

Raja Singh and anr. Vs. Durga Singh

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Court : Allahabad

Decided On : Apr-12-1923

Reported in : 73Ind.Cas.607

Judge : Daniels, J.

Appellant : Raja Singh and anr.

Respondent : Durga Singh

Judgement :

Daniels, J.

1. These appeals by the defendants arise out of two suits to set aside two sale-deeds executed by two adult members of the joint family to which the plaintiffs belong and by their mother. The sole issue in the case which is now material was whether these deeds were executed for purposes binding on the joint family estate. The consideration of the sale-deeds is made up of various items but the only item which is in dispute in this appeal consists of Rs. 415 which was applied to pay off a mortgage executed by the father of the plaintiffs. Part of the consideration was set off against each sale-deed. Following the law as laid down in *Sahu Ram Chandra v. Bhup Singh* 39 Ind. Cas.280 : 21 C.W.N. 698 : 1 P.L.W. 557 : 5 A.L.J. 437 : 19 Bom. :L.R. 498 : 26 C.L.J. 1 : 33 M.L.J. 14 : (1917) M.W.N. 439 : 22 M.L.T. 22 : 6 L.W. 213 : 39 A. 437 : 44 I.A. 126 (P.C.) the Courts below have gone on to consider how far this mortgage was executed for legal necessity.

Some items have been allowed and the others disallowed. The appellants do not challenge the findings as to the separate items. Their argument is that, inasmuch as the father who executed the mortgage is dead, it is immaterial whether the mortgage was executed for legal necessity or not. They invoke the doctrine of pious obligation on the part of the sons and say that the debt is binding on the sons whatever the purpose for which the money was borrowed so long, as that purpose was-neither illegal nor immoral. No- direct authority was cited in support of this view for the case of Gharib Ullah v. Khalak Singh 25 A. 407 : 30 I.A. 165 : 5 Bom. L.R. 478 : 7 C.W.N. 681 : 8 Sar. P.C.J. 483 (P.C.) on which the appellants rely is not really an authority on the point, and it appears to me impossible to accept the view contended for in view of the recent decision of the Privy Council in Chet Ram v. Ram Singh 67 Ind. Cas. 569 : 44 A. 368 : 49 I.A. 228 : 3 P.L.T. 363 : 31 M.L.T. 50 : 43 M.L.J. 98 : 16 L.W. 89 : (1922) M.W.N. 455 : 4 U.P.L.R. (P.C.) 64 : (1922) A.I.R. (P.C.) 247 : 3 P.L.R. 1922 : 24 Bom. L.R. 123 : 27 C.w.N. 150 : 21 A.A.J. 114 : 37 C.L.J. 79 (P.C). There the father had executed' a sale-deed in lieu of a previous usufructuary mortgage. The matter came before the Privy Council and their Lordships held that, under the rule laid down in Sahu Ram Chandra v. Bhup Singh 39 Ind. Cas.280 : 21 C.W.N. 698 : 1 P.L.W. 557 : 5 A.L.J. 437 : 19 Bom. :L.R. 498 : 26 C.L.J. 1 : 33 M.L.J. 14 : (1917) M.W.N. 439 : 22 M.L.T. 22 : 6 L.W. 213 : 39 A. 437 : 44 I.A. 126 (P.C.), the usufructuary mortgage could not constitute antecedent debt. At the time when the suit was brought the father was dead but his sons and grandsons were alive. Their Lordships refused to accept the contention that the father's death made any difference or that the transaction which was otherwise invalid' could be treated as valid by reason of the father having died prior to the suit. I, therefore, reject the argument put forward by the appellant. Both appeals clearly fail and they are; accordingly dismissed, with costs including in this Court fees on the higher scale.