

Privy Council Appeal No. 19 of 1915.

Allahabad Appeal No. 13 of 1913.

Lachhman Prasad, since deceased (now represented by Narain Prasad and Others) - *Appellant,*

v.

Sarnam Singh 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 26TH APRIL, 1917.

Present at the Hearing :

VISCOUNT HALDANE.

LORD ATKINSON.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* VISCOUNT HALDANE.]

In this case no difficult question of law arises, and their Lordships are prepared to intimate at once the advice which they will tender to His Majesty upon the appeal.

It is a suit with regard to a mortgage made on the 21st September, 1885, by three Hindus subject to the Mitakshara law, who joined in borrowing 1,200 rupees on the security of the property of the joint family of which they were the heads. There is nothing special in the terms of the mortgage, which do not go beyond what is stated. It is contended that although, according to the decisions of this Board, that mortgage is *prima facie* invalid, as being for neither an antecedent debt nor for any proven necessity of the joint family, it still may be held to be valid on the doctrine laid down by the High Court of Calcutta in the case of *Mahabees Persad v. Ramyad Singh* (12 B:L.R., 90). There, the head of a joint

family and his son, who was of age, united in attempting to raise money. There was a younger son, also a member of the joint family, who was not of age and who did not, and could not, concur. The mortgage was declared bad, but the learned judges who decided the case thought themselves at liberty to put a condition into the decree which in effect determined that an implied representation or undertaking given by the mortgagors that they had power to charge the joint family property, and would make good the representation by partition or otherwise, should receive effect, and accordingly they, in substance, ordered by their decree a partition of the property so that the separate shares to be obtained under the partition of the father and the son should be made payable to the mortgagees. Whether that particular case was rightly decided or not, it is not necessary to consider here, because the learned judges proceeded upon the footing that there had been the representation referred to. On looking at the facts, their Lordships agree with the observation of Mr. Parikh that there was very little, if any, evidence of such a representation, but that there was such a representation was the basis of the judgment, and, unless the learned judges had held that an equity arose out of it, their judgment would have amounted to this, that for every mortgage by the head of a joint family the property of the joint family could be made available to the extent of the interest of the mortgagor. Now, whatever may happen where there are special circumstances such as there were in the case referred to, that is not the general law. The general law is quite plainly laid down by Lord Watson in delivering the judgment of this Board in the case of *Madho Parshad v. Mehrban Singh* (17 I.A., 194), where he says, at p. 196, this:—

“ Any one of several members of a joint family is entitled to require partition of ancestral property, and his demand to that effect, if it be not complied with, can be enforced by legal process. So long as his interest is indefinite, he is not in a position to dispose of it at his own hand and for his own purposes ; but as soon as partition is made, he becomes the sole owner of his share, and has the same powers of disposal as if it had been his acquired property. The actual partition is not in all cases essential. An agreement by members of an undivided family to hold the joint property individually in definite shares, or the attachment of a member's undivided share in execution of a decree at the instance of his creditor, will be regarded as sufficient to support the alienation of a member's interest in the estate or a sale under the execution.”

Now these are the principles which govern this and all other cases of the kind, and, according to these principles, there can be no doubt that the present mortgage is void. There were no such special circumstances as the learned judges seem to find in the first case above quoted entitling them to impose terms upon the plaintiffs, and, whether Lord Watson approved that case or not, which is not quite clear, he at all events said that it had no application which would affect the

operation of the principles which he laid down as above quoted.

The result is that the mortgage in the present case is bad and the appeal fails, and their Lordships will humbly advise His Majesty that it should be dismissed with such costs as the respondents, not having appeared before this Board, may be entitled to.

In the Privy Council.

LACHHMAN PRASAD, SINCE DECEASED
(NOW REPRESENTED BY NARAIN
PRASAD AND OTHERS),

vs.

SARNAM SINGH AND OTHERS.

DELIVERED BY VISCOUNT HAIDANE.