Privy Council Appeal No. 31 *of* 1932.
Allahabad Appeal No. 3 *of* 1930.

Jagannath and others - - - - - - - - *Appellants*

v.

Shri Nath and others - - - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

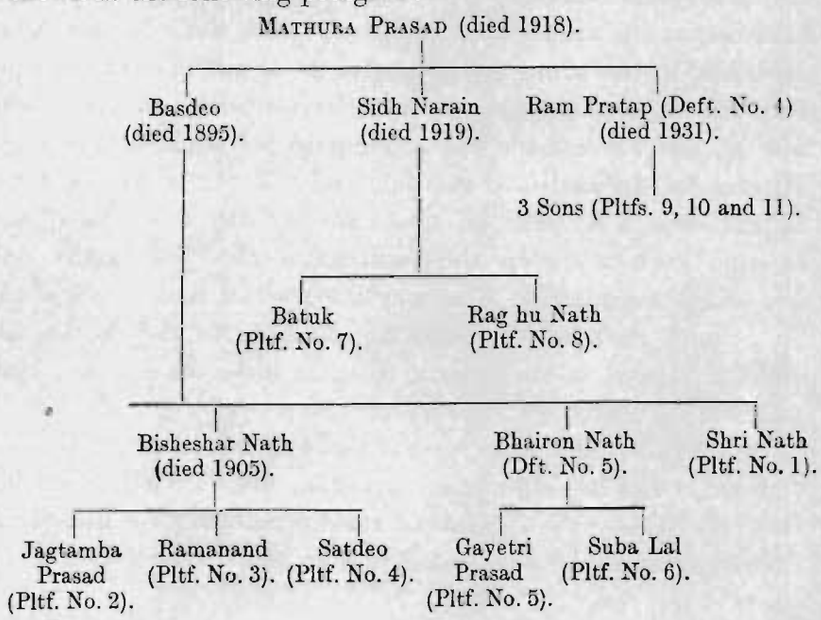
JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH DECEMBER, 1933.

Present at the Hearing:

LORD MACMILLAN.
SIR JOHN WALLIS.
SIR GEORGE LOWNDES.

[*Delivered by* SIR JOHN WALLIS.]

This is a suit of the usual character to set aside a sale of joint family property by one Mathura Prasad, from whom the plaintiffs and the fourth and fifth defendants are descended, as shown in the following pedigree :—



It was alleged in the plaint that Jagannath, the first defendant, had induced Mathura Prasad, who was blind and deaf and a very old man, to execute a sale deed in his favour on the 13th September, 1910, of *zemindari* property belonging to the joint family, and worth about Rs. 10,000, without any lawful necessity, for an inadequate consideration of Rs. 6,000, which was in great part fictitious. It was also alleged that he had cleverly induced the fourth and fifth defendants, Ram Pratap, one of Mathura's sons, and Bhairon Nath, one of his grandsons, to witness the sale deed by tempting and misleading them.

The first defendant in the written statement filed on behalf of himself and his minor sons, the second and third defendants, denied that the property was joint family property, and alleged that the sale deed had been executed by Mathura for the payment of antecedent debts and for the lawful necessities of the joint family by the advice of, and in consultation with, his son, Ram Pratap, and his grandson, Bhairon Nath, the fourth and fifth defendants. Rs. 6,000 was a fair and proper price, and none of the consideration was fictitious. The sale had not been questioned during the lifetime of Mathura, the vendor, who had survived for nine years, and the suit, which was filed on the last day before it would have become statute-barred, was barred by acquiescence. The chief reason for bringing it was that Jagtamba Prasad, the second plaintiff, had recently passed the muktarship examination and begun to carry on litigation.

None of the plaintiff's family who knew anything about the sale or the circumstances attending it were put into the box. Only three witnesses were called for the plaintiffs : of these, the first plaintiff, Sri Nath, had been living elsewhere for seven or eight years before the sale, and the second plaintiff, the aforesaid Jagtamba, was only twelve at the date of the sale. They and another witness gave evidence that the suit property was ancestral.

Jagtamba also deposed that Mathura was blind and deaf for some years before the execution of the sale deed. In cross-examination he stated that Mathura's sons, Sidh Narain, who, according to the plaint pedigree, was 38 at the date of the sale, Ram Pratap, who was 36, and his grandson, Bhairon Nath, who was 26, had never made any attempt to get back the property. He himself had instituted this suit within a year of his beginning to practise as a *mukhtar*, but could not say why Ram Pratap and Bhairon Nath, who were the eldest members of the family, had not joined as plaintiffs, as he had never asked them. Nor could he say how they were induced and tempted to witness the sale deed, as alleged in the plaint. He had inquired, but had been told it was a secret.

Their Lordships have set out this evidence because, in their opinion, it has an important bearing on the case which has not been noticed in the judgment of the High Court, which reversed the judgment of the Subordinate Judge and decreed the suit.

