

(1938) 06 CAL CK 0013
In the Calcutta High Court

Mt. Kulwanta Bewa and Others

APPELLANT

Vs

Karam Chand Soni and Others

RESPONDENT

Date of Decision : 08-06-1938

Acts Referred:

Succession Act, 1925 — Section 214

Citation : AIR 1938 Cal 714

Hon'ble Judges : R.C. Mitter, J; Biswas, J

Bench : Full Bench

Judgement

Biswas, J.—This is an appeal in a suit to enforce a mortgage. The learned Subordinate Judge of Darjeeling who heard the suit made a preliminary decree for a sum of Rs. 53,275 with interest and costs, and defendants 1 to 3 who represent the interest of the mortgagors have preferred this appeal.

2. The mortgage which is Ex. 1 in the case (Part II of the paper book, p. 27) is dated 16th January 1922, and was for a sum of Rupees 16,000 carrying compound interest at the rate of 12 per cent. per annum. It was executed by the widow and two sons of one Perganram, a Hindu resident of Darjeeling governed by the Mitakshara School of Hindu law, who had died intestate on or about 8th January 1897. The widow, Mt. Kulwant Bewa, is defendant 1 in the suit, and defendant 2 is the younger son, Ramdas Prasad Kanoo, while the other son, Ramchatti Ram Kanoo, having died, his son Rambiswas Prasad Kanoo has been made defendant 3. The subject-matter of the mortgage was a valuable leasehold in Darjeeling comprising lands and houses known as Master Hall's Location held on a 99 years" lease under Government commencing from 1862, which Perganram had acquired by purchase in 1886 by a conveyance Ex. C (Part II, p. I). The mortgage was taken in the name of a lady, Sm. Durgabati, who was the wife of one Lala Karam Chand Soni, plaintiff 1 in the suit. She died shortly after the mortgage on 22nd May 1922, leaving three sons as her heirs, and they have been made co-plaintiffs (plaintiffs 2 to 4). Defendants 4 and 5 in the suit are two alleged subsequent mortgagees. Two substantial grounds have been urged on

behalf of the appellants : first, that the suit is not maintainable, and secondly, that the mortgage is not valid and enforceable, and in any case is not binding on defendant 3, Rambiswas. A point was also made regarding the calculation of interest but it was not pressed.

3. The first point arises in this way. It is said that plaintiffs 2 to 4 as sons and heirs of their mother Sm. Durgabati, the mortgagee named in the deed, not having taken out letters of administration or a succession certificate, Section 214, Succession Act, 1925, is a bar to their recovering a decree. The plaintiffs met this objection in anticipation in their plaint by making the definite case that the real mortgagee was Lala Karam Chand, plaintiff 1, and Sm. Durga-bati was a mere benamidar; the sons were joined as plaintiffs merely to avoid any possible objections. The learned Subordinate Judge has found in favour of the plaintiffs on the question of benami, and it is conceded that if this finding stands, it would be a complete answer to this particular objection. We have come to the conclusion that the learned Judge was right.

4. It is not disputed by the plaintiffs that the onus is on them to prove the benami. The material fact to consider in this connexion is, who advanced the money, and on this point we have no doubt that it was Lala Karam Chand. Plaintiffs' case is that the loan had been negotiated through Hiralal Mahendra, father of Sm. Durgabati and father-in-law of Karam Chand. This is admitted by Ramdas. Hiralal is an old resident of Darjeeling, and knew both the sons of Perganram. In or about October 1921 Ramchatti and Ramdas being hard pressed for payment by a firm of merchants and bankers, Lachmandas Purukchand, to whom they owed money on a mortgage and two promissory notes, sought the help of Hiralal to raise a loan for them from some other party to liquidate the dues of these creditors. Hiralal said he could approach his son-in-law for the purpose and at the instance of the said sons of Perganram as well as of their mother he did so. Karam Chand was an Executive Engineer in the U.P. at the time, and he came down from there on taking leave to inspect the property at Darjeeling which was offered for mortgage. The terms being arranged, he left; but before leaving, he opened an account with the Darjeeling branch of the Alliance Bank of India (since gone into liquidation) with a view to making the payment of the mortgage money by a cheque. He had a sum of Rs. 12,000 with him, and with this and a further sum of Rs. 4000 which he obtained as a temporary advance from Hiralal, he opened the account. Karam Chand afterwards sent to Hiralal from the U. P. a cheque for Rupees 16,000 drawn on this account, which Hiralal according to his instructions handed over to Ramdas on the execution of the mortgage, Ramdas being the person who executed the document on behalf of all the parties. Ramdas in his turn endorsed the cheque in favour of Lachmandas Purukchand and handed it over to their agent and head gomasta, Kasari Chand Oswal, in full satisfaction of their dues. Hiralal and Kesari Chand have been both examined on behalf of the plaintiffs, and fully support the story. The learned Subordinate Judge accepted their evidence, and so do we.

