

*Privy Council Appeal No. 37 of 1916.*

*Allahabad Appeal No. 33 of 1911.*

**Anant Ram, since deceased (now represented  
by Lachmi Narain and Others), and  
Others)** - - - - - *Appellants,*  
*v.*  
**The Collector of Etah 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 29TH OCTOBER, 1917.

---

*Present at the Hearing :*

LORD BUCKMASTER.  
SIR JOHN EDGE.  
SIR WALTER PHILLIMORE, Bart.  
SIR LAWRENCE JENKINS.

[*Delivered by* LORD BUCKMASTER.]

---

THE question raised in this appeal is as to the rights of certain mortgagees under and in respect of a mortgage which was dated the 4th September, 1894. That mortgage was executed by one Raja Sheoraj Singh, the manager of certain joint property held by himself and his brother, Maharaj Singh, and governed by the Mitakshara law. The mortgage was for the sum of 3,000 rupees, with interest at the rate of 1 rupee 2 annas per cent. per month, with compound interest and half-yearly rests. The mortgage affects three villages, and on the face of it there is a recital that the money was lent in order that the mortgagor might pay the Government revenue. The original mortgagee is dead, and his representatives instituted the proceedings out of which this appeal has arisen for the purpose of enforcing their rights under the mortgage deed. A considerable number of defences were raised by the different parties who were made defendants to those proceedings, but for the purpose of the

present appeal only one of those defences needs consideration. That defence is this : that the property that was mortgaged being joint property, a mortgage could only be operative to the extent to which the mortgage-money was needed for the necessities of the joint estate. The learned Judge before whom the case was heard allowed the whole of the original mortgage debt to stand, but reduced the rate of interest. The High Court, to whom an appeal was brought, has allowed the mortgage for part only of the original sum, namely, for the sum of 1,698 rupees 5 annas, and has restored the full rights of interest which the mortgagee possessed under the deed on that sum.

The appeal from that judgment has been brought under an order made by the High Court, who thought that the appeal gave rise to two questions of importance, the first being : " Whether the burden lies upon a mortgagee who takes a mortgage from the manager of a joint Hindu family governed by the Mitakshara law to prove that the debt was incurred for family necessity"; and the second : " Whether, if the debt was not so incurred, the interest of the manager of the family, that is, of the mortgagor, in the mortgaged property could be sold in enforcement of the mortgage." It is to be observed that the grounds upon which the appeal was permitted do not include the question of considering whether, in point of fact, more than the amount allowed by the High Court had in fact been raised by way of necessity; but this point has been argued and considered by their Lordships.

As to the first of these two questions their Lordships entertain no doubt. The mortgage of joint estate made by the manager of the property, who is not the father of the other members of the joint family, can only be justified so far as it is wanted for the joint family purposes. If the necessity cannot be established by direct evidence it may be assumed if it can be shown that reasonable care was taken to ascertain if such circumstances existed and the transferee acted in good faith (see 38 Transfer of Property Act). In either case the burden of proof lies on the person who claims the benefit of the mortgage. There is no difference between the burden of proof when it is desired to support a mortgage made by a manager of a joint estate and that which is required to support the mortgage made, for example, by a widow who has only a similar limited power of disposition. In the case of *Banga Chandra Dhur Biswas v. Jagat Kishore Chowdhuri* (43 I.A., 249), following previous decisions to the same effect, it was stated in perfectly clear and unambiguous terms that the burden of proving that such dispositions were lawful rests upon the persons who seek to claim benefits under them. The question, therefore, which the High Court thought needed consideration, so far as the burden of proof is concerned, must be decided against the appellants.

As to the second point, that question, so far as it covers mortgages in the same province as the province from which

this appeal has been brought, has also been decided since the judgment of the High Court, adverse to the appellants' contention in a case to which their Lordships' attention was called—*Narain Prasad v. Sarnam Singh* (44 I.A. 163).

There remains only the point as to whether in this case the High Court were right in thinking that the mortgagee had only discharged the burden thrown upon him of proving necessity for the deed to the limited extent of the 1,698 rupees. Now the facts with regard to that matter are these: There were three villages that were the subject of the mortgage. The statement in the deed was that the money was needed to pay the Government revenue. What payments were made in respect of that revenue could easily be established by calling the proper witnesses, and, indeed, one such witness was called for the purpose of proving payments in respect of two of the villages, and he showed payments to the amount for which the High Court has allowed the mortgage to stand. The mortgagee cannot allege that the witnesses who could prove the necessity, on the existence of which his security depends, are inaccessible, or cannot now be obtained through lapse of time or for other good reason. The proof could have been and ought to have been laid before the Court by the appellants, on whom the burden rests. That burden they have failed to discharge, and in their Lordships' opinion the High Court was perfectly right in deciding that the security stood to the limited extent only of the necessity proved. They will therefore humbly advise His Majesty that this appeal should be dismissed.

---

In the Privy Council.

---

ANANT RAM AND OTHERS

v.

THE COLLECTOR OF ETAAH AND  
OTHERS.

---

DELIVERED BY

LORD BUCKMASTER.