The sale deed (Exhibit A) set out that Rs. 900 had been paid in cash, and both Courts found that the money was obtained for necessary purposes. Adding Rs. 119 for registration expenses, there remained a balance of Rs. 4,981, which was left in deposit with the vendee to be paid to specified creditors, under six heads :—

	Rs.
(1) A mortgage dated the 4th October, 1907, executed by Mathura Prasad in favour of Suraj Pratap and others .	1,180
(2) Debts due to Suraj Pratap, his brother, Krishna Dat, and his father, Sheo Garul Ram, under unregistered bonds in respect of interest due on the above bond, item No. (1)	1,370
(3) A debt due to Prabhu Nath, Brahman, on the basis of unregistered bonds...	325
(4) A debt due to Parmeshar in respect of an unregistered bond in Hindi	950
(5) A debt due to Kedar Nath in respect of an unregistered bond in Hindi	675
(6) A debt due to Jamuna Datt in respect of unregistered bonds	481

The High Court allowed items 1 and 5 and so much of item 2 as represented interest due under the mortgage mentioned in item 1. The balance due under item 2 was said to have been borrowed in separate sums, which were included in the unregistered bond for Rs. 1,370.

As regards items 3, 4 and 5, it was also recited that they were due by the vendor under unregistered bonds, and that the vendee was to take back these bonds executed by the vendor and keep them as authority. When, however, the defendant came to pay these debts it turned out that there were no such unregistered bonds executed by the vendor for the amounts specified, but bonds or promissory notes for smaller sums, making up the totals, some of them executed by Mathura Prasad himself or by him and his son, Ram Pratap. These sums the High Court allowed, but they disallowed a sum of Rs. 2,654 vouched by bonds and promissory notes executed by Ram Prasad or Bhairon Nath, the third and fourth defendants. Two trifling sums vouched by documents executed by Bhairon's brother, Shri Nath, and Batuk may be disregarded.

In September, 1910, when the sale deed was executed, Mathura Prasad, according to the plaintiffs' own case, was an old and infirm man with a large undivided family. In the sale deed, which was witnessed by Ram Pratap and Bhairon Nath, Mathura Prasad states that he was hard pressed for money to pay the debts which he had incurred and to provide for impending household necessities, and that, as there was no other conceivable way of paying his creditors, he had resolved to sell this *zemindari* property.

There is the uncontradicted evidence of the first defendant that the sale was settled at a meeting with Mathura Prasad, in

which third and fourth defendants took part. This was only natural, as on Mathura's death, which could not be long delayed, they and their children would become entitled to nearly half of the joint family property, Ram Prasad's branch to one-third, and Bhairon's to one-ninth. There is therefore every reason to believe that they not only witnessed the sale deed, but helped to bring it about and approved of it. Mathura's own borrowings, with and without Ram Pratap, show that he was in impecunious circumstances and constantly borrowing for the necessities of his large family. As it became more difficult for him to get about, it was only natural that he should send Ram Pratap or Bhairon instead of going himself, and not very surprising that the lenders should get promissory notes from them which might afterwards be included in a registered bond executed by Mathura himself.

The first defendant says that he took care to inquire of all the creditors whether the debts were really due by Mathura Prasad, and was told that they were. The fact that he stipulated that he should see himself to the application of this part of the consideration, and get back and retain as vouchers the documents held by the creditors, shows that he was fully alive to the risks necessarily incident to a transaction such as this and anxious to provide against them. In their Lordships' opinion these facts raise at least a *prima facie* case that the sale was effected for family necessities and for the payment of antecedent debts due by Mathura and so was binding on the joint family.

In *Gauri Shankar* v. *Jirvan Singh*, 32 C.W.N. 257, Lord Shaw made the following observations :—

> "He [the Subordinate Judge] adds this pregnant remark: 'It is also to be considered that the suit has been brought long after the execution of the sale deed, when it is not easy for the vendees to adduce strong and perfectly satisfactory evidence about each item of the sale consideration.' These views of the Subordinate Judge have the approval of their Lordships."

In *Masit Ullah* v. *Damodar Prasad*, 53 I.A. 204, where the plaintiff sought to set aside a sale of joint family property by his great grandfather and his father was impleaded as a defendant and did not give evidence, though as the man who had used the largest part of the consideration money for the disbursement of ancestral debts he could have told in his evidence how the sum of Rs. 2,000 was applied, it was held, as stated in the headnote, that the suit should be dismissed, as the plaintiff was liable for his great grandfather's ancestral debts, and the father, who was in collusion with his son, had deliberately withheld his evidence, which would have shown how the rest of the consideration was applied. The present case is even stronger. Ram Pratap and Bhairon Nath, the fourth and fifth defendants, are the eldest members of the family and heads of their respective branches, which are entitled to nearly one-half of the joint family properties. They were Mathura's right-hand men and borrowed practically all the money

which has been disallowed by the High Court, and are therefore in a better position than anyone else to say whether it was applied for the necessary purposes of the family. They have allowed their children, who are all minors but one, to figure as plaintiffs and have themselves been impleaded as the fourth and fifth defendants. They have not gone into the box in support of the plaintiffs' case, in which they are so largely interested. Possibly to provide them with some sort of excuse for not doing so, they have been charged in the plaint with fraud in bringing about the execution of the sale deed which they witnessed. No evidence of any fraud on their part was given at the trial, and the second plaintiff stated he could not say wherein the fraud consisted, as he had been told it was a secret.

In these circumstances their Lordships have no hesitation in holding that this also was a collusive suit, and that the conduct of the fourth and fifth defendants affords ample corroboration of the other evidence that this sale was effected for necessary family purposes. They are therefore of opinion that the appeal should be allowed, the decree of the High Court reversed, and the decree of the Subordinate Judge restored, and they will humbly advise His Majesty accordingly. The plaintiff-respondents will pay the appellants' costs both here and in the High Court.

In the Privy Council.

JAGANNATH AND OTHERS

v.

SHRI NATH AND OTHERS.

DELIVERED BY SIR JOHN WALLIS.

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