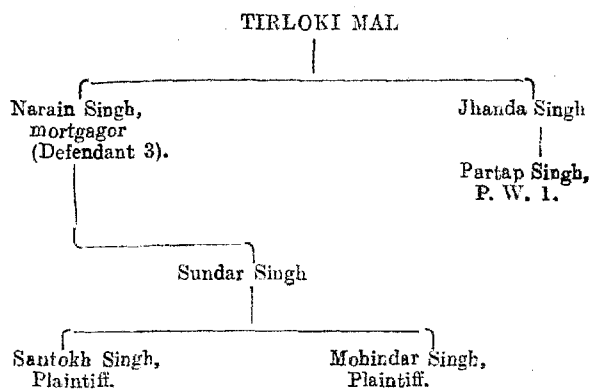
Second appeal from the decree of Mr. Nawab Singh, Additional District Judge, Amritsar, dated 23rd November, 1935, affirming that of Malik Khurshid-ul-Haq Khan, Subordinate Judge, 1st Class, Amritsar, dated 29th May, 1935, granting the plaintiffs' the declaration prayed for.

J. G. SETHI, for Appellant.

ACHHRU RAM and DIN DAYAL KAPUR, for Respondents.

The judgment of the Court was delivered by—

ABDUL RASHID J.—The following pedigree-table will be helpful in understanding the facts of this case :—



The property which forms the subject-matter of the present litigation was originally owned by Tirloki Mal. On his death it passed on to his sons Narain Singh, defendant No.3, and Jhanda Singh in equal shares. In 1892 Jhanda Singh sold his share of the property to his brother Narain Singh. On the 13th of June, 1930, the whole property, which consists of

(1) (1924) I. L. R. 5 Lah. 511. (2) (1911) I. L. R. 34 All. 135.

(3) (1923) 72 I. C. 659.

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a shop, was mortgaged by Narain Singh in favour of Kesar Singh, defendant No.1 for Rs. 2,000. The deed of mortgage was also signed by Sundar Singh the son of Narain Singh. On the 14th of November, 1930, Narain Singh effected a second mortgage of the same property for Rs.2,000 in favour of Partap Singh, defendant No.2, reserving the previous mortgage. The suit which has given rise to the present appeal was instituted by Santokh Singh and Mohindar Singh the grandsons of the mortgagor for a declaration to the effect that the shop in dispute was ancestral and that the mortgages in favour of Kesar Singh and Partap Singh were not binding on them, as they were not entered into for the benefit of the joint Hindu family consisting of themselves, their father and their grandfather. Partap Singh, defendant No.2, did not contest the suit, while Kesar Singh, defendant No.1, pleaded *inter alia* that the mortgage in his favour was binding on the plaintiffs as the money raised by means of this mortgage was required by the mortgagor for carrying on his ancestral rice business. The trial Court held that Jhanda Singh's one-half share in the shop was purchased by Narain Singh out of the joint family funds and as such was an accretion to the ancestral property. It was further held that both the alienations were without necessity, and, therefore, not binding on the plaintiffs. On these findings a decree was passed in favour of the plaintiffs. Kesar Singh, defendant No.1, preferred an appeal to the learned District Judge. His appeal having been dismissed, he has preferred an appeal to this Court.

The learned District Judge has held that defendant No.1 has succeeded in establishing that the

mortgagor was carrying on rice business at the time when he executed the mortgage-deed in his favour. The suit of the plaintiffs has, however, been decreed on the ground that it has not been established whether Rs.2,000 raised by the mortgagor on the 13th of June, 1930, were really needed for carrying on the rice business. According to both the lower Courts, the rice business was the ancestral business of the joint Hindu family consisting of the plaintiffs, their father and their grandfather, and it had descended to them from their great-grandfather Tirloki Mal. The mortgage-deed also recites the fact that Rs.2,000 were required by the mortgagor for the purposes of carrying on his business. Kesar Singh, defendant No.1, as a witness stated that the word "business" as used in the mortgage-deed meant "rice business" which the mortgagor was carrying on at the time of the execution of the mortgage-deed.

