Rajasthan High Court
Dev Kishan And Ors. Lrs. Of Kishan ... vs Ram Kishan And Ors. on 9 May, 2002
Equivalent citations: RLW 2003 (2) Raj 1250, 2002 (4) WLC 130, 2002 (4) WLN 481
Author: Garg
Bench: S K Garg
JUDGMENT Garg, J.

1. This second appeal has been filed by one Kishan Lal, original defendant No. 1 (during the pendency of this second appeal, Kishan Lal has died and his LRs have been taken on record, but for convenience, the appellants would hereinafter be referred to as appellant-defendant No. 1) against the judgment and decree dated 15.9.1980 passed by the learned Civil Judge, Bikaner in appeal No. 30/77 by which the learned Civil Judge dismissed the appeal of the appellant-defendant No. 1 and confirmed the judgment and decree dated 30.9.1977 passed by the learned Munsiff, Bikaner in Civil Suit No. 17/69 (116/70 after transfer) by which the learned Munsiff decreed the suit of the plaintiffs Ram Kishan and Kailash, respondents No. 1 and 2 to this second appeal, but for convenience, they would hereinafter be termed as plaintiffs. The other original-defendants No. 2 to 5, namely, Madan Lal, Laxmi Chand, Megh Raj and Badri Das have been made respondents in this second appeal also, but for convenience, Madan Lal, who was Karta of the family, would hereinafter be referred to as defendant No. 2.

2. It arises in the following circumstances:

The plaintiffs Ram Kishan and Kailash filed a suit in the Court of Civil Judge, Bikaner on 18.3.1969 against the appellant-defendant No. 1 and also against the defendants No. 2 to 5 with the prayer that the sale deed dated 12.5.1967 and void against the plaintiffs as well as against the defendants No. 2 to 5. It was alleged in the plaint that the plaintiffs and defendants No. 2 to 5 were members of joint Hindu Family, but the defendant No. 2 Madanlal, who was Karta of the family, was under the influence of the appellant-defendant No. 1. It was further alleged in the plaint that two houses mentioned in para No. 2 of the plaint were joint properties of that joint Hindu family and the plaintiffs in the month of Jan. 1969 came to know that the defendant No. 2 on 12.5.1967 sold the said two houses to the appellant-defendant No. 1 through registered sale deed Ex.A/3 for a consideration of Rs. 2000/- though the value of these two houses was about Rs. 16,000/- and not only this, the defendant No. 2 also got the signatures of the defendants No. 3 to 5 on that sale deed by undue influence and the amount taken by the defendant No. 2 after sale was not distributed by him to any other members of the family. Thereafter, the plaintiffs approached the appellant-defendant No. 1 and asked him to show the documents and upon this, the appellant-defendant No. 1 first tried to avoid, but then he showed to the plaintiffs the sale deed dated 12.5.1967 (Ex.A/3) and mortgage deed dated 19.5,1964 (EX.A/2) and in that mortgage deed EX.A/2 dated 19.5.1964, there was mention of another mortgage deed dated 6.12.1962 (EX.A/1). The further case of the plaintiffs was that the defendant No. 2 under the influence of appellant-defendant No. 1 first mortgaged the properties in question in favour of the appellant-defendant No. 1 for a consideration of Rs. 500/- on 6.12.1962 and that mortgage deed is EX.A/1 and furthermore, the same properties were further mortgaged by the defendant No. 2 in favour of the appellant-defendant No. 1 on 19.5.1964 for a consideration of Rs. 900/- and that mortgage deed is

Ex.A/2 and since the sale deed dated 12.5.1967 (Ex.A/3) was got executed by the appellant defendant No. 1 through defendant No. 2 in his favour after making influence over defendant No. 2, therefore, it should be declared null and void against the interest of the plaintiffs and defendants No. 2 to 5 and similarly, the rent deed Ex.A/4 by which the plaintiffs and defendants No. 2 to 5 were termed as tenants of appellant defendant No. 1 be also declared as null and void on various grounds mentioned in para 8 of the plaint and one of them was that there was no legal necessity for mortgaging as well as for selling the properties in question in favour of the appellant defendant No. 1 by the defendant No. 2 and if, at the most, properties were sold for the illegal and immoral purposes, for that the plaintiffs were not bound. Hence, it was prayed that the suit be decreed.

