

(1941) 08 AHC CK 0005
In the Allahabad High Court

L. Babu Lal and Others

APPELLANT

Vs

Babu Satya Narain Prasad and Others

RESPONDENT

Date of Decision : 12-08-1941

Acts Referred:

Citation : AIR 1941 All 372 : (1941) 11 AWR 264 : (1941) 11 AWR 140

Hon'ble Judges : Dar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dar, J.—This is an appeal from a judgment and decree dated 23rd April 1935 of the Civil Judge of Allahabad by which the plaintiffs' claim for a sum of money was partly decreed and partly dismissed. In the year 1930 Sat Narain Prasad, a Hindu resident of Allahabad, was manager of a joint Hindu family consisting of himself and his five sons, his nephew Radhika Prasad and two ladies of the family, Mt. Rajeshwari Bibi and Mt. Shyama Bibi, the widows of Sat Narain Prasad's two deceased brothers Shiva Narain Prasad and Govind Prasad respectively. At that time the family stood possessed of considerable immovable property which was assessed to a Government revenue of over Rs. 15,000 and which yielded a net income of about Rs. 20,000 a year. The evidence in the case is somewhat vague and indefinite but it appears that Sat Narain Prasad at that time had incurred certain debts and had also sold portions of family property. What the nature of these debts was and for what purposes they were incurred and what was the extent of the property which he had sold and for what objects is a moot point in the case and the evidence led in the case is much too indefinite to come to a satisfactory finding about it but it leaves an impression that Sat Narain Prasad was not a wise and prudent manager of the family.

2. On 6th December 1930 Sat Narain Prasad executed a hundi for Rs. 6000 in favour of a firm called Lachmi Narain Babu Lal which carried on a business of commission agency in the city of Allahabad. The hundi was executed by Sat Narain Prasad personally without disclosing that he was acting as the manager of

the family and it was payable in 211 days. The firm Lachmi Narain Babu Lal was a joint Hindu family firm but by a partition amongst its members the entire rights and interests in that family firm have come to be vested in Babu Lal and his two sons. The proprietors of the said firm Lachmi Narain Babu Lal were relations of Sat Narain Prasad by a marriage connexion, the sister's daughter of Sat Narain Prasad having been married to a son of Babu Lal. On 8th December 1930, two days after the execution of the hundi, a sum of Rs. 5500 was paid in currency notes by the firm Lachmi Narain Babu Lal to Sat Narain Prasad with regard to the hundi, Rs. 500 having been deducted for interest due on the hundi in advance. The currency notes handed over by the firm Lachmi Narain Babu Lal to Sat Narain Prasad were five currency notes of Rs. 1000 each and one currency note for Rs. 500. The amount of this hundi not being paid on the due date it was renewed by a fresh hundi on 2nd July 1931 for Rs. 6000 payable in 195 days.

3. On 28th September 1932, Sat Narain Prasad and his nephew Radhika Prasad and other members of the family executed an agreement by which they appointed an arbitrator for partitioning the family property and for making provision for the debts incurred by Sat Narain Prasad which were binding on the family. On 10th October 1932, the arbitrator gave an award by which he divided the family property into several lots, one being allotted to Radhika Prasad. One lot was allotted to Mt. Rajeshwari Bibi, the mother of Radhika Prasad, one lot was allotted to Mt. Shyama, widow of Govind Prasad this lot being given to her in lieu of her maintenance and one lot was allotted to the sons of Sat Narain Prasad and one separate lot to Sat Narain Prasad. By a decree dated 21st April 1933, this award was made a rule of the Court in a suit between Radhika Prasad on one side and Sat Narain Prasad and his sons on the other side. In the partition mentioned above some provision was made for the payment of some of the debts of Sat Narain Prasad. With regard to other debts, it was stated in the award that they were improper debts and were not binding on the family property and no provision was made for the payment of the hundi executed by Sat Narain Prasad in favour of the firm Lachmi Narain Babu Lal. There being a default in payment of the hundi on the part of Sat Narain Prasad and after making a demand for payment the firm Lachmi Narain Babu Lal which is now represented by Babu Lal and his two sons raised an action in the Court of the civil Judge of Allahabad for recovery of a sum of Rs. 7700 being the principal sum and interest due on the hundi against Sat Narain Prasad and his five sons, his nephew Radhika Prasad, and the two ladies of the family Mt. Rajeshwari Bibi and Mt. Shyama. The plaintiffs' claim shortly stated was that the money borrowed on the hundi of 6th December 1930, was borrowed by Sat Narain Prasad as a manager of the joint family for legal necessity and the entire family property irrespective of the partition of 1932 was answerable to the plaintiffs' claim. The suit was contested on separate defences by Sat Narain Prasad's sons, by Radhika Prasad and by the two ladies of the family, Mt. Rajeshwari Bibi and Mt. Shyama Bibi and a number of defences were raised by them. The trial Judge found that legal necessity for borrowing money on hundi was not proved but that

