

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Seth Narsinghdass v. Seth Ramlal and others, from the Court of the Judicial Commissioner, Central Provinces, India; delivered the 25th February 1904.*

---

Present at the Hearing :

LORD DAVEY.

LORD ROBERTSON.

SIR ARTHUR WILSON.

[*Delivered by Lord Robertson.*]

Their Lordships are clearly of opinion that the judgment appealed against is right.

The theory of the plaint was that the mortgaged property was Bhajanlal's; and the Defendants 8, 9 and 10 were joined as Defendants with Bhajanlal's heirs only because they also were in possession. It is now proved beyond doubt that the property belonged to Bhajanlal's firm, and the Appellant has accordingly to attempt the arduous task of making out the liability of the other partners.

The facts, when examined, afford no support to this contention.

The Appellant first maintains that the mortgage was granted by Bhajanlal as agent for the firm; and that the money was borrowed for firm purposes. He has a bad beginning for this case in the fact that the mortgage was not granted until after Bhajanlal had received notice of dissolution of the firm. Nor has the Appellant made any effort to support his case by witnesses. Such parol evidence as there is, is to the effect

that the mortgage and the debt were private transactions of Bhajanlal. And on this point it is difficult to see how the Appellant can expect to succeed by substituting argument for evidence, when he did not offer himself as a witness in support of his case, and when, called by the Respondents, he left his statement that that the loan stood in his own books in the name of Sirdarmar Bhajanlal unqualified by any explanation which could avert the natural inference.

When the Appellant's books are appealed to, they confirm this statement and furnish nothing to modify it. Nor is the case improved by an appeal to the books of Bhajanlal's firm, in which Bhajanlal, as an individual against the firm, is credited with the money which he had applied to firm purposes out of the borrowed money. The subsequent change in the books by which the Appellant's name is substituted for Bhajanlal's is justly described in the Court below as a manipulation, unknown to the other partners.

Their Lordships agree with the Court below that the Appellant has no evidence which brings him within the scope of Section 41 of the Transfer of Property Act, 1882.

They will humbly advise His Majesty that the Appeal ought to be dismissed. The Appellant will pay the costs of the first two Respondents who alone defended the Appeal.

No. IV. of 1882.