5. The comment which the appellants make is that neither the cheque nor the Bank account of Karam Chand has been produced, and it is further pointed out that Kesari Chand does not expressly state that the cheque had been drawn by Karam Chand. We do not think however that on the evidence on record the plaintiffs' case suffers on this account. That payment was made by a cheque admits of no doubt; this is shown by the endorsement of satisfaction on the mortgage of Lachmandas Purukchand which was made by Kesari Chand on receipt of payment, and which we had an interpreter of this Court to translate for us. Hiralal's evidence is that Durgabati had no banking account, and nothing is shown to the contrary by the defendants. It is fair to conclude therefore that the cheque by which payment was made was a cheque drawn by Karam Chand on his own account in the Alliance Bank. There was no suggestion to Hiralal in cross-examination that Karam Chand opened the account or drew the cheque on behalf of his wife. In fact, as the learned Subordinate Judge points out, it was not put to the witness at all that the money had been advanced by Sm. Durgabati or that she had money of her own. Ramdas made the case in his evidence that Hiralal paid him Rs. 10,000 in one G. C. Note and the balance in notes of smaller denominations, but there is nothing to support it except his bare statement, which the learned Subordinate Judge refused, and rightly refused, to accept. It is worthy of note that this case was not put to Hiralal on behalf of Ramdas, but only on behalf of Mt. Kulwant Bewa, though on her own case she knew nothing about the mortgage.

6. In support of their case that Sm. Durgabati was the real creditor, the appellants rely mainly on the recital in the mortgage deed itself, but if the transaction was benami, the recital could not be otherwise. The appellants refer also to clause 15-A of Ex. N (Part II, pages 22, 25) a registered power of attorney executed by Ramchatti in favour of his brother Ramdas on 23rd November 1921, by virtue of which Ramdas executed the mortgage on behalf of Ramchatti, the latter being physically incapable at the time of moving about. The words in this clause are:

Provided however the said attorney is hereby given full power to raise money by mortgaging: the premises to Durgabati or to anybody else.

7. It is argued that the mention of Durgabati's name shows that the loan was to be taken from her and not from her husband. But if the mortgage was to be a benami transaction, the power of attorney would obviously refer to the proposed deed by the name of the benamidar, and the mention of Durgabati's name is therefore wholly inconclusive. But the words which follow, "or to any body else", almost clinch the matter, showing quite plainly that the mortgage was to be benami, only that the name of the benamidar had not yet been finally settled. Some reliance was also placed by the appellants on a letter of 5th July 1922 written by Karam Chand from Cawnpore to the appellants' vakil at Darjeeling, Mr. N. Sen (Ex. E, Part II, p. 38). This was an intimation of Durgabati's death and was in these words:

I beg to inform you that Srimati Durgabati died on 22nd May 1922, In future you may deposit the interest in my banking account, as I am her legal heir.

8. It is on the last few words, "I am her legal heir", that stress is laid, as implying an admission on the part of Karam Chand that Sm. Durgabati was the real mortgagee. But it seems to us that the letter was no more than an assurance to the mortgagors that they might go on paying interest to Karam Chand without any risk. Ramdas had in fact already made the first payment of interest on 19th May 1922 to Karam Chand through his account in the Alliance Bank. The position was in fact more fully explained by Karam Chand in another letter which he wrote to Mr. N. Sen on 27th July 1922 (Ex. A, Part II, p. 39). In this letter Karam Chand further made it clear that his wife was merely his benamidar, and also drew attention to the fact that the mortgagors had themselves paid the first instalment of interest into his account in the Bank. We do not think therefore that Karam Chand's correspondence on which the appellants rely affords them any assistance. It is not necessary to refer to the evidence on this point in further detail, beyond pointing out that further payments of interest after Durgabati's death were actually made to Karam Chand direct by insured post or through his account in the Alliance Bank at Darjeeling : see Ex. 1, Part II, page 43. We hold accordingly that Karam Chand was the real mortgagee, and he being plaintiff 1 in the suit, the suit is maintainable at his instance. The first objection taken by the appellants therefore fails.

