

Privy Council Appeal No. 8 of 1931.
Allahabad Appeals Nos. 46 and 47 of 1929.

Shyam Narain Singh - - - - - *Appellant*

v.

Suraj Narain Pandey and another - - - - - *Respondents*

Same - - - - - *Appellant*

v.

Same - - - - - *Respondents*

(Consolidated Appeals)

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 18TH NOVEMBER, 1932.

Present at the Hearing :

LORD MACMILLAN.

SIR GEORGE LOWNDES.

SIR DINSHAH MULLA.

[Delivered by LORD MACMILLAN.]

Their Lordships have not found it necessary in this appeal to call upon Counsel for the respondents. Counsel for the appellant has very properly accepted the position that the burden lies upon him to establish upon the evidence that the mortgage on which this suit was founded was tainted with immorality in this sense, that it was effected for the purpose of raising money to defray debts incurred by the mortgagor for immoral purposes. The learned Judge of the Subordinate Court decided the case in favour of Mr. Subba Row's client, but in doing so he states that he does not find the evidence sufficient

to connect the particular cases of expenditure directly with the acts of immorality alleged. He adds, however, that it was said for the defence that "they have succeeded in showing that defendant No. 1 was leading a licentious life and living beyond his means and there being nothing to show that there was any business on which the loans in question could have been expended, they were entitled to the presumption that those loans must have been expended for licentious purposes and that it was not necessary for them to prove that each item was expended on an immoral purpose." It is apparently upon that unsatisfactory footing that he holds that the case has been made out. When the appeal came before the High Court, the evidence was subjected to a very close and careful analysis, and the result of this analysis was that in the opinion of that Court there had been a complete failure to establish any connection whatever between the loan in question and the alleged immorality of the borrower. Their Lordships see no reason to differ from the Judges of the High Court in the estimate which they have formed of the evidence in the case, and they consequently feel themselves to be relieved from the necessity of going over it again in detail. Counsel for the appellant brought the whole of the evidence again before their Lordships, but was quite unable to satisfy them that the Judges of the High Court had in any way done injustice to it. The burden being upon the appellant here to establish that the debts in question were contracted for immoral purposes, all that he has done, to quote the language of Lord Macnaghten in a previous case of a similar character, has been to establish a general charge of immorality, and that, as has been said more than once by this Board, is not sufficient.

The question is purely one of fact, and as their Lordships entirely agree with the High Court that the appellant has failed to prove his case, they will humbly advise His Majesty that the appeal ought to be dismissed with costs.

1871

1872

1873

In the Privy Council.

SHYAM NARAIN SINGH

v.

SURAJ NARAIN PANDEY AND ANOTHER

SAME

v.

SAME.

(Consolidated Appeals.)

DELIVERED BY LORD MACMILLAN.

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1932.