

Privy Council Appeal No. 25 of 1935

Allahabad Appeal No. 52 of 1932

Lala Chunni Lal and another - - - - - *Appellants*

v.

Udai Prakash and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED 26TH JUNE, 1939

Present at the Hearing :

LORD ROMER

SIR GEORGE RANKIN

MR. M. R. JAYAKAR

[*Delivered by* SIR GEORGE RANKIN

The appellants on the 5th January, 1929, sued the respondents in the Court of the Subordinate Judge of Meerut to enforce their security under a mortgage bond dated 15th September, 1922, over certain property situate in mousa Shikohpur. The bond had been executed by the first respondent Udai Prakash for himself and as guardian of the second respondent Om Prakash, his minor brother, in favour of Chunni Lal, the first appellant, and Ratan Lal (now deceased) father of the second appellant. It was for Rs.6,000 with interest at 2 per cent. per mensem with half-yearly rests. Rs.200 was expressed to have been paid before registration of the bond and Rs.250 at the time of registration. The rest of the loan was made up of four items: Rs.1,200 and Rs.1,600 for interest due under prior bonds dated 4th July, 1921, and 19th February, 1920; Rs.1,350 to discharge a promissory note dated 28th June, 1922, given to one Sundar Lal, and Rs.1,400 for deposit in Court under a decree dated 3rd July, 1922, in suit No. 566 of 1919.

One Harbans Singh, a Hindu governed by the Mitakshara, had three sons, Fateh Singh, Udai Prakash and Om Prakash. Fateh, the eldest son, was of full age at all times material to be considered in the present case. Udai was born in 1901 and Om in 1904. A son, Gandharp Singh, was born to Om in or about 1924—that is after the date of the bond in suit. Harbans Singh died in 1920.

The family had valuable properties but there had been extravagance on the part of Harbans Singh, so that in 1915 it appeared that Rs.1,54,000 was owing. The District Judge of Meerut on 26th May, 1915, appointed Fateh Singh as guardian of Udai and Om, and in December of that year

he was told that Harbans Singh and Fateh Singh had sold their 5 biswas share in certain property for Rs.1,11,000 and wanted to mortgage 3 biswas out of the 5 biswas share belonging to Udai and Om for Rs.47,000. This proposal he sanctioned and later in February, 1916, he sanctioned a further mortgage on the 2 biswas that remained. By a mortgage bond of 19th February, 1920, without obtaining leave from the District Judge, Fateh Singh for himself and for Om and Udai purporting to act for himself, borrowed from the first appellant and the second appellant's father Rs.8,500 with interest at 15 per cent. per annum with half-yearly rests partly but not wholly to meet claims under previous bonds. In like manner the same parties entered into a mortgage bond dated 4th July, 1921, for Rs.4,500 at Rs.1-10-0 per cent. per mensem with half-yearly rests. Again on 28th June, 1922, Udai borrowed Rs.1,300 from one Sundar Lal upon a promissory note which recited that the loan was taken in order to finance a suit which he and Om had brought in 1919. This suit was brought to recover certain property which had been sold by their father and it ultimately succeeded in the High Court, the property being recovered conditionally on Rs.1,400 being deposited in Court for account of the defendants in that suit. This sum was provided by the appellants as a term of the bond of 15th September, 1922, now in question.

The appellants by their plaint (5th January, 1929) impleaded in addition to Fateh Singh, Udai, Om and Gandharp, five other persons as transferees of the property subsequent to the mortgage bond sued upon. One of these, Jagannath Prasad (defendant 5), was the only person to file a written statement, though a verbal defence was made by Mir Singh Mal (defendant 10). The Subordinate Judge (14th November, 1929) held that Udai was of age on 15th September, 1922, and was liable for the whole of the amount of the bond: also that he was competent on the ground of legal necessity to act for his minor brother Om but that legal necessity was only shown in respect of the sum of Rs.1,400 paid into Court and the two small items of Rs.200 and Rs.250 received in cash at the time of the bond. He reduced the rate of interest to Rs.1-10-0 with half-yearly rests.

The High Court on appeal varied this decree. The learned Judges (Mukerji and Bennet JJ.) held that Harbans Singh and Fateh Singh had in 1915 become divided in estate from Udai and Om but that Udai and Om had continued to remain joint with each other; that Udai was of age at the date of the bond in suit: that Udai was competent to bind the interest of Om for legal necessity but that the only items in respect of which legal necessity was proved were the sums of Rs.1,400 for deposit in Court and Rs.100 for costs of registration and stamp duty on the bond. They further held that as Udai was joint with Om he could only mortgage his own undivided interest to the extent to which there was legal necessity. They reduced the rate of interest to simple interest at 15 per cent. per annum.

On this appeal their Lordships have had the advantage of a detailed argument by Mr. Godfrey for the appellant-mortgagees. He contended, contrary to his clients' plaint, that Udai and Om were separate after 1915, but though the evidence is somewhat slight, their Lordships agree with the High Court that after 1915 these two continued joint in estate. Their suit to recover land which their father had sold (No. 566 of 1919) was on the footing that the family was still a joint family and though this cannot in law be correct as between them on the one hand and their father and eldest brother on the other hand, it is useful evidence as to their relationship *inter se*. No appeal has been brought by any of the defendants and their Lordships do not find it necessary to decide whether the mere fact that Fateh Singh had not been formally removed by order of the District Judge from the office of guardian to Udai or Om could be held to affect the right of Udai to effect a mortgage for legal necessity. Their Lordships agree with the High Court's findings that legal necessity is only proved in respect of the sums of Rs.1,400 and Rs.100.

Mr. Godfrey contended that no particulars were proved as to the interest of Jagannath Prasad (defendant 5) and the character of the transfer or transfers made in his favour. He argued that there was nothing to show that the doctrine of *Madan Lal v. Chiddu* (1931) I.L.R. 53 All. 21, had been properly applied to the case, as a mere voluntary transferee from Udai could not impeach Udai's alienation of his undivided interest. But Om was a party to the suit and nothing is shown to defeat his right to object to the alienation being enforced against the joint property. Moreover Jagannath Prasad was described by the appellants in their own cross-objections before the High Court as an auction purchaser. This objection cannot therefore succeed. Nor does any question of ratification by Om fall to be considered as the bond of 5th March, 1924, is not before the Board. The reduction of the rate of interest under the Usurious Loans Act, 1918, to 15 per cent. simple interest seems eminently reasonable and their Lordships do not disturb the High Court's decision in this matter.

The appeal fails and must be dismissed. Their Lordships will humbly advise His Majesty accordingly. The appellants must pay the respondents' costs of the appeal.

In the Privy Council

LALA CHUNNI LAL AND ANOTHER

v.

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DELIVERED BY SIR GEORGE RANKIN

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