

**(1924) 02 AHC CK 0046**  
**In the Allahabad High Court**

Sanmukh Pande and Another

APPELLANT

Vs

Jagarnath Pande and Others and Ram Saran Pande

RESPONDENT

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**Date of Decision :** 26-02-1924

**Acts Referred:**

**Citation :** (1924) 02 AHC CK 0046

**Final Decision :** Allowed

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### **Judgement**

1. Second-Appeal No. 1 of 1922 and Second Appeal No. 2 of 1922 arise out of two independent suits Nos. 416 and 440 of 1920 respectively which were suits brought by Hindu sons to set aside a deed of sale dated the 4th September 1905 and the 28th of June 1912 in the second case. In these second appeals we are not now concerned with the mortgage-deed of the 28th of June 1912.

2. As regards the sale-deed both the Courts below have come to the conclusion that out of the consideration of Rs. 1,000 for which it was executed by the plaintiffs' father Rs. 500 were paid in order to pay off the amount due on a previous usufructuary mortgage-deed which has been held not to be an antecedent debt, and out of the balance of Rs. 500, Rs. 200 have not been proved to have been paid as recited in the deed.

3. We may say at once that the view that the amount due on the previous mortgage-deed was not a good antecedent debt cannot now be upheld in view of the opinion recently pronounced by their Lordships of the Privy Council in the case of Brij Narain Rai v. Mangla Prasad Rai 77 Ind. Cas. 689 : 21 A.L.J. 934 : 46 M.L.J. 23 : 5 P.L.T. 1 : 28 C.W.N. 253 : (1924) M.W.N. 68 : 19 L.W. 72 : 2 P.L.R. 41 : 10 O. & A.L.R 82 : AIR (1924) (P.C.) 50 : 33 M.L.T. 457 It was laid down in that case that in order to be antecedent debt the previous debt need not necessarily be a simple debt but may also be a mortgage-debt.

4. As regards the balance of the sale consideration Rs. 200 were left in the hands of the vendee to be paid to one Nand Kishore. The defendants were not liable to produce evidence which would satisfy the Courts below either that this debt was

actually due to Nand Kishore or that such a payment was made to him The finding on this point is a finding of fact which we must accept as final.

5. The result, therefore, is that so far as the sale-deed is concerned, Rs. 200 out of the total consideration of Rs. 1,000, have not been proved to have been required for any necessity or to have been an antecedent debt. In a case of this kind where the defendants have succeeded in establishing necessity or antecedent debt with respect to a part of the consideration, the difficulty often arises whether the sale-deed should or should not be upheld. It is impossible to lay down any hard and fast rule which could apply equally to every case; for every transaction, has to be considered on its own merits and the Court has to come to a finding on the merits of every case. The balance which is not proved to have been for valid necessity or antecedent debt is not so insignificant as to be ignored. Therefore, having regard to the course of rulings in this Court we have to come to the conclusion that this sale-deed should be set aside on payment by the plaintiffs of the sum of Rs. 800 which has been found to be a good consideration. We may refer to the cases reported in Gobind Singh v. Baldeo Singh 25 A. 330 : A.W.N. (1903) 57, Ram Dei Kunwar v. Abu Jafar 27 A. 494 : A.W.N. (1905) 68, Buchchan Singh v. Kamta Prasad 5 Ind. Cas. 585 : 32 A. 392 : 7 A.L.J. 337, Mannu Khan Vs. Chandi Prasad and Others,

6. We accordingly allow Second Appeal No. 1 of 1922 to this extent that we direct that if the plaintiffs pay Rs. 800 within three months of this date they would be entitled to recover possession of the property covered by the sale-deed together with costs from" the defendants. In default of payment, the suit shall stand dismissed with costs. The costs in this Court will include fees on the higher scale.

7. As to Second Appeal No. "2 of 1922, which arises out of Suit No. 440 of 1920 the finding of the lower Appellate Court is that this mortgage-deed was for a sum of nearly Rs. 700 out of which nearly Rs. 250 were paid in cash and the balance was said to have been due on five previous mortgage-deeds. So far as the payment of cash is concerned, the finding is that there is no proof of necessity whatsoever. As regards the previous mortgage-deeds which had to be paid off by the mortgage-deed in suit it is to be noted that the second mortgage-deed was not filed on the record and the 4th and the 5th mortgage-deeds, though filed, were not proved. The defendants, however, succeeded in proving the existence of the mortgage of 1902 for Rs. 99-15-9 and the mortgage in favour of Hira Pande for Rs. 49-15-6.

8. The result, therefore, is that according to the findings Rs. 149-15-3 represent that part of the consideration for the mortgage which must be upheld as being binding on the sons.

9. We accordingly modify the decrees of the Courts below to this extent that we grant the plaintiffs a declaration that the total amount which the plaintiffs are bound to pay in order to" redeem the mortgage-deed, dated the 4th of

September 1905, is Rs. 149-15-3. Having regard to the partial success of the suit we direct that the plaintiffs do recover one third of their costs throughout, including in this Court fees on the higher scale. The defendants will bear their own costs.