

(1922) 01 PAT CK 0034
In the Patna High Court

Debi Lal Sah and Others

APPELLANT

Vs

Nand Kishore Gir and Others

RESPONDENT

Date of Decision : 09-01-1922

Acts Referred:

Citation : AIR 1922 Patna 22 : 65 Ind. Cas. 315

Hon'ble Judges : Das, J;Adami, J

Bench : Division Bench

Judgement

Das, J.—This was a suit by the appellants to enforce five mortgage bonds executed by Bholanath, the karta of the joint family, and by Nand Kishore and Bir Gir, his sons. One of these bonds, namely, the bond dated the 10th August 1904, was executed only by Bholanath, but it appears from the subsequent bond dated the 6th April 1906 that Nandkishore and Bir Gir accepted the bond of the 10th August 1904 as binding on them.

2. The learned Subordinate Judge found that the consideration money was advanced by the mortgagees to the mortgagors. But, taking the view that there was no legal necessity in respect of the advances made by the plaintiffs to the defendants, he has given a mortgage-decree to the plaintiffs to the extent of the shares of Bholanath Nand Kishore and Bir Gir in the properties; he has dismissed the suit as against those members of the family who were not parties to the mortgage-bonds.

3. On the facts, as found by the learned Subordinate Judge, the decree was far too favourable to the plaintiffs. He found that there was no legal necessity in respect of the bonds, and yet he gave the plaintiffs a mortgage-decree to the extent of the shares of the executants of the mortgage-bonds in the properties. Apparently, the learned Subordinate Judge was not aware of the celebrated decision of the Judicial Committee in the case of Sahu Ram Chandra v. Bhup Singh 39 Ind.Cas. 280 : 39 A. 437 : 21 C.W.N. 698 : 1 P.L.W. 557 : 15 A.L.J. 437 : 19 B.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 : 44 I.A. 126 (P.C.). That case establishes the proposition that

where a mortgage is granted by one co-parcener on his own account over the joint family properties, it is invalid, the estate is wholly unaffected by it and its entirety stands free of it. But it has been urged on behalf of the plaintiffs-appellants that the decision of the learned Subordinate Judge on the question of legal necessity is erroneous. Mr. Jayaswal, indeed, argues that most of these bonds are binding upon the entire joint family on the doctrine of antecedent debt which was recognised and affirmed by the Judicial Committee in the case to which I have already referred, it is necessary, therefore, to consider the evidence which had been adduced by the plaintiffs in regard to the different bonds which were executed in their favour.

4. The first of these bonds is dated the 1st August 1902. That was a bond for Rs. 7,900 and was executed by Bholanath, Nand Kishore and Bir Gir. The document recites that Rs. 7,600 was due by the executants to Gopal Sahu and Motilal Sahu on previous registered bonds dated the, 13th December 1893. 24th May 1896, 28th June 1898 and unregistered bonds dated the 25th March 1898 and 22nd September 1897. All these bonds have been produced in the case and Mr. Abani Bhusan Mukerjee does not dispute that money was in fact due to Gopal Sahu and Motilal Sahu on the foot of these bonds. If that be so, there was clearly a debt due by Bholanath to Gopal Sahu and Motilal Saha on the date of the execution of the bond Exhibit 1 In my opinion Rs. 7,600 was clearly an antecedent debt and was binding upon the family. The band further recites that Rs. 300 was paid in cash to the executants for household expenses. The evidence establishes that enquiry was made on behalf of the plaintiffs as to the necessity for this sum of money and that upon enquiry it was found that the necessity was a real necessity. There is no reason to doubt that Rs. 300 was in fact required by the executants for household expanses. In my opinion, the bond dated the 1st August 1902 is binding upon the entire joint family.

5. I now come to the bond dated the 25th September 1902, Exhibit 2, This bond was again executed by Bholanath, Nand Kishore and Bir Gir. The bond recites that the money was required in order to pay off Gopal Sahu and Motilal Saha. There is no dispute that money was in fact due to Gopal Sahu and Motilal Saha on the date of the execution of this bond. If that be so, then Rs. 933 out of Rs. 969 which was borrowed on the 25th September 1902 constituted an antecedent debt. So far as Rs. 6 is concerned, it is a very small sum of money and may be left out of account, In my opinion, the bond dated the 25th September 1902 is binding upon the joint family.