out of the amount borrowed a sum of Rs. 3000 was spent for the benefit of the family. He further found that the male members of the family and the family property in their hands were liable to the extent of Rs. 3000 and with regard to the balance of the claim defendant 1 alone was liable. He further found that the property in possession of the ladies was in lieu of maintenance and that the property in their possession can only be sold if necessary subject to their right of maintenance and possession. In the end he passed a decree in the following words:

The suit is decreed with costs ex parte against Sat Narain Prasad, defendant 1. In the decretal amount the liability of defendants 2 to 6 will be only for Rs. 3000 and that too to the extent of the property in their hands which they got on partition. Defendants 2 to 6 will get half their costs from the plaintiffs.

4. The nephew Radhika Prasad was defendant 7 in the suit and the ladies Mt. Rajeshwari Bibi and Mt. Shyama Bibi were defendants 8 and 9. The claim of the plaintiffs as set out in the plaint included a claim for pendente lite and future interest also. The trial Judge had found that for a sum of Rs. 3000 all the male defendants and the property in their hands was liable. Therefore on this finding there should have been a decree against defendant 7 also. The trial Judge has further found that subject to the right of maintenance of the ladies defendants 8 and 9 the property in their possession could also be sold. Therefore, in the decree which the learned Judge had passed, there should have been a provision for this sale also. The suit was not contested by Sat Narain Prasad who was defendant 1 and an ex parte decree was passed against him. The decree is silent as to whether pendente lite and future interest was allowed or not by the trial Judge and if so at what rate. These are some obvious omissions and errors in the decree passed by the trial Judge which will have to be considered at a later stage.

5. The defendants have submitted to the decree but the plaintiffs have made an appeal to this Court and in the appeal two main questions arise for our consideration. The first question is whether the loan of Rs. 6000 which was made on 6th December 1930, whole or in part was justified by legal necessity or had enured for family benefit and secondly, if the debt, whole or in part was binding on the family property, is the property in possession of the ladies in lieu of maintenance answerable to the claim or not? It is not disputed that if the whole or a portion of the debt is held binding upon the family and the family property, then, in spite of the partition of 1932, the property in possession of the nephew Radhika Prasad defendant 7 would be liable. It is also not disputed that whether the debt was justified by legal necessity or not in any event the sons of Sat Narain Prasad, defendants 2 to 6, to the extent of the family property are liable to the plaintiffs' claim and it is also not disputed that in the decree the provision should be made for pendente lite and future interest.

6. On 6th December 1930, Sat Narain Prasad executed a hundi for Rs. 6000 payable in 211 days at 1-4-0 per cent, interest. The hundi was executed in his personal capacity and not as a manager of the joint Hindu family. Sat Narain

Prasad's family was not a trading family and it was not a trade debt. At the time of the execution of the hundi the family was possessed of considerable zamindari property which was assessed to a revenue of over Rs. 15,000. The interest charged on the hundi having regard to the status of the family and the property in its possession was unusually high. Two days later the amount of this hundi was paid by the creditor in five currency notes of Rs. 1000 and one currency note of Rs. 500. On the date that this hundi was executed no sum was due to the Government for revenue of the family property. The revenue of the family property fell due nine days later on 15th December 1930 and it was payable up to 31st March 1931 and in the ordinary course it should have been paid out of collections between 15th December 1930 and 31st March 1931. In March 1931 a sum of about Rs. 7490 odd in all was deposited by Sat Narain Prasad in the Government treasury for revenue and on 21st March 1931 Sat Narain Prasad deposited a sum of Rs. 5689 odd in payment of Government revenue. This sum of Rs. 5000 odd included Rs. 3000 in currency notes of Rs. 1000 each which Sat Narain Prasad had received from the plaintiffs' firm Lachmi Narain Babu Lal on 8th December 1930. It will thus appear that on 6th December 1930, when the hundi was executed or on 8th December 1930, when the money was received by Sat Narain Prasad no revenue was due from the family property. Out of the sum of Rs. 5500 which Sat Narain Prasad received from the plaintiffs Rs. 2500 was spent by Sat Narain Prasad for purposes unknown and Sat Narain Prasad when he paid the revenue in March 1931 found Rs. 4000 odd from unknown sources and he utilized Rs. 3000 received from the plaintiffs in payment of Government revenue. In support of the case of legal necessity or family benefit, the only evidence on plaintiffs' side is the statement of Babu Lal, plaintiff 1. He stated as follows:

The loan on the first hundi was taken for payment of land revenue due.... Sat Narain Prasad told me the loan was required for payment of land revenue.... I did not enquire whether land revenue was in fact due from Sat Narain Prasad. I accepted his words.... A few days before the suit I enquired from Radha Raman and learnt that the money was paid towards malguzari.