9. We might notice another answer which was given by the learned Subordinate Judge to this objection, and it was that a mortgage was not a "debt" within the meaning of Section 214, Succession Act, and that the bar of this Section did not consequently apply. In view of our finding on the question of benami, it is not necessary to press this point, and it is sufficient to state that there is ample authority in this Court in support of the view expressed by the learned Subordinate Judge, though the Allahabad High Court appears to have struck a different note. See for instance the cases in Roghu Nath v. Poresch Nath (1888) 15 Cal 54 Kanchan Modi v. Baij Nath Singh (1892) 19 Cal 336 Baid Nath Das v. Shamanand Das (1895) 22 Cal 143, Mahomed Yusuf v. Abdur Rahim Bepari (1899) 26 Cal 839 and Umash Chandra Pramanik v. Mathura Mohan Halder (1901) 28 Cal 246. The present suit is one to enforce a mortgage security, and not for a mere personal decree against the mortgagors, and will not therefore be affected by decisions like Abdul Sattar v. Satya Bhusan Das (1908) 35 Cal 767.

10. As regards the next objection raised on behalf of the appellants which assails the validity of the mortgage, the argument may be summarised thus. Perganram was no doubt living jointly with his sons, forming a coparcenary with them, but the mortgaged premises Master's Hall Location was his self-acquired property which devolved on his sons by way of succession. It was quite proper therefore for his widow Mt. Kulwant Bewa after his death to take out, as she did, letters of administration to his estate including this property. As administratrix, she was

accordingly the only person competent to deal with the property by way of mortgage or otherwise. There was however no valid execution of the mortgage in suit by or on behalf of the lady. It is further pointed out that as administratrix she had not obtained the permission of the District Judge u/s 307, Succession Act, 1925, to execute the mortgage, and that it was consequently not valid.

11. The learned Subordinate Judge recorded a finding regarding the character of the mortgaged property which, if well founded, would really cut at the root of the appellant's objections. He held that it was the ancestral property of Perganram and passed upon his death to his sons by survivorship, the family being admittedly governed by the Mitakshara school. No letters of administration were therefore proper or necessary: Section 211 (2), Succession Act, 1925; see also *In Re: Pokurmull Augurwallah* (1896) 23 Cal 980 and *Durga Prosad Barhai Vs. Jewdhari Sing and Others*, . The grant of administration to Mt. Kulwant was accordingly wholly ineffectual and no title vested in her by virtue of the grant. The learned Subordinate Judge further held that in any case the grant was limited to the minority of the sons, and hence ceased to be operative on their attaining majority which they did before the date of the mortgage. We are unable to agree with the learned Judge on any of these points.

12. Taking the second point first, this is negated by the terms of the grant of which Ex. S (Part II, p. 10) is a certified copy and which does not contain any limitation whatever. As regards the finding that the mortgaged property was ancestral, it is rested mainly on the testimony of two witnesses P. Ws. 3 and 4, Budha Ram and Sew Saran Ram, two old shopkeepers of Darjeeling, who speak to a shop at Darjeeling owned by Perganram, which is supposed to have formed the nucleus of the joint family fund with which the property was purchased. The evidence of these witnesses is not at all convincing, and certainly falls short of establishing that the shop was joint family property. At the highest it only shows that Perganram carried on a business, but there is no presumption that a business carried on by a member of a joint family is joint family business. A member of a joint family who engages in trade can make separate acquisitions of property for his benefit, and unless it can be shown that the business grew from a nucleus of joint family property, or that the earnings were blended with joint family funds, they remain his self-acquired property. There is no evidence in this case from which it is possible to infer that the shop was joint family business. The supposed nucleus of joint family estate for the acquisition of the mortgaged property therefore fails.

13. The learned Subordinate Judge holds on the evidence of P. W. 3 that Perganram's father was living at the time of the conveyance by which the property was purchased (Ex. 0), and that it must therefore be presumed that the property was being acquired by the father. We do not think any such presumption is justified, nor are we satisfied that Perganram's father was living at that date. The conveyance was dated 17th September 1886 and it is not disputed that Perganram died on 8th January 1897. The only evidence in support

of the finding of the learned Judge is a casual statement of the said witness that Perganram died eight or nine years after his father's death, but it would not in our opinion be safe to act on such an indefinite statement made by a person who was a stranger to the family. The documentary evidence in the case furnished by the conveyance and by the grant of the letters of administration coupled with the dealings of the parties, all tells against the property being other than the self-acquired of Perganram. We must consequently proceed on this basis and hold that the grant of administration to Mt. Kulwant was proper and legitimate.