6. Now, the third bond is dated the 13th August 1901 and has been marked Exhibit 3 in the case. This bond was executed by Bholanath alone: the bond recites that Rs. 859-1-3 was due to the plaintiffs on the foot of three simple bonds which had been executed by Bholanath in favour of the plaintiffs. These three simple bands are dated the 6th Aghan 1311, 28th Sawan 1311, and 15th Jeth 1311 respectively. All these documents have been produced in the case and the sum of Rs. 859-1-3 undoubtedly constituted an antecedent debt. As regards

the balance, the evidence is that Rs. 282 was required to buy a plough bullock and other accessories for agricultural purposes, The evidence as to the enquiry conducted by the plaintiffs, in my opinion, is sufficient to establish the debt as against the joint family.

7. The fourth bond is dated the 6th April 1905 and has been marked as Exhibit 4 in the case. This bond was executed by Bholanath, Nand Kishore and Bir Gir. The document recites that Rs. 925 was necessary for the marriage expenses of a son and a daughter of Bholanath Gir. The evidence on this point establishes that one Shewjas Singh on behalf of the plaintiffs went to the defendants' house to make an enquiry and he found that the money was required for certain marriage ceremonies in the family. Shewjas Singh has given evidence in the case and he says that he enquired from several people in the village about the necessity. The money was borrowed for marriage of one of the defendants and his sister. This evidence receives strong corroboration from the evidence of Mahabir Puri who was examined on behalf of the defendants, He says that the Barat came from Bhavanpur twelve years ago and that Bhola's daughter was married there. Now, this witness was giving evidence in 1918. This supports the case of the plaintiffs that there was a marriage in the family, of the defendants in 1906.

8. The learned Subordinate Judge apparently does not disbelieve the case of the plaintiffs that Rs. 925 was required for the marriage expenses in the family, but he has come to the conclusion that marriage being a luxury and not a necessity, the debt did not bind the joint family properties. Now, the authorities on this point are all one way. It is quite true that some of the earlier decisions in the Madras High Court took the view that the marriage of any of the sons by the father is not, according to Hindu Law, a family purpose because there is no moral or religious obligation on either the father or the co-parcener to bring about the marriage; see the case of *Govindarazulu Narasimham v. Devarabhotla Venkatanarasayya* 27 M. 206, But this case has been overruled by a Full Bench decision of the Madras High Court in *Gopalakrishnama Raju v. Venkatanarasa Raju* 17 Ind. Cas. 308 : 37 M. 273 : 23 M.L.J. 288: 12 M.L.T. 292 : (1912) M.W.N. 903 . In that case the Madras High Court held that "marriage is obligatory on Hindus who do not desire to adopt the life of a perpetual Brahmashari or of a Sanyasi, and debts reasonably incurred for the marriage of a twice-born Hindu male are binding on the joint family properties". The same view has been adopted both in Bombay and in Allahabad, see the case of *Bhagirathi v. Jokhu Ram Upadhia* 6 Ind. Cas. 465 : 32 A. 575 : 7 A.L.J. 667 and *Sundrabai Javari Dagdu Pardeshi v. Shivanarayana Ridkarna*. 32 B. 81 : 9 B.L.R. 1366 : 3 M.L.T. 44. The decision of the Bombay High Court is a very careful one and was arrived at on a critical study of the texts on the subject. I am of opinion that the view of the learned Subordinate Judge is entirely erroneous and ought to be overruled.

9. It follows, therefore, that the bond dated the 6th April 1908 is binding upon the joint family properties.

10. The last bond is dated the 7th April 1906 and was executed by Bholanath Nand Kishore and Bir Gir. The document recites that the money was necessary in order to enable them to pay off prior debts incurred by Bholanath to certain other creditors, There was, therefore, an antecedent debt binding on Bholanath on the 7th April 1905. This bond accordingly binds the joint family properties.

11. I must allow the appeal, modify the degree passed by the learned Subordinate Judge and give the plaintiffs a mortgage decree in terms of the prayers in the plaint. The period of redemption, three months from the date of this judgment, The plaintiffs are entitled to their costs in this Court as well as in the Courts below.

Adami J.

12. I agree.