

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Maheshar Bakhsh Singh v. Ratan Singh and
others, from the Court of the Judicial Com-
missioner of Oudh, Lucknow; delivered 20th
March 1896.*

Present :

LORD WATSON.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The suit in this appeal was brought upon a mortgage of a village called Sadhopur in the district of Sitapur part of the property of Thakur Munnu Singh who died childless in 1874 leaving Umrai (or Umrao) Kunwar his widow. On his death she succeeded to his estate as his heir. The mortgage is dated the 12th July 1884 and was executed by Umrai Kunwar. It states that she had borrowed Rs. 7,000 from Thakur Pertab Rudr Singh Talukdar of Rampur at an interest of 13 annas per cent. per mensem payable in three years in order to liquidate the debts due to bankers, and in lieu thereof had hypothecated the entire village Sadhopur which was in her proprietary possession and enjoyment without a co-sharer. The mortgagee Pertab Rudr Singh died on the 18th October 1885 and the Appellant—the Plaintiff in the suit—is his heir and representative. Umrai Kunwar died on the 14th February 1887 and an order for mutation of names having been made in favour

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of the Defendants—one of whom is represented by the present Respondents—as the heirs entitled on her death they entered into possession of the estate. The question in this appeal is whether the mortgage is a valid charge upon the village after the death of Umrai Kunwar against the next heirs of her husband.

The terms of it are consistent with its being such a charge, but they are also consistent with its having effect only during the widow's life. The District Judge decided this question in the Appellant's favour and made a decree that the sum due should be realized by attachment and sale of the village. This decree has been reversed by the Additional Judicial Commissioner and the suit has been dismissed.

According to Hindu law Umrai Kunwar on the death of her husband became the full owner of the estate for her life but she had not the same power of alienation as a full owner has. Her power was a limited and qualified one, to alienate against the next heirs of her husband only for certain purposes which the law authorizes, and the question to be decided is whether it has been proved that the mortgage was made for a legitimate purpose. It has been seen that in the present case the suit is brought by the heir of the mortgagee and therefore what is laid down in *Hunooman Persaud Panday v. Mussumat Babooee Munraj Koonweree* 6 Moore I. A. 419 which has been held to apply to the case of a widow and the next heir of her husband, is not directly applicable. It is that where the mortgagee with whom the transaction took place is himself setting up a "charge in his favour made by one whose "title to alienate he necessarily knew to be "limited and qualified, he may be reasonably "expected to allege and prove facts presumably "better known to him than to the infant heir,

“namely, those facts which embody the representations made to him of the alleged needs of the estate, and the motives influencing his immediate loan.” But what is said in the next page,—that if a charge “be created by substitution of a new security for an older one, where the consideration for the older one was an old precedent debt of an ancestor not previously questioned a presumption, in favour of the charge, would be reasonable”—may have to be considered with reference to some of the evidence in this case. As it only applies to part of the loan it will be noticed afterwards.

Although the suit here is not brought by the original mortgagee the affirmative of the question whether the money was borrowed for a legitimate purpose is on the Plaintiff who seeks to have the mortgage enforced and in proof of this he ought to produce sufficient evidence of the nature of the transaction. The evidence given was to the effect that when Munnu Singh died he was deeply indebted and his estate being taken into the charge of the Court of Wards claims by mahajans to the amount of Rs. 65,000 were registered. The estate was under the management of the Court of Wards for 17 months and was then given up to the widow. No evidence was produced from the Court of Wards of the value of the estate or of the incumbrances upon it, nor did it appear that any endeavour had been made to obtain such evidence. One witness said that Munnu Singh’s revenue from his estate was Rs. 6,500 and that debts which carried interest at the rate of 24 per cent. per annum were paid by borrowing money at 10 per cent. Other witnesses also spoke to this and said that the estate was improved by the widow’s management. Bhawani Singh the brother of Umrai Kunwar and said by one of the witnesses to have been her principal agent was examined for the Plaintiff. He said that

during Munnu Singh's lifetime he assisted in the management of the estate, that he was indebted in his lifetime at a guess he should say in about Rs. 65,000, the Thakurain paid off debts borrowing from Rampur (meaning Partab Rudr Singh), that by her management the estate was improved, that she borrowed at reduced interest to pay off debts carrying heavier interest, the creditors were attaching property in execution of decrees against her, and she therefore borrowed, and that the debts were incurred by the Thakur. On cross-examination he said that without looking at accounts he could not give the total of revenue, he could not state the Thakurain's monthly expenses, he could not give any idea of what should be her monthly expenses, attachment was made in his presence, he could not say for how much. Their Lordships are unable to believe that the witness could not give more precise evidence of the condition of the estate and the nature of the various loan transactions. There was no explanation of the non-production of the accounts. There was evidence of other witnesses that two or three days after the mortgage sued upon was executed mortgages to the amount of Rs. 5,000 were paid with the borrowed money. All these mortgages appear to have been made in 1883 and in the four which are in the record Umrai Kunwar is stated to have borrowed the money and brought the same to her own use. There is no evidence connecting any of these mortgages with a debt of her husband and so no ground for presuming that they were made for a legitimate purpose.

The District Judge in coming to a decision in the Appellant's favour appears from his judgment to have been influenced by the Defendants not having proved that the profits which Umrai Kunwar obtained from the estate sufficed to meet the liabilities upon it. The Defendants were not

bound to prove this. His decision about the mortgage sued upon seems to be founded on general evidence that Munnu Lal was heavily indebted at the time of his death, that he had agreed to pay heavy interest and the widow had contracted fresh loans at a lower rate of interest to pay off the old ones, the loan on this mortgage being one of them. But it is said in the judgment of the Additional Judicial Commissioner that on the hearing of the appeal it was admitted by the counsel for the then Respondent—now the Appellant—that he was unable to connect this mortgage loan of 1884 with any debt of Munnu Singh or to show the particular purpose for which it was contracted. The Appellant is not the original mortgagee but that does not exempt him from proving the nature of the transaction and their Lordships cannot infer from the facts proved that the money was borrowed for a legitimate purpose. They will therefore humbly advise Her Majesty to affirm the decree of the Judicial Commissioner and to dismiss this appeal. The Appellant will pay the costs of it.
