

**Debi Dat Vs. Jadu Rai and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/495767](http://sooperkanoon.com/495767)

**Court :** Allahabad

**Decided On :** May-09-1902

**Reported in :** (1902)ILR24All459

**Judge :** Banerji and ;Aikman, JJ.

**Appellant :** Debi Dat

**Respondent :** Jadu Rai and ors.

**Judgement :**

**Banerji and Aikman, JJ.**

1. This was a suit for sale upon a mortgage dated the 5th of November, 1895, executed by the first four defendants, namely, Jadu Rai and his three sons. The other defendants are a son of Jadu Rai and the sons of Gajadhar and Birj Lal, defendants. These persons were joined as lefendants, as they were members of a joint Hindu family with their father and grandfather, and it was sought to make the mortgaged property, which was the joint family property of all these persons, liable under the mortgage. The Courts below, relying on the ruling of this Court in Jamna v. Nain Sukh (1887) I.L.R. 9 All. 493 have exempted from liability the shares of the defendant Mul Chand and the grandsons. The plaintiff has preferred this appeal. It is true that the ruling referred to above has not in express terms been overruled; but having regard to the later Full Bench ruling in Badri Prasad v. Madan Lal (1893) I.L.R. 15 All. 75 and to the ruling of the Privy Council in Nanomi Babuasin

v. Modhun Mohun (1885) I.L.R. 13 Calc. 21 it can no longer be considered as law. The sons and grandsons of a mortgagor can only dispute the validity of the mortgage either on the ground that the debt was never incurred or is no longer in existence, or that it was tainted with immorality. None of these pleas were set up in this case. The plaintiff was therefore entitled to the decree which he had asked for. We allow the appeal and vary the decree of the Court below by decreeing the plaintiff's claim against the whole of the property comprised in the mortgage, and we fix the 9th of November, 1902, as the date by which the mortgage money must be paid. The appellant will have his costs in this Court and in the Courts below. We direct that our decree be drawn up in accordance with the terms of Section 88 of the Transfer of Property Act.

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