It was contended by the learned counsel for the appellant that in view of the findings of the lower Courts that Narain Singh was carrying on the ancestral rice business at the time of the execution of the mortgage-deed and of the recital in the deed that the money was required for business it was not necessary for the creditor to make any further enquiry regarding the necessity for the mortgage-debt. Reliance was placed in this connection on a Division Bench ruling of this Court reported in *Mussammatt Champa v. Official Receiver, Karachi* (1). It was held in that case that "Where a joint Hindu family carries on a business or profession, and maintains itself by means of it, the member who manages it for the family has an implied authority to contract debts

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for its purposes, and the creditor is not bound to inquire into the purpose of the debt in order to bind the whole family thereby, because that power is necessary for the existence of the family.”

It was held by a Full Bench of the Allahabad High Court in *Ram Nath v. Chiranji Lal* (1) that “It is settled law that money borrowed for the purposes of an ancestral family business is *per se* a valid justification for alienation of family property. In such a case no further inquiry on the part of the creditor is required.”

It has been laid down by their Lordships of the Privy Council in *Ramkrishna Muraji v. Ratan Chand* (2), that a mortgage of property of the joint family for the purpose of discharging debts incurred in carrying on the business is binding upon the joint family including minor members, if the mortgagee acting honestly and with due caution has made reasonable inquiries which led him to believe that there was a real necessity so to borrow and it is not necessary for him to see that no part of the money is applied in discharging debts due to speculative transactions.

In another Privy Council ruling, reported as *Niamat Rai v. Din Dayal* (3) it was laid down that in the case of a joint Hindu family business the manager had authority to raise money, not only to discharge debts arising out of the family business, but also money needed to carry it on. It was a matter for his decision whether the money necessary should be raised by mortgage or a sale, and whether it was better to raise money to continue a business

(1) (1935) I. L. R. 57 All. 605 (F. B.). (2) (1931) 132 I. C. 613 (P. C.).

(3) (1927) I. L. R. 8 Lah. 597 (P. C.).

which latterly had not been profitable, or to close it down; it would be unreasonable to expect a lender or purchaser to go into questions of that kind.

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It was observed in *Raghunathji Tarachand v. Bank of Bombay* (1) that "The rule of Hindu Law that debts contracted by a managing member of a joint family are binding on the other members only when they are for a family purpose is subject to at least one important exception. Where a family carries on a business or profession, and maintains itself by means of it, the member who manages it for the family has an implied authority to contract debts for its purposes, and the creditor is not bound to inquire into the purpose of the debt in order to bind the whole family thereby, because that power is necessary for the very existence of the family."

The learned counsel for the respondents relied on *Girdhari Lal v. Kishen Chand* (2), where it has been held that the mere existence of a family business is not sufficient, but that the lender must also show that the money was required for the family business. This ruling was based mainly on *Ganpat Rai v. Munnji Lal* (3). It appears, however, that the Allahabad High Court has expressed a different view in *Ram Nath v. Chiranji Lal* (4), which is a Full Bench ruling.

The learned counsel for the respondents also referred to *Gangadhar Naryan Pandit v. Ibrahim Bara Dingankar* (5), where it was held by the Bombay High Court that it was not sufficient for the mortgagor to prove by evidence that the mortgagor had

(1) (1909) I. L. R. 34 Bom. 72. (3) (1911) I. L. R. 34 All. 135.

(2) (1924) I. L. R. 5 Lah. 511. (4) (1935) I. L. R. 57 All. 605 (F. B.).

(5) (1923) 72 I. C. 659.

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been carrying on an ancestral joint family business and that he must further show that the money was required for such business. With all respect, this decision does not appear to us to be sound in view of the observations of their Lordships of the Privy Council in *Niamat Rai v. Din Dayal* (1) and *Ramkrishna Muraji v. Rattan Chand* (2).

We are of the opinion that in the present case Kesar Singh, appellant, advanced Rs.2,000 to Narain Singh on the representation of the latter, that the money was required for carrying on the ancestral business. In these circumstances it was not incumbent on the appellant to prove that the money was actually spent on the ancestral business.

For the reasons given above, we accept this appeal and dismiss the plaintiffs' suit so far as Kesar Singh, appellant, is concerned. The appellant will get his costs from the plaintiffs-respondents throughout.

P. S.

Appeal accepted.

(1) (1927) I. L. R. 8 Lah. 597 (P. C.). (2) (1931) 132 I. C. 613 (P. C.).