

**(1920) 04 AHC CK 0038**

**Allahabad High Court**

**Case No:** None

Tulshi Ram

APPELLANT

Vs

Tula Ram and Others and Ram  
Dayal and Others

RESPONDENT

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**Date of Decision:** April 28, 1920

**Citation:** (1920) ILR (All) 559

**Hon'ble Judges:** Sulaiman, J; Pramada Charan Banerji, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

Pramada Charan Banerji and Sulaiman, JJ.

This appeal arises out of a suit for sale upon a mortgage executed on the 5th of July, 1904, by Hulas Rai, Jawahir Lal and Dori Lal, who were members of the same family. The appellants before us are the descendants of Hulas Rai, and it is contended on their behalf that the mortgage was executed without any family necessity and is therefore not binding on the joint family property which was comprised in the mortgage. The amount, secured by the mortgage was Rs. 3,000, and this amount was alleged to have been due to the mortgagee, Sohan Lal, who is now dead and is represented by his adopted son, the plaintiff, under an earlier mortgage of the 19th of June, 1891, executed by Hulas Rai and Jawahir Lal in favour of Sohan Lal for Rs. 2,000. We may mention that the present [appellants have purchased the interests of Jawahir Lal in the mortgaged property, and in the sale deed which was executed in their favour one-half of the mortgage money due to the plaintiff was left in the hands of the purchasers for payment to the mortgagee, Sohan Lal. In order to consider whether the mortgage now in suit is binding on the appellants, it is necessary to determine whether the earlier mortgage of the 19th of June, 1891, was made for family necessity or for the benefit of the family. In the mortgage deed the necessity for raising the loan is stated to be the purchasing of zamindari shares in the villages of Tajpur and Muriana. It appears that on the 19th

of September, 1891, a sale deed of the said villages was obtained in the names of the two sons of Hulas Rai from the liquidators of the Uncovenanted Service Bank. The consideration for that sale was Rs. 5,250. If that sale was for the benefit of the family and if the loan was taken on the representation that the money was required for the purpose of obtaining a sale of the aforesaid property, the debt was incurred for the benefit of the family and was binding on all the members who belonged to it. It is admitted that the two villages of Tajpur and Muriana which were purchased on the 19th of September, 1891, are still in the possession of the family, including the present appellants, and that these villages have been in their possession ever since the date of purchase. We have evidence before us which shows that this purchase was one which proved beneficial to the family. One of the purchasers was Baljit, and from his evidence it appears that the revenue assessed on the property purchased at the time of the purchase was Rs. 800 a year. Baljit further deposed that at the present time the income from the property is Rs. 1,600 or Rs. 1,700 and that the revenue has been enhanced to Rs. 900. From the fact that at the date of the purchase the revenue assessed on the property was Rs. 800 a year, it may reasonably be presumed that the income which the property yielded to its owners was at least Rs. 600, and the fact that at the present moment the profits amount to about Rs. 800 raises a strong presumption that at the date of the sale the purchase was not an unprofitable or improvident transaction but was a purchase for the benefit of the joint family. Had it not been so, it is unlikely that the family would have retained possession of this property for nearly 30 years. We may, therefore, take it as established that the purchase which was made in 1891 was a purchase which was beneficial to the family and not detrimental to its interests. We have now to consider whether the creditor, on whom the burden of course lay of showing that the loan was taken for the benefit of the family, took reasonable care to ascertain that the representations made to him were representations upon which he could reasonably and honestly have acted. As we have already stated, it is recited in the mortgage deed that the loan was taken for the purpose of purchasing zamindari shares in the villages of Tajpur and Muriana. There is the evidence of witnesses which proves that this was the representation made by Hulas Rai and Jawahir Lal to Sohan Lal at the time when the loan was taken from him. The amount of the loan, Rs. 2,000, was paid in cash at the time of registration. It appears that as a matter of fact the price for the purchase of the two villages had already been paid by the 4th of June, 1891, to the liquidators of the Unconvenanted Service Bank and therefore no purchase money had actually to be paid at the date of the mortgage in question. If, however, the mortgagors represented that they needed the money for the purposes of the purchase, and their statements were believed by the lender upon such inquiry as he could have made from the borrowers, and he honestly believed that the money was required for the purposes of a purchase, he would be entitled to realize his money from the mortgaged property which happened to be joint family property. In the Well known case of Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree (1856) 6 M.I.A. 393 their Lordships observed as follows:

Their Lordships think that the lender is bound to inquire into the necessities for the loan, and to satisfy himself as well as he can, with reference to the parties with whom he is dealing, that the manager is acting in the particular instance for the benefit of the estate. But they think that if he does so inquire and acts honestly, the real existence of an alleged sufficient and reasonably-credited necessity is not a condition precedent to the validity of his charge.

2. In the present instance the lender, Sohan Lal, made inquiries with reference to the parties with whom he was dealing, and satisfied himself as well as he could that the mortgagors, who were the managers of the joint family, were acting for the benefit of the family. The sale had not actually taken place and negotiations for it were in progress. If he was satisfied that the sale was about to take place and the borrowers represented to him that the money which they borrowed was needed for the purposes of the sale, it was not necessary for him to ascertain whether the money was actually needed for the purchase or whether the purchase money had already been paid or not. Sohan Lal is now dead and so are Hulas Rai and Jawahir Lal. It must be remembered that a number of years have elapsed since the date of the mortgage of 1891. The only person who is alive, and who along with Hulas Rai and Jawahir Lal admitted the correctness and validity of the mortgage of 1891, is the defendant Dori Lal, but he has not appeared in this case and has not offered his evidence on behalf of the defendants. The fact that the adult male members of the two branches of the family, who were apparently the managing members of the family, executed the mortgage of 1904, and admitted the validity of the mortgage of 1891 is a circumstance which tells strongly in favour of the plaintiffs. The further circumstance that when the present appellants purchased the share of Jawahir Lal they undertook to pay half the amount of the disputed mortgage to the mortgagee, on account of the share of Jawahir Lals liability under the mortgage, also tells strongly in favour of the original mortgage of 1891 being a mortgage which was entered into for the benefit of the family. In these circumstances We must hold that the mortgage of 1891 was binding on the family and that consequently the mortgage now sought to be enforced is equally binding. We dismiss the appeal with costs. We extend the time for payment of the mortgage money for six months from this date.