

(1937) 09 AHC CK 0002
In the Allahabad High Court

Lala Chatar Sen

APPELLANT

Vs

Raja Ram and Others

RESPONDENT

Date of Decision : 08-09-1937

Acts Referred:

Citation : (1937) 09 AHC CK 0002

Hon'ble Judges : Allsop, J

Bench : Single Bench

Judgement

Allsop, J.—On 25th August 1921 one Mutaoadi Lal executed a deed of simple mortgage in favour of the appellant Lala Chatar Sen. On 28th January 1926 Mutasaddi and Thakur, a member of his family, executed a usufructuary mortgage in favour of the defendants-respondents 2 and 3 who are fathers of the plaintiffs-respondents. One of the terms of this deed of usufructuary mortgage was that the mortgagees should pay a sum of Rs. 1,580 to Lala Chatar Sen in order to redeem the simple mortgage of 25th August 1921. On 17th September 1927 defendants-respondents 2 and 3 executed a simple mortgage in favour of L. Chatar Sen for a sum of Rs. 1,390 in order to fulfil their obligation to pay the debt due to him from Mutasaddi. A suit was instituted on the basis of this last mortgage of 17th September 1927 and a decree was passed. The suit which has given rise to the present appeal was instituted by the plaintiffs in order to obtain a declaration that the mortgage executed by their fathers, defendants 2 and 3, was not binding upon them. The trial Court dismissed the suit. In first appeal the learned First Subordinate Judge of Meerut decided that the suit should succeed and passed a decree accordingly. His reason was that the liability of defendants respondents 2 and 3 to pay the amount due from Mutasaddi to Chatar Sen on the mortgage of 25th August 1921 did not constitute an antecedent debt in payment of which these defendants-respondents were entitled to alienate the joint family property belonging to them and the plaintiffs. The question at issue before us is whether this liability did amount to an antecedent debt which would entitle a father to alienate joint family property in payment of it. The learned Judge of the lower Appellate Court was influenced by his opinion that the liability

to pay the amount due from Mutasaddi to Chatar Sen incurred by defendants, respondents 2 and 3 was not a liability which could be specifically enforced. His point was that the most that could be claimed against defendants 2 and 3 on the basis of the usufructuary mortgage in their favour was that they should pay damages for any loss incurred by their failure to pay the amount due from Mutasaddi to Chatar Sen. As the amount was not ascertained, the learned Judge thought that this was merely a liability to pay unliquidated damages and therefore it could not be a debt in the proper sense of the term.

2. It has been argued before us that a suit could have been instituted against defendants-respondents 2 and 3 for the recovery of the specific amount, because the mortgage in their favour was a usufructuary mortgage and because they were in possession of the property. Reliance was placed upon the case in *Sheopati Singh and Others Vs. Jagdeo Singh and Another*. In that case it was held by a Bench of this Court that a usufructuary mortgagee could be sued for part of the consideration which he had failed to pay to the mortgagor since he was in possession of the mortgaged property. In a later case, *Khunni Lal v. Bankey Lal A.I.R (1934) All. 470* Some doubt was cast upon the authority of the earlier ruling, but the principle of that ruling was again affirmed in *Tikam Singh Vs. Bhola Nath and Another* In the view which we take of the case before us, it is not necessary for us to consider whether we are prepared to follow the two rulings in *Sheopati Singh and Others Vs. Jagdeo Singh and Another* and *Tikam Singh Vs. Bhola Nath and Another* or whether we are inclined to agree with the observations in *Khunni Lal v. Bankey Lal A.I.R (1934) All. 470*. We have come to the conclusion that it does not affect the issue whether the liability of defendants respondents 2 and 3 to pay the sum due from Mutasaddi to Chatar Sen was or was not a liability which could be specifically enforced, that is, whether the claim against defendants 2 and 3 would be a claim for the recovery of the specific sum of money or a claim for the recovery of unliquidated amount by way of damages.

3. We have been referred to the original authorities upon which the proposition is based that a son is liable to pay the antecedent debts of his father. The question is whether the term "antecedent debt" should be considered in the narrow and technical sense in which the term "debt" is now used, or whether it should include a wider class of liabilities. On behalf of the respondents, reliance is placed upon the text of Brihaspati as translated by Max Muller in Vol. 33 of the Sacred Books of the East at p. 319. It is pointed out that the question of a son's liability to pay the antecedent debts of his father is part of a discussion on "The law of debts." It is urged that the discussion of the subject begins with a statement on the precautions which should be taken by a creditor when he is proceeding to lend money. The original word which has been translated as loan is the Sanskrit word "rin." This word is used in the beginning of" the discussion where it is said that a creditor should not advance money without taking certain precautions. It is therefore urged that the word "rin," where it is used in the farther part of the discussion about the liability of the son to pay a debt, should also mean merely a liability incurred for the payment of a debt in the strict sense of the word. We do

not think that there is much force in this argument, because, if we carry it to its logical conclusion, the liability of a son to pay the antecedent debts of his father would not extend to any liability incurred otherwise than by the advancing of a sum in cash to the father. We cannot believe that this was the intention of the author of the text. We cannot believe, for instance, that a son would not be liable to pay the unpaid price of a commodity which had been bought by his father or to pay rent due by his father as a tenant. We think that the obvious meaning is that a son is bound to pay any sum which is lawfully due from the father, provided that the father's liability is not in any way tainted with immorality.

4. The question then is whether a son must satisfy the liability of the father for the payment of a sum of money in the circumstances of the case before us. A good deal of the argument on behalf of the respondents, that is the argument which was accepted by the learned Judge of the Court below, is based upon the meaning assigned to terms at the present day. We do not think that the original text can be interpreted in the light of these special meanings. It has been urged on behalf of the respondents that there could be no specific decree against the father for the payment of this particular sum; but it cannot be doubted that the father had undertaken the obligation to pay off the debt due from Mutasaddi Lal to the appellant. It may be that this obligation could not be specifically enforced; but the inference sought to be drawn from this, that the obligation itself was destroyed, is we think unjustified. There is no doubt that the obligation to pay the sum of money existed. Defendants-respondents 2 and 3 had taken possession of the property and had made a promise to pay the money. They had an obligation to pay that sum, and it does not matter whether the remedy of the mortgagor was for the payment of the sum by way of specific relief or was for the recovery of damages for any loss which might have been caused by the non-payment of the sum. The father had an obligation, and we have no doubt that he was perfectly justified in fulfilling it. If he fulfilled it and borrowed money in order to pay the amount, we think that the sons are bound by his agreement. The obligation to pay was antecedent to the deed of mortgage executed on 17th September 1927. For this reason, we think that the mortgage was binding upon the sons. We therefore allow the appeal and dismiss the suit with costs throughout.