Privy Council Appeal No. 62 of 1921.
Allahabad Appeal No. 42 of 1919

Chet Ram and others - - - - *Appellants*

v.

Ram Singh and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 10TH APRIL, 1922.

Present at the Hearing:
LORD SHAW.
LORD PHILLIMORE.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD SHAW.]

This is an appeal from a decree, dated the 11th March, 1919, of the High Court of Judicature at Allahabad, which varied a decree dated the 31st March, 1916.

The suit was brought on the 24th July, 1915, in the Court of the Subordinate Judge of Meerut. The plaintiffs were minors and sued through their guardian, Ram Singh.

No pedigree need be given. It is sufficient to bear in mind that Amar Sing succeeded on the death of his father, Nawal Sing, to a half of Nawal's property. This half, thus ancestral family property, was, at the date of the mortgage and sale after mentioned, the joint family property of Amar, of his two sons, Bharat and Kehar, and of Ram, son of Bharat, and Mahabir and Gajraj, the two sons of Kehar. This ancestral joint undivided estate was thus owned by two sons and three grandsons. The two sons as well as the three grandsons, the plaintiffs, were all

alive at the date of the mortgage and sale after mentioned, and they are still alive. Amar, the grandfather, died in 1909.

On 23rd March, 1904, Amar executed a mortgage over this family property for Rs. 8,000. It is a fact beyond dispute that Amar, whom the Subordinate Judge finds to have been a man of extravagant habits, not leading a moral life and addicted to drink, incurred this debt for his own personal purposes. It was, with the doubtful exception of Rs. 1,000 to be presently referred to, neither incurred nor used for family purposes or necessity, nor was it an antecedent debt. It was scheduled upon the mortgage as " Received in cash at the village before registration, Rs. 1,000. Cash at the time of registration, Rs. 7,000." (As to the Rs. 1,000, the High Court has allowed it with certain interest as a good charge, and the respondents do not present any cross appeal. The item may accordingly be dismissed from further consideration.)

In short, Amar treated the property as his own and violated the well-known rule of the Mitakshara, under which, as clearly laid down in *Sahu Ram Chandra* v. *Bhup Singh*, 44 I.A. 126, joint family property " cannot be the subject of a gift, sale or mortgage by one coparcener except with the consent, express or implied, of all the other coparceners. Any deed of gift, sale or mortgage granted by one coparcener on his own account of or over the joint family property is invalid ; the estate is wholly unaffected by it, and it stands entirely free of it." This law has been, in substance, repeated again and again. It is in entire accord with the ancient texts. It was accepted law long prior to *Sahu Ram Chandra's* case—a convenient instance being Lord Watson's judgment in *Mahdo Parshad* v. *Mehrban Singh*, L.R. 17 I.A. 194 ; and it has been followed by the cases after referred to.

The exception to this rule is where the consideration for the transaction is an antecedent debt of the vendor or mortgagor. And the judgment of Sir John Stanley on this part of the law in *Chandradeo Singh* v. *Mata Prasad*, I.L.R. 31 All. 176, 196, and expressly affirmed by this Board in 44 I.A. 133, appears to this Board exactly to cover the present case.

Before passing from the mortgage, however, their Lordships desire to note that it was, by its terms, a usufructuary mortgage, and was for the period of ten years running from its date—that is, from 1907–1917. It is stipulated that, possession and occupation being given to the mortgagee—

> " The profits of the mortgaged land will be equal to the interest of the amount of mortgage until redemption of the mortgage. . . . Whenever, after the expiry of ten years, I, the executant, shall have paid the entire amount of mortgage in a lump sum to the mortgagee, I shall get the property mortgaged by me redeemed. I shall not have power to the redemption of the mortgage before the expiry of ten years."

Apparently, however, the profuse scale of the father's personal expenditure continued, and he was again willing to put,

or attempt to put, in jeopardy the joint family property. Notwithstanding the ten years' provision of the usufructuary mortgage, he (Amar Singh) within three years from its date—namely, on the 16th July, 1907—sold his equity of redemption in the property to the mortgagees for Rs. 13,500. In the specification of the consideration he "allowed credit" to the vendees for the Rs. 8,000 obtained from the mortgage, and the balance was put down "Received in cash at the time of the registration."

