

Lachmi Narayan Vs. Deoki and ors.

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Court : Allahabad

Decided On : May-20-1920

Reported in : AIR1920All296; 59Ind.Cas.797

Judge : Piggott and ;Kanhaiya Lal, JJ.

Appellant : Lachmi Narayan

Respondent : Deoki and ors.

Judgement :

Kanhaiya Lal, J.

1. The question for consideration in this appeal is, whether a certain mortgage-bond executed by Gokla, the father of the defendant-appellant, for Rs. 550 was executed for legal necessity. The Court of first instance found that no legal necessity had been established. The lower Appellate Court, however, came to the conclusion that out of the sum of Rs. 550 secured by the mortgage there was a legal necessity to the extent of Rs. 325 which had been paid to a prior creditor named Raghunandan. In the mortgage bond in suit it is recited that Rs. 325 were left with the mortgagee for payment to Raghunandan on account of four prior usufructuary mortgage-deeds. These mortgage-deeds were produced but not proved. The learned Counsel for the defendant-appellant contends that, if Rs. 325, for which a legal necessity has been found by the Court below to have been established, were paid in satisfaction of those prior usufructuary mortgage-deeds,

that payment cannot be taken to be a payment made in satisfaction of an antecedent debt within the meaning of the decision of their Lordships of the Privy Council in *Sahu Ram Chandra v. Bhup Singh* 39 Ind. Cas. 280 : 39 A. 407 : 21 C.W.N. 698 : 1 P.L.W. 557 : 15 A.L.J. 437 : 19 Bom. L.R. 498 : 26 C.L.J. 1 : 33 M.L.J. 14 : (1917) M.W.N. 139 : 22 M.L.T.22 : 6 L.W. 213 : 44 I.A. 126 (P.C.) as interpreted in the later decisions of this Court in *Brij Narain Rai v. Mangla Prasad* 50 Ind.Cas.101 : 41 A. 235 : 17 A.L.J. 249 : 1 U.P.L.R. (A.) 49 and *Ram Singh v. Chet Ram* 51 Ind. Cas. 119 : 41 A. 529 : 1 U.P.L.R. (A.) 52. 17 A.L.J. 706. It does not appear, however, necessary to go into the question, because none of the mortgage deeds were proved. If the mortgages existed and the family property was saved by the payment of the mortgage money to the prior mortgagee, the family was presumably benefited by the restoration of the family property, which might otherwise have been lost to the enjoyment of the family. If those mortgage bonds did not exist, then the debts must be taken to have been simple debts binding on the defendant appellant by reason of the pious obligation attaching to him to pay the debts of his father, if not tainted with immorality. There is no allegation in this case that the debts were so tainted. In either event, the appeal fails and is dismissed with costs.

Piggott, J.

2. I am certainly not prepared to dissent. My feeling in the matter is that, if we felt compelled to bring this particular case within the purview of the decisions of this Court to which reference has been made, which decisions personally I am prepared to treat as correctly interpreting the view of the law laid down by their Lordships of the Privy Council in *Sahu Ram Chandra v. Bhup Singh* 39 Ind. Cas. 280 : 39 A. 407 : 21 C.W.N. 698 : 1 P.L.W. 557 : 15 A.L.J. 437 : 19 Bom. L.R. 498 : 26 C.L.J. 1 : 33 M.L.J. 14 : (1917) M.W.N. 139 : 22 M.L.T.22 : 6 L.W. 213 : 44 I.A. 126 (P.C.), unless and until the entire question is reconsidered by a Full Bench of this Court, it would be incumbent upon us to direct further enquiry to be made upon such a variety of points that we should be virtually directing a new trial upon issues never definitely fixed in the Courts below. I feel that the necessity for doing this should be avoided in the interests of the parties their selves, if we can do so without committing ourselves to any clearly erroneous proposition of law. Taking a

broad view of the equities of the case, I see no reason whatever to doubt that the appellant Lachhmi Narain is making a good bargain for himself, in that he has secured the reduction of his liability under the mortgage in suit to the sum of Rs. 325 which actually went in satisfaction of a debt incurred by his father with another creditor. I concur in the order proposed dismissing this appeal with costs.

3. We dismiss this appeal with costs.

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