14. The question then arises whether by reason of the grant, which was made on 24th September 1897, Mt. Kulwant as administratrix was the only person competent to deal with the estate at the date of the mortgage in question, namely 16th January 1922. For unless this is established, there would hardly be any point in the appellants' objection either that the deed was not validly executed by her or on her behalf, or that she had not obtained the previous sanction of the District Judge. The fact remains that the deed was also executed by the two sons of Perganram, Ramchatti and Ramdas, and if this was valid execution and if they had power to bind the joint family property by the mortgage, it would really be immaterial whether there was any infirmity in respect of the execution by Mt. Kulwant.

15. It is not disputed that Mt. Kulwant as-administratrix or otherwise had no beneficial interest in Perganram's estate. At the date of his death, the beneficial interest was vested in the two sons as the sole surviving coparceners, but at the date of the mortgage it is said a son had been born to Ramchatti, namely Rambiswas, defendant 3 in this suit, who was then an infant. Whether the interest of Rambiswas was or could be bound by the mortgage is a question we shall have to examine later, but assuming for the present that Ramchatti and Ramdas could by their dealings bind the entire coparcenary interest, what we have now to consider is, first, whether the mortgage was validly executed by the two brothers, and secondly, whether, if otherwise competent, their right to mortgage was in any way affected by the grant of the letters of administration.

16. As to the first of these points, admittedly the document was not executed by Ramchatti personally, but the execution was by Ramdas for self and as constituted attorney of Ramchatti as well as of Mt. Kulwant. The power of attorney granted by Ramchatti to Ramdas in this behalf is Ex. N already referred to above. The validity of this power is not challenged, but the only point made is as to the scope of the authority given by it. It is said that Ramdas was merely authorized by this document to "clear off and liquidate a mortgage debt that now existed" on Master's Hall Location, being the property which was the subject-matter also of the mortgage in suit. According to the recital in the mortgage in suit, the purpose of the loan was to repay the debt which was then owing to the firm of Lachmandas Purukchand, not only on a mortgage of the said property (Ex, 2) but also on two promissory notes (Exs. 3 and 4). It is contended therefore that the power of attorney conferred no authority on Ramdas to

execute a mortgage for the purpose of satisfying the dues under these promissory notes. We do not think there is any substance in this contention. The terms of the authority must be construed reasonably, and upon a reasonable view there cannot, in our opinion, be any doubt that the object was to give authority to execute the particular document which Ramdas actually executed by virtue of it. Merely because in referring to the document, the power of attorney recited part of the consideration for the mortgage to be effected thereby, it would not be right to hold that the transaction was authorized by Ramchatti only so far as it went to satisfy the mortgage of Lachmandas Purukchand, but not the two promissory notes in their favour. It may be mentioned here that the two promissory notes, though they were executed by Ramdas alone, were executed by him signing for Ramchatti Ramdas, that is to say for the firm which admittedly belonged to both Ramchatti and Ramdas. On the first point, we must hold accordingly that the mortgage in question was validly executed by both the sons of Perganram.

17. The next question is a more difficult one, as to whether the capacity of the two sons to create the mortgage was affected by the grant of letters of administration to their mother Mt. Kulwant. We have not been referred to any authority to show that merely because an estate is in the hands of an administrator, the beneficiaries are thereby rendered incompetent to deal with their interest in the estate. Section 211, Succession Act, 1925, merely provides that the estate of a deceased person vests in his executor or administrator as such; these words "as such" are important, and show that the vesting is not of the beneficial interest in the property, but only for purposes of representation. The present case is one of intestate succession, and is not complicated by any question of the assent of the executor or administrator being necessary to complete the legatee's title (S. 332). In such a case it does not, in our opinion, admit of any doubt that the beneficial interest vests in the heir-at-law, and we are unable to find anything in the Succession Act which limits the power of disposal of the heir-at-law over such estate merely because a grant of administration has been made. Nor does the Transfer of Property Act make the interest of the heir-at-law in the estate property which may not be transferred.

