

(1937) 08 PAT CK 0009
In the Patna High Court

Babu Ramsewak Missra

APPELLANT

Vs

Choudhary Babu Jamuna Prasad Singh and Another

RESPONDENT

Date of Decision : 11-08-1937

Acts Referred:

Citation : AIR 1937 Patna 667

Hon'ble Judges : Courtney-Terrell, C.J.;Madan, J

Bench : Full Bench

Judgement

Courtney-Terrell, C.J.—This is an application in civil revision against a judgment of the Small Cause Court Judge of Darbhanga dismissing a suit by the plaintiff to recover Rs. 272 principal and Rs. 98 interest. The maker of the hand, note, Mt. Manrup Kuer died before the suit was begun and her co-defendants are persons who have succeeded to the last male holder, i.e. her deceased husband, the lady having a mere life-interest in the estate at the time of the making of the hand-note. It is sought to make these defendants liable partly on the hand-note and also on the ground that they are bound to the extent of the estate which came into their hands, because the loan in respect of which the hand-note was made was advanced to the lady for legal necessity. The hand-note bears a statement that the loan was advanced for the expenses of the lady in connexion with the estate, but there is no statement in the plaint as to any particular necessity which might throw liability on those who succeeded to the estate on the death of the lady. No doubt, being impressed when they sought legal advice with the importance of showing some necessity of a character such that the expenses in connection therewith would be binding on the estate, the plaintiff set up a story to the effect that the lady required the money for the completion of a temple which was under construction. This was a case which was not set up in the pleadings and should not have been considered. Moreover, in all cases of necessity, to prove the mere nature of the purpose for which the money is borrowed is hardly sufficient; the borrowing must also have been necessary for the particular purpose and a lady in possession of an income of Rs. 10,000 a year is under no necessity to borrow such a small sum as Rs. 272 for the

finishing of the temple and no evidence was offered by the plaintiff, nor is there any finding of fact as to the necessity for the borrowing. It must also be remembered that the suit is based upon the hand-note and the persons liable on the hand-note are only the parties to the hand-note and the heirs of those parties. They cannot be made liable merely as the persons who succeeded to the interest of the maker of the hand-note when that interest has ceased altogether.

2. The learned Judge who decided this case dismissed it on the ground that the debt was an unsecured debt and therefore not binding upon those who succeeded to the estate. The question of the recoverability of a secured or an unsecured debt has-given the Courts very great difficulty. Since the date of the decision of Saunders, J. in Baramdeo Singh and Others Vs. Lal Bahadur Sah, , there has been a decision of a Full Bench of the Bombay High Court in Dhondo Yeshvant Kulkarni Vs. Mishrilal Surajmal, which renders the soundness of the decision of Saunders, J. open to some doubt. The learned Judge was however right in following the decision of the learned Judge of this High Court in preference to any other decision. The real ground, however, upon which the suit should, in my opinion, have been dismissed as the learned Judge did in fact dismiss it, is that the purpose, even if we accept the story of the plaintiff, for which the money was required, is not in the nature of a legal necessity which would be binding upon those who succeeded to the estate.

3. In the result, the learned Judge's decision was in my opinion right and this application should be dismissed with costs which we assess at two gold mohurs.

Madan, J.

4. I agree.