

(1923) 02 AHC CK 0004
In the Allahabad High Court

Sahu Raghunath Singh and Others

APPELLANT

Vs

Seth Srinarain and Another

RESPONDENT

Date of Decision : 22-02-1923

Acts Referred:

Citation : (1923) 02 AHC CK 0004

Final Decision : Dismissed

Judgement

1. These appeals arise out of four suits based on four hundis executed in November 1914 by Harnam Singh deceased. The defendants-appellants are nephews of Harnam Singh and formed a joint family with him. It has been found by both the Courts below that the debts were incurred in connection with the marriage of one of the appellants, Sahu Raghunath Singh, and that the amount borrowed for the purpose of the marriage was not excessive in view of the status of the family. On this finding it necessarily follows, and it has been held by the Court below that the debts were incurred for legal necessity.

2. Two pleas have been urged in appeal. The first is that, inasmuch as a hundi is a negotiable instrument within the meaning of the Negotiable Instruments Act, it could not be enforced against the appellants whether it was incurred on behalf of the joint family or not. This point, as the learned Advocate for the appellants, admits, has been definitely decided against him in the recent case of Krishnanand Nath Khare Vs. Raja Ram Singh, It is sufficient for us to say that we agree entirely with the judgment in that case and that we propose to follow it.

3. The second point taken is that, because the debts were simple debts not secured on the joint family property they must be treated as personal debts of the manager and are not binding on the other members of the joint family. The learned Counsel for the appellants goes so far as to argue that even where there is a distinct finding that the debts were incurred by the manager as such and on behalf of the joint family, no liability is incurred except a personal liability on the part of the manager.

4. In Appeals Nos. 1671 and 1672, no such plea was taken in either of the Courts below, and if these had been the only two appeals before us we should have been disposed to dismiss the plea on the simple ground that the appellants were setting up a new case in second appeal, which they are not entitled to do. In the other two Appeals Nos. 294 and 295 of 1922, the point was raised and it has been expressly found by both Courts that the debts were incurred by the manager as such and on behalf of the joint family.

5. The only semblance of authority which the learned Counsel has been able to adduce for the argument he advances consists of two cases, *Dhiraj Singh v. Manga Ram* 19 A. 300 : A.W.N. (1897) 69 : 9 Ind. Dec. 196 and *Kallu v. Faiyaz Ali Khan* 30 A. 394 : 5 A.L.J. 367 : A.W.N. (1908) 173, in which, it was held, that, where a widow in possession of her husband's estate has incurred simple debts the creditors cannot after her death enforce those debts by sale of the family estate against the reversioners even though the purpose for which the debts were incurred might have been one for which the widow would have been justified in charging the property, It is suggested that the position of the "widow and the position of the manager of a joint family are identical, this is not the case. There are no doubt certain resemblances between the two and that the purposes for which they are entitled to charge the joint family property are, generally speaking, the same. The widow, however, has never to act on behalf of other co-owners. The very fact that the estate has come into her hands shows that the co-parcenary body has ceased to exist. The widow has not, , s a manager has, to incur debts and enter into all sorts of transactions in the ordinary course of administration of the estate on behalf of the co-parcenary body of which he is the head. The proposition that a manager can incur simple debts in his capacity as such and on behalf of the family never seems to have been doubted. There are a large number of cases in which it has been held that there is no presumption that any such debt was incurred by the manager on behalf of the family, and some of these cases such as *Soiru Padmanabh Rangappa v. Narayanrao* 18 B. 520 : 9 Ind. Dec 855 are cases of simple debts. It is laid down that the person who asserts that, a particular debt is binding on the family must prove it, but all these cases clearly assume that, if it is proved the members of. the joint family will be liable. The case of *Krishnanand Nath Khare Vs. Raja Ram Singh*, referred to above is also an authority on this point. The case is very similar to the one before us. In that case a hundi executed by a manager of the joint family for family purposes, was held to be binding on the entire co-parcenary body. For these reasons we reject both the pleas advanced on behalf of the appellants.

6. In Appeal No. 1672 a cross-objection is put forward by the respondents as to the rate of interest allowed, The hundi carried interest at 18 per cent per annum. The Courts below have held that, although the debt was incurred for family necessity, there was no necessity to borrow the money at such a high rate of interest. There is the authority of the Privy Council in *Nawab Nazir Begam Vs. Raghunath Singh*, that, where the rate of interest is unduly high a creditor in

order to bind the estate must prove not only the necessity for the loan but the necessity to borrow it at so extravagant a rate. The point taken by the respondents is that they paid up the interest on the original loan, so far as it was then due, in 1917. They suggest, therefore, that the interest should only be reduced from that date. This contention is, in our opinion, unsound. In so far as Harnam Singh acted without legal necessity the appellants are not bound by his acts. The appellants are the nephews and not the sons of the deceased and no question of antecedent debt arises. The appellants cannot be compelled to pay an unnecessary high rate of interest merely because during the period since the loan was incurred Harnam Singh made to the creditors a payment on account.

7. The result is that we dismiss all four appeals with costs including in this Court fees on the higher scale.

8. We also dismiss the cross-objection in Appeal No. 1672 with costs.