18. The appellants rely strongly on Sections 220 and 273, and particularly on Section 216, Succession Act, but these are hardly of any avail. Section 220 merely deals with the point of time from which title of the administrator as such takes effect, while Section 273 only declares the conclusiveness of the grant as to the representative title of the grantee against all debtors of the deceased and all persons holding property which belong to him. As for Section 216, it enacts that after any grant of probate or letters of administration, no other than the person to whom the same may have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, until such probate or letters of administration has or have been recalled or revoked. In other words, it makes the executor or administrator the legal representative of the deceased. In fact the whole scheme of these and other provisions of the Act

is only to provide for representation of the deceased's estate for purposes of administration, and is not intended to cut down the rights of the beneficiaries. To put the matter in another way, the position is that where a grant of administration is made, the grantee is constituted the person competent and entitled to represent the persons beneficially interested in such persons. This, it may be pointed out, is recognized in Order 31, Civil P.C., in so far as it lays down that in all suits concerning property vested in an executor or administrator, it will be sufficient ordinarily to make the executor or administrator party, but it also provides that the Court may, if it thinks fit, order the beneficiaries or any of them to be made parties. The rule in fact is to make the beneficiaries parties when the estate had been fully administered : see *Clegg v. Rowland* (1867) 3 Eq 368 .

19. We do not think therefore that merely because in this case Mt. Kulwant held letters of administration to the estate of Perganram that fact by itself had the effect of taking away the power of Ramchatti and Ramdas to deal with their beneficial interest in the estate. Even supposing that as a result of the grant of administration, the administratrix as the legal representative of the deceased was the only person competent to deal with the estate, it has still to be seen for how long this power of administratrix would continue to the exclusion of the right of the beneficiaries. As already pointed out, all that Section 216, Succession Act, provides is that until the grant is recalled or revoked, no other person will have the right to act as representative of the deceased, but the right to represent the estate for the purposes specified in that Section is not the same as the right to deal with the beneficial interest in the estate. Even taking the Section as it stands, it is doubtful whether this may be regarded as lending any countenance to the proposition, once an administrator always an administrator. The moment administration is completed, the purpose of the grant will have been fulfilled, and the administrator would virtually become *functus officio*. It seems only reasonable to hold that thereupon the grant would stand revoked in effect, if not by a formal order of Court.

20. We may perhaps refer in this connexion to the line of cases in which it has been held that where administration has been fully carried out, the Court would refuse leave to the administrator to sell or mortgage u/s 90, Probate and Administration Act, (5 of 1881), corresponding to Section 307 of the present Succession Act : *In Re: Nursing Chunder Bysack* 3 CWN 685 and *Lakshmi Narain Chatterjee v. Nanda Rani Debi* (1909) 9 CLJ 116. The principle underlying the case is the same on which the Court also refuses to make a grant of administration, if there is reason to believe that the estate has been fully administered : *Lalit Chandra v. Baikuntha Nath* 14 CWN 463 and *Prosonno Kumari Debi v. Ram Chandra Singha* (1910) 17 CLJ 66. It is obvious that there must be a limit to the authority of an executor or administrator to act after administration is over: see the observations of Mitra and Brett JJ., in *Taran Singh Hazari v. Ramtaram Tewari* (1904) 31 Cal 89 quoted with approval in *Sankar Nath Mukherji v. Biddutlata Debi* AIR (1918) Cal 41.

21. As the evidence stands in this case, and particularly having regard to the long lapse of time, it may be fairly presumed, and the Court will be entitled to act on the presumption, that at the date of the mortgage, the administration of Perganram's estate was at an end and from this point of view the execution of the mortgage deed by Mt. Kulwant as administratrix was of no consequence, and that by the two sons of Perganram would therefore have full effect. Seeing that Mt. Kulwant was not the sole executant of the mortgage, it is not necessary to consider the matter from another aspect, viz. whether and how far the beneficiaries having allowed the administratrix to remain in possession, in spite of administration being over, they could be heard to say that the administratrix was not competent to deal with the estate.

