

## Lila Dhar vs Chunni And Ors. on 4 January, 1951

**Equivalent citations: AIR1951ALL574, AIR 1951 ALLAHABAD 574**

### JUDGMENT

Agarwala, J.

1. This is a pltf's appeal arising out of a suit for recovery of Rs. 139/6/-by sale of the mtged property.
2. Jagan, father of defts respondents 1 to 3, executed a simple mtge in favour of the predecessor-in-interest of the pltf applt on 8-2-1933 for a sum of Rs. 50/-. The rate of interests was Rs. 1/4/- per cent per mensem simple. The mtged property was an ancestral house; The pltf alleged that this amount was borrowed for a valid family purpose or necessity & that it was binding on the defts resps. The defts case was that the debt was incurred for a new business & not for an ancestral business & hence it was not binding on them.
3. The facts found are that Jagan was a teli (oilman). His father used to carry on the business of an oilman but he himself carried on the business not of an oilman but of an itinerant grocer. He borrowed a sum of Rs. 50/- in order to purchase an oil-crushing machine & a bullock to enable him to carry on the trade of an oilman, presumably with the object of augmenting his income. The Cts below held that since this was a new business, an alienation for its purpose was not binding upon the sons. The suit was, therefore, dismissed.
4. In this second appeal it has been urged that the view taken by the Cts below is erroneous in law.
5. The law with regard to alienations is now well settled. An alienation may be made not only for a defensive legal necessity but also for the benefit of the family. As was held in Jagat Narain v. Mathura Das', AIR (15) 1928 All 454: (50 All 969 FB), the test in all such cases is to see whether the transaction was such "as a prudent owner would have carried out with the knowledge that was available to him at the time..... .The degree of prudence would be the prudence which an ordinary man would exercise with the knowledge available to him; & the transaction would have to be judged not by its results but by what might have been expected to be its results at the time it was entered into. The degree of prudence to be demanded might well be held to be that which would be demanded in ordinary cases from a trustee."
6. A new business very often involves risk & when any business may involve a risk, it may not be prudent to enter into it. On the other hand, there may be circumstances in which a new business may not be said to be involving any appreciable risk & may be considered to be a prudent action on the part of the manager of a joint Hindu family. The matter Will depend on the facts of each case.

7. It was held in 'Sanyasi Charan v. Krishnadhan Banerji', 49 IA 108: 49 Cal 560: (AIR (9) 1922 PC 237), that the manager of a joint Hindu family had no power to impose upon a minor member of the family the risk & liability of a new business started by him. That was a Dayabhaga case. The same principle was followed in the case of Mitakshara family.

7a. In 'Benaras Bank Ltd. v. Hari Narain', AIR (19) 1932 PC 182: (54 All 564), their Lordships observed rather broadly, "A new business, their Lordships think, is not within the purview of those verses (Mitakshara, Ch. I, versus 27 to 29). It does not make any difference that the manager starting the new business is the father."

A question arose whether this pronouncement of their Lordships would rule out an alienation made for the starting of a new business when the new business was utterly necessary for the support & maintenance of the family or was for the benefit of the family. The matter was considered by a F. B. of this Ct in 'Ram Nath v. Chiranji Lal', AIR (22) 1935 All 221: (57 All 605 FB), & it was held that "where the business to finance which money has been borrowed by a mtge is a new business, the sons are not liable for the payment of the loan contracted by the father for this business, unless the transaction was for the benefit of the family & to the benefit of the estate or it was supported by legal necessity. The question whether the particular transaction in dispute was for legal necessity or was for the benefit of the estate & the joint family, is something more than the mere question whether the money borrowed was required for the purposes of a new business. The fact that it was required for a new business would not be any justification. If in addition thereto it could be shown that there was either a pressure of necessity to continue that business, as it was the mainstay of the family or that the-particular transaction was at the time beneficial to the family & the family estate, the transaction would be supported but, of course,, on the latter ground. The question whether the transaction was for such benefit or not is a question of fact depending on the circumstances of the case, & it is for the Ct to decide whether it was so beneficial & was such as an ordinary prudent manager would have entered into in the interest of the family."

The earlier F. B. decision in 'Jagat Narain v. Mathura Das', AIR (15) 1928 All 454: 50 All 969 FB), was affirmed and it was held that it was not overruled by the pronouncement of the P. C. in the 'Benares Bank case', (AIR (19) 1932 PC 182: 54 All 564).

8. More recently, a Bench of this Ct of which. I was a member had occasion to consider this matter in 'Angney Lal v. Angeny Lal', S A No--2329 of 1943, D/- 1-9-1950: (AIR (38) 1951 All 400). Following the case of 'Ram Nath v. Chiranji Lal', AIR (22) 1935 All 221: (57 All 605 FB), it was held that, where a new business was started by the father in a trading, family, when a similar business was carried on by him & the new business was not of a hazardous or speculative nature, the starting of the business was a prudent act & was for the benefit of the family.

9. To see whether the transaction is one which a prudent owner would have entered into, one has to place himself in the arm chair of the manager & to envisage what knowledge the manager possessed, & what were the circumstances in which the manager & the family were placed & then to discover whether on those facts one would have been prudent to make the disputed alienation.

10. In the case of a new business entered into by a manager, the circumstances that the manager was already carrying on a business, that the new business was allied to the business which the manager was carrying on, that the new business was natural for him on account of his caste or family traditions, that the new business was comparatively safe & not speculative & that the amount borrowed was small & not disproportionate to the financial circumstances of the family, may well be considered.

11. In the present case, the manager was, already stated, a tell by caste. His father used to do the business of an oil-man which a tell ordinarily does. Though that business was not Carried on by him, he was already in trade. The business started by him was not of speculative nature, nor could it be said that he was unfit for the purpose of carrying on that business. The amount borrowed was a paltry sum of Rs. 50/-. He could not have been In affluent circumstances if he had the necessity of borrowing this sum of Rs. 50/-, as was also obvious from the fact that he was an itinerant grocer. Placing myself in the arm chair of the manager & the circumstances in which he was placed at the time he was making the alienation, I have no hesitation in holding that his act was a prudent act. The transaction is binding upon the sons. The lower appellate Ct did not apply its mind to the question whether the business, though new, was for the benefit of the family in the circumstances in which the manager was placed.

12. I, therefore allow this appeal, set aside the decrees passed by the Cts below & decree the pltf's suit.

13. The suit was for Rs. 139/6. The amount claimed in this Ct, & in the lower appellate Ct was Rs. 100/- only. That would reduce the rate of interest appreciably. The suit must, therefore, be decreed for a sum of Rs. 100/- only with interest at 6 per cent per annum from the date of The suit till the date of realisation. A decree under Order 31, Rule 4 will be drawn up fixing three months time for payment.

14. The pltf will have his costs in all the Cts.