

Privy Council Appeal No. 101 of 1915.

Allahabad Appeal No. 40 of 1913.

**Jogi Das, since deceased (now represented by
Ram Sarup), and another** - - - *Appellants,*

v

Ganga Ram and Others - - - *Respondents,*

FROM

**THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN
PROVINCES, ALLAHABAD.**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 17TH APRIL, 1917.

Present at the Hearing :

VISCOUNT HALDANE.

LORD ATKINSON.

SIR JOHN EDGE.

MR. AMEER ALLI.

SIR WALTER PHILLIMORE, BART.

[*Delivered by VISCOUNT HALDANE.*]

THE question in this appeal is whether the appellants, who are mortgagees, are entitled to enforce their mortgage. That question depends on whether the view of Hindu law taken by the majority of the learned Judges of the Court which decided the case of *Chandradeo Singh and Others v. Mata Prasad and Others* (I.L.R., 31 All., p. 176), is right, or not.

In this case there are concurrent findings of fact that the mortgage which was made by the joint managers of a Hindu joint family was not made for any such necessity as must be found in order to justify such a mortgage, and that it was not made for an antecedent debt. It is an ordinary mortgage by the joint managers, and the only peculiarity of the case is that among the persons against whom the mortgage is sought to be enforced are some sons of certain of the mortgagors. It is said that that constituted a distinction in its favour, even if the Allahabad decision is right, because those sons were under

a pious obligation to pay their father's debts, and that this fact would validate the mortgage.

But, unfortunately for the appellants, not only upon that point, but upon the main question, the whole of this case has been disposed of by a decision given very recently by this Board in the case of *Sahu Ram Chandra and another v. Bhup Singh and others* (at present unreported). In that case it was laid down in effect that joint property could not be alienated as against co-sharers by way of mortgage, or otherwise, except for necessity, or for payment of an actual antecedent debt, quite distinct from the debt incurred in the mortgage itself, and that in consequence the transaction in that case could not stand, and it was added that the mere circumstance of a pious obligation does not validate the mortgage.

This being so, everything that has been stated to their Lordships by Mr. DeGruyther on behalf of the appellants, and he has stated the point very fairly, is disposed of, and their Lordships have only to intimate that they are precluded by their previous decision from taking any other course than that of advising His Majesty that this appeal should be dismissed with costs, and they will therefore humbly advise His Majesty accordingly.



In the Privy Council.

JOGI DAS, SINCE DECEASED (NOW
REPRESENTED BY RAM SABUP),
AND ANOTHER

vs.

GANGA RAM AND OTHERS.

DELIVERED BY VISCOUNT HALDANE.