Beyond all question with regard to this latter sum, here was a sale in flat defiance of the law. For what is not pretended to be any family purpose or necessity, he had improperly and illegally sold the family property; and such a sale cannot stand.

This case is singularly clear because it is not affected by other considerations such as the property having been publicly sold: there are no rights of execution creditors or auction purchasers to be considered.

But an argument was submitted, supported by the judgment of the Subordinate Judge, to the effect that although by the rules of the Mitakshara law a mortgage is at its date an invalid deed in so far as purporting to encumber the joint family property, yet when it purports to become the consideration for a sale it then becomes a just and a legal consideration on the principle of "antecedent debt." The family property could not be affected by such an invalid mortgage, but it could be sold next year or next day to the mortgagee for an "antecedent" debt—namely, the mortgage debt itself! Thus by turning the "antecedent debt" simply into a debt "antecedent" to the sale, the whole doctrine of antecedent debt is reduced *ad absurdum*, the principle of the Mitakshara law is circumvented, and the rights of the junior members of a Hindu family are no longer protected but can be easily destroyed. Their Lordships cannot hold that this is in accordance with law. The views of the Board have been expressed quite recently in *Sahu Ram Chandra's* case, and in *Jogi Das*, about to be referred to.

As to the matter of the antecedency of debts, it is clear beyond question that the antecedency is antecedency to the mortgage itself. And it is more than that—it is disconnection with the mortgage in fact as well as in time. In no other way can the law of Indian joint family property protect itself against being undermined.

These sentences from *Sahu Ram Chandra's* case may be quoted as particularly applicable to the circumstances of this appeal.

"In their Lordships' opinion these expressions, which have been the subject of so much difference of legal opinion, do not give any countenance to the idea that the joint family estate can be effectively sold or charged in such a manner as to bind the issue of the father, except where the sale or charge has been made in order to discharge an obligation not only antecedently incurred, but incurred wholly apart from the ownership of the joint estate or the security afforded or supposed to be available by such joint estate. The exception being allowed, as in the state of the authorities

> it must be, it appears to their Lordships to apply, and to apply only, to the case where the father's debts have been incurred irrespective of the credit obtainable from immoveable assets which do not personally belong to him, but are joint family property. In their view of the rights of a father and his creditors, if the principle were extended further, then the exception would be made so wide as in effect to extinguish the sound and wholesome principle itself, namely, that no manager, guardian or trustee can be entitled for his own purposes to dispose of the estate which is under his charge."

The law thus laid down was followed in *Narain Prasad* v. *Surnam Singh*, 44 I.A. 163. Further, to employ the résumé made by the learned Judges of the High Court—

> "The point was again considered by their Lordships of the Privy Council in the case of *Jogi Das* v. *Ganga Ram*, XXI, Calcutta Weekly Notes, p. 957, where Lord Haldane interpreted the judgment in the case of *Sahu Ram Chandra* v. *Bhup Singh* as follows :—'In that case it was laid down in effect that joint property could not be alienated as against co-sharers by way of mortgage or otherwise, except for necessity, or for payment of an actual antecedent debt, quite distinct from the debt incurred in the mortgage itself, and that in consequence the transaction in that case could not stand, and it was added that the mere circumstance of a pious obligation does not validate the mortgage.'"

This body of law is rightly followed and applied by the High Court, and their Lordships fully approve of the judgment delivered.

