

**(1923) 08 PAT CK 0024**  
**In the Patna High Court**

Ramsunder Kuer and Others

APPELLANT

Vs

Satruhan Prasad Chaudhuri and Others

RESPONDENT

---

**Date of Decision :** 06-08-1923

**Acts Referred:**

**Citation :** AIR 1924 Patna 591

**Hon'ble Judges :** Dawson Miller, C.J.;Mullick, J

**Bench :** Full Bench

---

## **Judgement**

Dawson Miller, C.J.—This is an appeal from a decision of the District Judge of Darbhanga affirming a decision of the Additional Sub-Judge.

2. The appellants as the next reversionary heirs of Jaikaran Kuer after the death of his mother Makunda Kuer, instituted the suit out of which this appeal arises claiming declaration that a kobala executed by Makunda Kuer on the 12th July 19.19 in favour of the defendant No. 1 was not justified by legal necessity and that the alienation is inoperative and not binding upon the appellants.

3. The Trial Court and the lower Appellate Court dismissed the claim upon the ground that the alienation was justified by legal necessity. The plaintiffs have appealed.

4. When Makunda Kuer succeeded by inheritance to her son's estate she found herself involved in litigation in which it was necessary to defend her title to the estate against claims by the father of some of the present plaintiffs. Partition Proceedings were also started in which she was involved and there can be no doubt that there must have been a serious drain upon the income arising from the estate. She borrowed money from time to time in comparatively small sums giving bonds bearing interest. In, the in order to clear herself of debt, the interest on which was running on, Makunda Kuer sold 13 bighas of the property for a sum of Rs. 2,300 the amount of the debts then due. This is the transaction which has been challenged. The objects for which these debts had been incurred were, with one exception, admittedly objects for which the property in the hands

of Makunda Kuer might legitimately be alienated if her resources from income were insufficient for the purpose. They were, speaking generally, the marriage and gauna expenses of her daughter, litigation in connection with the property, decrees obtained against the property, Government revenue, some debts of her late husband and & small sum for her own maintenance when, owing to drought, the crops failed.

5. The only item which, has been challenged was a contribution to the expenses of the *sradh* of Gobind Bati whose husband was a near relation of the Musammafs husband and half of whose property was in her possession, whilst her obligation to contribute half the expenses was admitted by the plaintiff No. 1. The Dt. Judge found that, in such circumstances, the necessity was proved and I agree with him.

6. The main contention, however, which was urged in this appeal was that the learned District Judge had not come to any specific finding as to how much it was reasonable in the circumstances to spend upon the objects for which, the sums were borrowed, and that he has not found expressly that the expenses could not have been paid from income. In so far as the expenses for paying off decrees obtained or for Government revenue is concerned, the question of amount can hardly arise. With regard to the marriage expenses and the and the expenses of litigation and maintenance I find no suggestion in either of the judgments that these were attacked as unreasonable in amount, and on looking at the items I confess the amounts expended do not appear to have been excessive. For example, Rs. 250 were borrowed in connection with the partition suit and the District Judge says that it was not alleged that this was not necessary for such a suit. Rs. 100 were borrowed for maintenance, Rs. 200 for the *sradh* of Gobind Bati and the other items certainly do not appear to be excessive. The learned District Judge, however, dealt with the point which was urged before him that the widow had an income from the property sufficient to defray all these expenses without; borrowing. He found that she had to incur extraordinary expenses for litigation and that drought and flood further depleted her resource; and he rejected the plaintiff's evidence on this point. He then states. "Believing, therefore, the defendants' witnesses I hold that the lady was under the necessity of borrowing money from time to time for the purposes set forth above. I accordingly hold that defendant. Mo. 1 has satisfactorily proved that each item which went towards the consideration of the sale-deed was a legal necessity and as such this sale-deed is binding upon the reversioners."

7. The learned District Judge had the evidence of both sides before him, an advantage which we in second appeal do not possess. We are bound by his findings unless it be shown that he went wrong in law or that there was no evidence to support the findings. His findings in this respect, were clear and definite and it is not been shown, that there was no evidence to support them. Nor do I think it has been shown that the learned Judge misapplied the law. The appeal accordingly fails and is dismissed with costs to the respondents who have

appeared. There will be one set of costs only.

Mullick, J.

8. I agree.