7. This is the entire evidence in proof of necessity for raising the loan. It is not admitted that no loan was due in fact on the date when the money was borrowed. It is conceded that no enquiry whatever was made about the necessity of the loan. It is not disputed that Government revenue ordinarily is paid out of the collections which are made in the course of the year. Beyond the plaintiffs' assertion there is no evidence to show that the money was borrowed on a representation that it was required for payment of Government revenue. Even when there are clear recitals in a document of legal necessity a creditor is expected to corroborate them in Court by some independent evidence against the members of the family if he wishes to make them liable. It is an improbable story that any zamindar should borrow money in advance for payment of Government revenue long before Government revenue has become due and when the time for collection has not arrived out of which revenue is usually paid.

We therefore think that the trial Judge was right in coming to the conclusion that the money was not borrowed on a representation that it was required for payment of Government revenue or further that any necessity existed in fact on 8th December 1930, for borrowing the money and that the plaintiffs made no enquiries whatever with regard to the existence of necessity. The law relating to burden of proof where the creditor wants to charge the joint Hindu family with its manager's debt is well settled and is succinctly stated in Mulla's Hindu Law, Edn. 9 at p. 269 as follows:

Where money has been borrowed by the manager on the representation that it is required for a family purpose, or for family business and the lender seeks to render the whole family property including the shares of other members of the family liable for the debt, he is not entitled to a decree against the whole family property, unless he shows that there was a necessity for the loan, or that he made reasonable enquiry as to the necessity for the loan and that the facts represented to him were such as, if true, would have justified the loan or that it is for the benefit of the family.

8. In a Calcutta case, *Rameshwar Mandol v. Provabati Debi* ("15) 2 AIR 1915 Cal. 141, Sir Ashutosh Mukerji in dealing with a case of an alienation by a Hindu widow has stated the law in the following words:

Consequently, a person who claims title under an alienation from her must prove that there was legal necessity for it, that is such pressure on the estate at the time that loan was taken or the alienation made as justified the act of the widow. He can also protect himself by proof of bona fide enquiry and if the fact of such enquiry is established the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his title. In the case before us there is no proof of bona fide enquiry by the creditor, and further reference need not consequently be made to this possible aspect of the matter.

9. The question then reduces to this:

Was there legal necessity for the loan? The mere fact that the loan was taken to pay rent and the money raised was applied for that purpose, is clearly not sufficient. It may be conceded that the extreme view taken in *Matiullah v. Radhabinode* (56) Beng. S.D.S. 596 and *Radhamohan v. Girdhari Lal* (1857) Beng. S.D.A. 460, namely, that the creditor must not only show that the money was borrowed or required for a necessary purpose, but also that the necessity was attributable to causes beyond the control of the widow, is unsound and cannot be supported on principle; for, as their Lordships of the Judicial Committee pointed out in *Hunooman Persaud Panday v. Mt. Babooee munraj Koonweree* (1854) 6 M.I.A. 393 the creditor is not affected by any precedent mismanagement of the estate provided that he has not been a party to the conduct which has produced the danger he helps to avert by his loan. On the other hand, the opposite extreme view that the creditor is protected if the money raised has been applied for the benefit of the estate is equally untenable. The

true rule is that the creditor to protect himself-where he is not shown to have made a bona fide enquiry-must prove that there was an actual pressure on the estate, such as an outstanding decree or an impending sale which the widow had no funds capable of meeting.