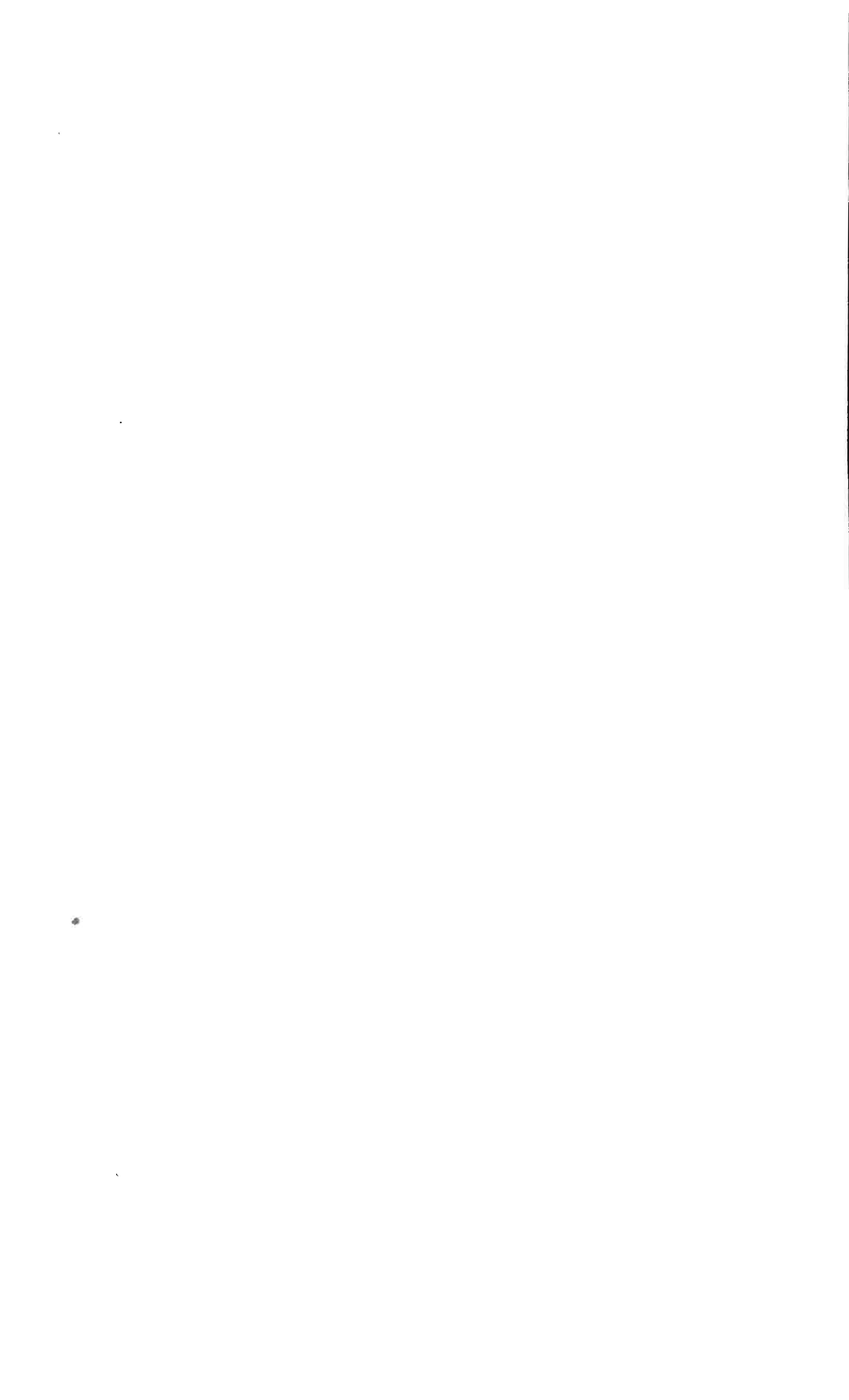
A separate and protracted argument was laid before the Board to the effect that the respondents, the grandsons of Amar Singh, are not entitled to have their property against his invalid proceedings by reason of "pious obligation." It is sufficient to say that no such doctrine can be invoked in the circumstances of the present case. In *Sahu Ram Chandra's* case a similar appeal to the "pious obligation" doctrine was made during the father's lifetime, and the point was thus dealt with :—

> "While the father, however, remains in life, the attempt to affect the sons' and grandsons' shares in the property in respect merely of their pious obligation to pay off their father's debts, and not in respect of the debt having been truly incurred for the interest of the estate itself, which they with their father jointly own, must fail ; and the simplest of all reasons may be assigned for this—namely, that before the father's death he may pay off the debt, or after his death there may be ample personal estate belonging to the father himself out of which the debt may be discharged. In short, responsibility to meet the father's debts is one thing, and the validity of a mortgage over the joint estate is quite another thing."

In the present case the doctrine is invoked against grandsons and in the lifetime of sons.

Nothing more need be said. The invocation of the doctrine entirely fails.

Their Lordships will humbly advise His Majesty that the appeal should be refused with costs.



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DELIVERED BY LORD SHAW.

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