

Gopal Chunder Shaw Vs Sm. Jadumoney Dassee and others

Court: Calcutta High Court

Date of Decision: June 15, 1911

Judgement

Stephen, J.

In this suit the Plaintiff sues on a mortgage the Defendants being the mortgagors one of whom is a widow of the man from

whom the others derived their title, the remainder representing the sons of that man. The mortgage is in respect of the Hindu widow's estate and is

executed by the widow and her reversioners. No question arises on the fact of the execution of the mortgage which has been satisfactorily proved

before me, but it is suggested on behalf of the reversioner mortgagors that all that passes under the mortgage is the estate of the Hindu widow. In

support of this contention I am referred to Hari Kissen Bhagat v. Bajrang Sahai Singh 13 C. W. N. 544 (1909), the passage which has a bearing

on the point in question being on p. 548. That, however, is a case in which the mortgage was executed by the widow alone, and the most that can

be said was that the reversioners concurred in it. This is the case in which the widow and the reversioners joined in the mortgage. According to a

well recognised rule expressed in Joggeswar v. Bhuban I. L. R. 33 Cal. 425 (1906), it is not open for me now to investigate the mortgagor's title,

and I cannot consider that it is open to the mortgagors to deny their title. There will be enough opportunity hereafter for the mortgagors to consider

what passes under the mortgage. Present consideration of that question is premature. I therefore give judgment for the Plaintiff with costs on scale

No. 2 as against the appearing Defendants, and on scale No. 1 as against the other Defendants as between attorney and client as provided in the

deed.