

was the section on which the Full Bench Ruling was founded. These mortgages were made subsequent to the 1st May 1843 : the one on the 7th November 1863, and the other on the 7th of June 1859. It is, therefore, clear that the registered mortgage took priority over the prior unregistered mortgage, and that the purchaser, under the decree which ordered a sale in satisfaction of the mortgage which had priority, has a preferable right to the purchaser under the execution of the decree of the other mortgage. Under these circumstances, the plaintiffs are entitled to priority, the second mortgage having priority over the unregistered mortgage of earlier date.

The decision of the lower appellate Court is reversed, and the decree of the first Court upheld, with costs of this appeal, and costs of the lower appellate Court.

*Before Mr. Justice Loch and Mr. Justice Glover.*  
LALA CHATRANARAYAN v. UBA KUNWARI.\*

*Reversioner—Ancestral Debt—Sale by Son's widow.*

A. died leaving B., a grandson by a son deceased, C., the widow of another son deceased, and D. and E., sons, him surviving. All four held separate possession of their respective shares in the estate. C. sold her share, for Rs. 995, to pay off a debt of A.'s of Rs. 670. D. and E. having waived their rights, B. sued as reversioner to set aside the sale made by C. *Held*, that C. did no wrong in selling her share to pay off the debt, and the mere fact that she sold it for more than the amount of the debt, did not render the sale invalid.

Jitaram had four sons,—(1) Newal Sing, father of Lala Chatranarayan, the plaintiff; (2) Sibnarayan; (3) Bidyananda; (4) Prabhunarayan. Newal Sing and Sibnarayan predeceased Jitaram. Sibnarayan left a widow, Ajnas Kumari. law, and provided its authenticity be executed prior or subsequent to the established to the satisfaction of the registered mortgage, any knowledge Court, shall be satisfied in preference or notice of any such unregistered to any other mortgage on the same pro deed or certificate alleged to be had perty, which may not have been by any party to such registered deed registered, and whether such second or certificate notwithstanding.” or other mortgage shall have been

\* Special Appeal, No. 750, of 1868, from a decree of the Principal Sudder Ameen of Bhagulpore, affirming a decree of a Moonsiff of that district.

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PRAHLAD  
MISSEK  
v.  
UDIT  
NARAYAN  
SING.

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LALA UHA-  
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Jitaram died leaving him surviving, the plaintiff, Ajnas, Bidyananda, and Prabhunarayan. Plaintiff sued to set aside a sale made by Ajnas Kumari of her husband's share in the family estate, and for declaration of his right as reversioner, alleging that his uncles, Bidyananda and Prabhunarayan, had waived their claims. Plaintiff also alleged that he and Ajnas were in joint possession of the share sold. Ajnas' defence was, that plaintiff, and she, and her husband's surviving brothers were each in separate possession of their shares; that she sold the property to meet a debt of Jitaram's, and that plaintiff could not set aside the sale.

The lower Courts found, as a fact, that plaintiff, his uncles, and Ajnas Kumari lived separate in estate; that Ajnas had *bonâ fide* sold the estate to pay off a debt of Jitaram's and performed necessary religious duties; and they dismissed plaintiff's suit.

On special appeal, the plaintiff urged that, as the debt was one for which the whole estate of Jitaram was liable, defendant, Ajnas, was not warranted in selling her share to pay off the whole of it. She ought only to have sold enough to meet one-fourth of the debt.

*Baboo Boodh Sen Sing* for appellant.

*Baboos Khali Krishna Sen and Nilmadhab Sen* for respondents.  
The judgment of the Court was delivered by

LOCH, J.—It has been urged that even if there was a legal necessity for the sale of this property for payment of the ancestral debt, yet as there were other heirs who held portions of the ancestral property, the defendant should have only sold so much as covered her portion of the debt, and should not have sold the whole which was in her possession. The debt was one for which the whole of the ancestral property was liable to be sold, and if there was any necessity to sell, we do not see that she has done wrong in selling her share, in order to pay off that debt.

It has been pointed out to us, that the defendant sold the property for the sum of Rupees 995 and that the ancestral debt amounted to Rupees 670, consequently it is contended there was no necessity for selling the whole, and the sale is consequently invalid.

We do not think that there is any force in the argument. The mere fact of the property being sold for a higher price than the amount of the debt to liquidate which it was sold, is not a reason for considering the sale invalid, when the purpose for which the sale is made, namely, the payment of the ancestral debt, is quite legal.

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Under this view of the case, we see no reason for interfering with the order of the lower Court, and we dismiss the special appeal with costs.

*Before Mr. Justice L. S. Jackson and Mr. Justice Mitter.*

RAM CHANDRA JANA v. JIBAN CHANDRAJANA.\*

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*Damages—Ryots—Lessor—Right to bring Suit—Interest in Land—Parties.*

A. erected an embankment across a river, in consequence of which, lands let by B. to ryots were overflowed, and the crops lost. The ryots paid rent to B. only when crops were reaped from the lands. *Held*, B. had such an interest as to entitle him to sue A. for damages.

THIS was a suit to recover damages on account of injury alleged to have been caused to the crops of plaintiff's (respondent's) ryots, by the defendants (appellants) who, it was alleged by the plaintiff, had constructed an embankment, across the river Puranga, below the mouth of Jamtola Khal, which arrested the course of the water, whereby the lands of his (plaintiff's) farm were inundated.

The defendants denied the right of the plaintiff to sue for damages, and set up that the so-called embankment was an old *band*, re-erected on its former site; and that it did not cause water to flow over the farm of the plaintiff; but that the injury complained of was the result of excessive fall of rain and plaintiff's own neglect to dam up the mouth of the Jamtola Khal.

The Principal Sudder Ameen held, that the plaintiff had sufficient interest in the lands which entitled him to institute this suit; that the defendants had constructed a new *band*, of considerable height, running across the river, which created

\* Special Appeal, No. 3099 of 1867, from a decree of the Judge of Midnapore, affirming a decree of the Principal Sudder Ameen of that district.