The suit of the plaintiffs was contested by the appellant- defendant No. 1 by filing written statement on 4.8.1969 and in that written statement, it was alleged by the appellant-defendant No. 1 that the defendant No. 2 WAS Karta of the family and he took loan from him for the legal necessity of the family or that loan should be termed as antecedent debt and for that, the plaintiffs and defendants No. 2 to 5 were bound to pay. The allegations of influence and immoral or illegal transactions were denied by the appellant-defendant No. 1 and it was further averred that from the mortgage deed dated 6.12.1962 (Ex.A/1), it was clear that the properties in question were mortgaged by the defendant No. 2 in favour of the appellant-defendant No. 1 for the purpose of marrying his daughter Vimla and later on, the same properties were further mortgaged by the defendant No. 2 in favour of the appellant-defendant No. 1 through mortgage deed dated 19.5.1964 (Ex.A/2) for the purpose of marrying Vimla and Pushpa. Hence, all the transactions were for legal necessity and thus, the suit of the plaintiffs be dismissed.

On the pleadings of the parties, the following issues were framed by the learned Munsiff on 20.10.1971 :-

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After hearing both the parties and taking into consideration the entire evidence and materials available on record, the learned Munsiff, Bikaner through his judgment and decree dated 30.9.1977 decreed the suit of the plaintiffs against the appellant-defendant No. 1 (Ex.A/3) in respect of two houses mentioned in the plaint and rent deed Ex.A/4 to be null and void against the plaintiffs and defendants NO:2 to 5. In decreeing the suit of the plaintiffs, the learned Munsiff came to the following conclusions on issue No. 1:-

(1) That from perusing the mortgage deed dated 6.12.1962 (Ex.A/1), it clearly appears that Rs. 500/- were taken by the defendant- No. 2 from the appellant-defendant No. 1 for the purposes of marrying his daughter Vimla and through another mortgage deed dated 19.5.1964 (Ex.A/2), Rs. 900/- were

taken by the defendant No. 2 from the appellant defendant No. 1 for the purposes of marrying No. 1 for the purposes of marrying Vimla and Pushpa and through registered sale deed dated 12.5.1967 (Ex.A/3), the amount was taken by the defendant No. 2 from the appellant defendant No. 1 for the purposes of marrying Ram Kishan, plaintiff No. 1.

(2) That Vimla, Pushpa and Ram Kishan were all minors when the properties were mortgaged by the defendant No. 2 in favour of the appellant defendant No. 1 and when sale deed Ex.A/3 was executed by the defendant No. 2 in favour of the appellant- defendant No. 1.

(3) That the loan taken by the defendant No. 2 from the appellant-defendant No. 1 cannot be termed as loan for payment of antecedent debt as the loan was taken by the defendant No. 2 for the purposes of marrying him minor daughters and, thus, the learned Munsiff came to the conclusion that the present transactions cannot be regarded as transaction for payment of antecedent debt.

(4) That the learned Munsiff also did not find the case of legal necessity as the expenses in the marriage of Vimla, Pushpa and Ram Kishan (plaintiff No. 1) were not incurred by the defendant No. 2 and furthermore, there was no necessity for taking loan for their marriages.

(5) That apart from that, the age of Vimla and Pushpa at the time of their marriages was 12 and 8 years respectively and, therefore, taking loan for their marriages could have not been visualised looking to their age and thus, the submission that the loan was taken for their marriages was wrong.

(6) That even for the sake of argument, the loans were taken by the defendant No. 2 from the appellant defendant No. 1 for the purposes of marrying his minors after executing mortgage deeds and sale deed, such transactions became void being opposed to public policy in view of prohibition of child marriage under the Child Marriage Restraint Act, 1929 (hereinafter referred to as "the Act of 1929") and, therefore, the amount, if spent on the marriages of minor children, cannot be termed as legal necessity.

(7) That sale deed Ex.A/3 dated 12.5.1967 was executed on the same day when there was marriage of Ram Kishan, plaintiff No. 1 and, therefore, when the marriage of plaintiff No. 1 Ram Kishan was going to be performed on the date of execution of sale deed Ex.A/3, to say that the amount taken by the defendant No. 2 from the appellant defendant No. 1 through sale deed Ex.A/3 dated 12.5.1967 was to be utilised for the purpose of marriage of Ram Kishan, plaintiff No. 1 WAS wrong one and thus, the learned Munsiff came to the conclusion that the amount even of sale deed Ex.A/3 dated 12.5.1967 was not utilised by the defendant No. 2 for the marriage of Ram Kishan, plaintiff No. 1.

