

(1880) 05 AHC CK 0005

Allahabad High Court

Case No: None

Sheozore Singh

APPELLANT

Vs

Ganraj Dubey

RESPONDENT

Date of Decision: May 13, 1880

Citation: (1880) ILR (All) 898

Hon'ble Judges: Straight, J; Pearson, J

Bench: Division Bench

Judgement

Pearson, J.

The plea which constitutes the second ground of the appeal was not taken in the Court of First Instance. There it is true Kalahal pleaded that Kishen's estate was not a separate one, but not that the mortgage made by his widow and sons was invalid because it had been made without his consent; and Ganraj pleaded that it was invalid because she was not a lawful wife and his children were illegitimate. The plea now set up is here for the first time set up, not by Kalahal, who alone might under other circumstances, i.e., if he had not by his own act incapacitated himself, have been competent to urge it, but by Ganraj, a stranger to the family, in whose mouth it does not lie,--Ballabh Das v. Sundar Das ILR All. 429. The second ground of appeal is consequently disallowed. The appeal is dismissed with costs.