10. In a loan given to a Hindu widow and in a loan given to a Hindu manager circumstances and facts may differ in two cases and presumptions of fact may arise in favour of a manager which may be wanting in the case of a Hindu widow, but generally speaking the creditor who wants to charge a Hindu family with a debt incurred by a manager has to prove legal necessity or family benefit with regard to the loan in fact or he has to prove bona fide and reasonable enquiry as to the existence of legal necessity or family benefit, one or the other. In the case before us it is a matter of admission that no enquiry whatever was made by the creditor at the time of the loan and it is now conceded that on the date when the loan was advanced no necessity existed in fact, nor any family benefit resulted from the loan on the date when it was advanced. But Mr. Pathak contends that as three months after the loan was made a sum of Rs. 3000 out of the sum lent was utilized by the manager for the payment of Government revenue a benefit resulted to the family and the plaintiff is entitled to recover the sum of Rs. 3000 from the entire family property on the principle that the family has received benefit to that extent and the family cannot retain the benefit and repudiate the burden, Mr. Pathak's contention, shortly stated, is that the payment of Government revenue is a legitimate family purpose and indeed it is one of the heads of legal necessity recognized by Hindu law for which a manager can borrow money. When therefore Rs. 3000 out of the plaintiffs' money was utilized by the manager in payment of Government revenue due to the family the family was saved the necessity of paying Government revenue from its own funds and to the extent of Rs. 3000 the family was benefited and in support of his contention Mr. Pathak relies upon certain cases of this Court, viz : Indar Kuar v. Lalta Prasad Singh ('82) 4 All. 532 at p. 543, Bhagwan Das Naik and Others Vs. Mahadeo Prasad Pal and Others, Jado Singh v. Nathu Singh ('26) 13 AIR 1926 All. 51, Sohan Lal and Others Vs. Atal Nath and Sohan Lal and Others Vs. Zorawar Singh and Others .

11. It may be that in certain transactions under Hindu law, e.g., transfers made by a Hindu manager or by a Hindu widow or money borrowed by a Hindu manager or by a Hindu widow, the English equitable doctrine has been applied that he who takes the benefit of a transaction cannot repudiate its burden. Two of the cases relied on by Mr. Pathak, Indar Kuar v. Lalta Prasad Singh ('82) 4 All. 532 and Bhagwan Das Naik and Others Vs. Mahadeo Prasad Pal and Others, were cases in which money was raised by the widow or the manager for financing some litigation which in the end did or did not bring some property to the widow or to the family and three other cases relied on by him were cases in which out of the money raised some property was purchased and retained by the family. In such cases the equitable doctrine might well be applied that the family while retaining the property which has been acquired and added to the family property

cannot repudiate the burden as a result of which the family property has been acquired. But this doctrine and the cases relied on by Mr. Pathak lend no support to his broad contention that whenever money is borrowed by a manager and subsequently utilized by him for some purpose of the family a benefit results to the family irrespective of the fact whether any necessity existed for the loan or not.

12. In our opinion, whether money borrowed by a manager in any particular case was for legal necessity or for family benefit is a question of fact in each case to be decided on the facts of that case and the burden of proof in each case is upon the creditor to satisfy the Court that the money advanced by him was in fact borrowed for legal necessity or for family benefit. It is not sufficient for the creditor simply to show that the money borrowed was spent for a family purpose which ordinarily is met by family income. He will have further to show that circumstances existed at the time which justified the borrowing. It is no doubt true that payment of Government revenue is a legitimate family purpose but ordinarily the family Government revenue is paid out of the family income and the manager is not justified to borrow money to pay Government revenue unless circumstances exist which justify the borrowing. A loan incurred by the manager for the payment of Government revenue when justifying reasons do not exist for borrowing cannot be regarded as benefit to the family. Indeed in circumstances like those of borrowing money for payment of Government revenue far from conferring a benefit on the family might be regarded as imposing an obligation which is wholly unauthorized. We are therefore of opinion that the question of family benefit cannot be decided as an abstract proposition of law on the basis that the family revenue was in fact paid from the borrowed money, but there must be evidence available to show that circumstances existed which necessitated the borrowing and the burden of proving these circumstances is upon the creditor. No evidence has been led in the case before us to show as to why the revenue was not paid out of the collections and as to whether there was any necessity whatever to borrow Rs. 3000 in March 1931 when the plaintiffs' money was deposited in Government treasury. In our opinion therefore the plaintiffs have failed to prove legal necessity or family benefit for the entire sum of the loan or for any portion of it and this finding disposes of the claim of the plaintiffs against the nephew Badhika Prasad, defendant 7, and against the two ladies of the family, Mt. Rajeshwari Bibi and Mt. Shyama Bibi, defendants 8 and 9, and as against them the appeal as well as the suit is dismissed with one set of costs throughout. But the plaintiffs are entitled to a decree for Rs. 7700 with pendente lite and future interest at the usual Court rate and costs throughout against defendants 1 to 6; the liability of defendants 2 to 6 however is not personal and is limited to the family property in their possession. In the result in modification of the decree of the trial Court we grant the plaintiffs a decree in the above terms.