22. It is perhaps worth while pointing out that the appellants do not make the case that the transaction in question was one in due course of administration. Mt. Kulwant herself in fact said in her written statement that she knew nothing about the mortgage, and she was supported in this by Ramdas in his deposition at p. 48, lines 11-14. The evidence also does not make out that the loan was raised for purposes of administration. Perganram admittedly had left no debts. He left a business, but there is nothing to show that any debts were or had to be incurred for it. In 1914 according to Ramdas the two brothers started a business in the name of Ramchatti Ramdas, which shows that the old business ceased at any rate in that year. According to the recital in the mortgage bond, Ex. 1, the purpose of the loan, as already pointed out, was to repay the dues of Lachmandas Purukchand under a previous mortgage, Ex. 2, and two promissory notes, Exs. 3 and 4. As regards the promissory notes, Ramdas's evidence is that the money borrowed thereon was spent for the personal expenses of the brothers, to buy a motor cycle for one and race ponies for the other. As for the mortgage, the bond recites that it was for the purpose of repaying some previous loans. The document in respect of one only of such previous loans is in evidence, Ex. 10 (Part II p. 18) a mortgage for Rs. 4000 dated 12th May 1910, executed by Mt. Kulwant Bewa as administratrix and her two sons, and according to the recital therein, purports to have been executed for satisfying in part an earlier mortgage for Rs. 6000 in favour of a different party dated 15th November 1909. The mortgage deed in respect of this last mentioned transaction is not in evidence, and apart from the fact that it is said to have been executed by Mt. Kulwant as administratrix, there is nothing to show for what purpose that particular loan had been raised.

23. Taking all the facts and circumstances into consideration, we hold accordingly not only that at the date of the mortgage in suit, the estate had been fully administered, but that the loan was not required for purposes of administration. In this view of the matter, it is not necessary to consider whether the alleged execution of the mortgage by Mt. Kulwant was valid or not, or whether the mortgage itself was invalid for want of sanction of the District Judge u/s 307, Succession Act. The objections taken by the appellants in this behalf consequently fail.

24. There remains to consider the question as to whether and how far the mortgage is binding on defendant 3, Rambiswas. As already pointed out, he had been born at the time of the mortgage and had acquired by his birth an interest in the mortgaged property which had devolved on his father and uncle (Ramchatti and Ramdas) from their father, but he was no party to the mortgage. The appellants in fact show from the mortgage bond itself that it did not even purport to hypothecate the interest of Rambiswas in the property: what was mortgaged was only the right, title and interest of the executants, which meant that of Ramchatti and Ramdas, Mt. Kulwant, though one of the executants, having admittedly no beneficial interest. As it is the appellants' case that the mortgage was not executed for legal necessity, they argue, relying on the principle of the Full Bench decision in *Sadabart Prasad v. Foolbash* (1869) 3 Beng LR 31 that the mortgage was wholly void. It was however conceded on their behalf, having regard to the fact that Rambiswas was the son of Ramchatti, that if it was shown that the mortgage was for the purpose of satisfying an antecedent debt of Ramchatti, not tainted with immorality, the mortgage would be binding on Rambiswas, even though he was no party to it and though the debt was a personal debt of Ramchatti: see *Brij Narain v. Mangala Prasad* AIR (1924) PC 50 and AIR 1925 264 (Privy Council). The appellants relied on the limited scope of the authority given by Ramchatti by the power of attorney, Ex. N, which he granted to Ramdas to execute the mortgage, and maintained that the mortgage debt was only in part the debt of Ramchatti, namely to the extent that it went to satisfy the prior mortgage in favour of Lachmandas Purukchand, and not the two promissory notes. In that view, it was argued that Rambiswas could be held bound, if at all, only to the extent of the dues under the said prior mortgage. We have already held how-ever that Ramdas had authority under the power of attorney to execute the mortgage on behalf of Ramchatti in its entirety, and the debts under the two promissory notes were equally the debts of both the brothers. This argument therefore fails.

25. It was next sought to be made out that the debts were immoral, but we agree with the learned Subordinate Judge and have already shown that this is not established. The only question that remains is whether the mortgage was for the purpose of discharging an antecedent debt of Ramchatti. As to this we have no hesitation in holding that it was, and the point was not seriously contested. Our conclusion therefore is that the mortgage is binding on Rambiswas as much as it was binding on Ramchatti and Ramdas. There must accordingly be a mortgage decree against Rambiswas as well as against Ramdas and Mt. Kulwant as made by the learned Subordinate Judge. So far as the puisne incumbrancers, defendants 4 and 5, are concerned, as the money due on their mortgages had not become payable at the date of the suit, the learned Subordinate Judge did not adjudicate on the amount due to them. The last contention raised on behalf of the appellants was as regards the computation of interest, but as already stated, this was not finally pressed. The result is that this appeal fails and is dismissed with costs.

R.C. Mitter, J.

26. I agree.