

(1924) 05 AHC CK 0037
In the Allahabad High Court

Bhagwati Singh and Others

APPELLANT

Vs

Gurcharan Dube

RESPONDENT

Date of Decision : 27-05-1924

Acts Referred:

Citation : (1924) 05 AHC CK 0037

Final Decision : Dismissed

Judgement

1. We think that this appeal cannot succeed. The suit was for a declaration that a hypothecation bond executed by the plaintiff's father of ancestral joint property was not binding on the plaintiff, not having been executed for legal necessity. Both the Courts have decreed the suit and the defendants appeal. The bond in question was for a sum of Rs. 177 of which Rs. 165 was paid in discharge of a mortgage on certain property which the plaintiff's father had acquired under a preemption decree. The decree was given him on payment of Rs. 130 which had been paid into Court, The preempted property was however subject to an encumbrance, and the hypothecation bond in suit was executed to pay off this encumbrance.

2. Reference has been made to the decisions in Nathu v. Kundan Lal (1911) 33 All. 242 and Chatur Bhuj and Another Vs. Gobind Ram and Others, , which dissented from the decision, in Nathu v. Kundan Lal (1911) 33 All. 242. Neither of these decisions is strictly applicable. In these cases the question arose whether payment of an amount which the father was required to deposit under a pre-emption decree amounted to antecedent debt or not. In this case there was no question of any debt. The amount which the father was required to deposit under the decree had already been deposited. The question is therefore reduced to this whether it was more advantageous to the family that the encumbrance on the pre-empted property should be paid off at the cost of encumbering the ancestral property or not.

3. On this there is a finding of both the lower Courts that it is not established that the discharge of the encumbrance at the cost of hypothecating the family

property was for the benefit of the family. The Courts have pointed out that the hypothecation bond in suit carried compound interest at a fairly high rate.

4. In face of this finding the appeal cannot succeed and we accordingly dismiss it with costs including in this Court fees on the higher scale.