(8) That it is difficult to believe that the properties worth Rs. 7000-8000/- would be mortgaged or sold for a consideration of Rs. 400-500/-on the pretext of marrying minor daughters, as according to the learned Munsiff, other brothers and mother of these minor daughters were earning members and, therefore, in no case, the properties were mortgaged for taking loan for the purposes of marrying minor daughters.

In these circumstances, since the properties were not mortgaged and sold by the defendant No. 2 in favour of the appellant defendant No. 1 for the purposes of legal necessity and there was no question of payment of antecedent debt, therefore, the learned Munsiff came to the conclusion that the plaintiffs and defendants No. 2 to 5 would not be bound by the terms of the sale deed dated 12.5.1967 (Ex.A/3) and that should be declared null and void against them. Thus, the learned Munsiff decided issue No. 1 in favour of the plaintiffs and against the appellant- defendant No. 1 and decreed the suit of the plaintiffs in the manner as indicated above.

Aggrieved from the said judgment and decree dated 30.9.1977 passed by the learned Munsiff, Bikaner, the appellant-defendant No. 1 preferred first appeal before the learned District Judge, Bikaner, which was transferred to the learned Civil Judge, Bikaner and the learned Civil Judge, Bikaner through his judgment and decree dated 15.9.1980 dismissed the appeal of the appellant-defendant No. 1 and upheld the judgment and decree dated 30.9.1977 passed by the learned Munsiff, Bikaner holding inter-alia :-

(1) That the debt was taken by the DEFENDANT.NO.2 from the appellant defendant No. 1 for the purpose of marriages of his minor daughters through mortgage deeds dated 6.12.1964 (EX.A/1) 19.5.1964 (EX.A/2) and that debt was opposed to public policy because of prohibition of child marriage under Act of 1929 and in this respect, the learned Civil Judge placed reliance on the decision of the Orissa High Court in Maheshwar Das and Ors. v. Sakhi Dei, AIR 1978 Orissa 84 and the law laid down in Parasram and Ors. v. Smt. Naraini Devi and Ors., AIR 1972 Allahabad 357, and Rulia and Ors. v. Jagdish and Anr., AIR 1973 Punjab & Haryana 335, was not found favourable by the learned Civil Judge. Thus, he confirmed the findings of the learned Munsiff on that point.

(2) That the expenses of the marriages of Vimlaj Pushpa and Ram Kishan were not borne by the defendant No. 2, father of these minor children, but on the contrary the expenses were borne by their mother and brothers, as they were earning members and thus, the amount taken by the defendant No. 2 from the appellant defendant No. 1 WAS not utilized for the welfare of the family.

(3) That no liability of the plaintiffs was found in respect of the antecedent debt also and in this respect, the learned Civil Judge also confirmed the findings of the learned Munsiff.

Aggrieved from the said judgment and decree dated 15.9.1980 passed by the learned Civil Judge, Bikaner, this second appeal has been filed by the appellant-defendant No. 1.

3. This Court while admitting this second appeal framed the following substantial questions of law on 22.1.1981:-

(1) Whether the taking of a debt by a major member of the family for the marriage of a minor member of the family is a debt incurred for a legal necessity or is for illegal purpose?

(2) Whether the debts incurred by the father for satisfying the earlier mortgages should be considered to have been incurred for legal necessity?

(3) Whether the sale for satisfying the earlier mortgage debt of the Joint Hindu Family and for performing the marriage of a minor member of the family was rightly held to be void by the learned first appellate court?"

4. I have heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents and gone through the record of the case.

5. There is no dispute on the point that through mortgage deeds dated 6.12.1962 (EX.A/1) and 19.5.1964 (EX.A/2), the defendant No. 2 mortgaged the properties in question in favour of the appellant defendant No. 1 for a consideration of Rs. 500/- and Rs. 900/- respectively and the ground for mortgaging the properties in question was marriages of his daughters Vimla and Pushpa. There is also no dispute on the point that Vimla and Pushpa were minors when the properties in question were mortgaged by the defendant No. 2 in favour of the appellant-defendant No. 1.

6. The question is whether taking loan through mortgage deeds EX.A/1 and EX.A/2 by the defendant No. 2 from the appellant defendant No. 1 for the purposes of marrying his minor daughters can be regarded as legal necessity or not and this question has to be answered keeping in mind the findings of both the courts below that in fact the amount which was taken by the defendant No. -2 after mortgaging the properties in question in favour of the appellant defendant No. 1, was not spent by the defendant No. 2 on the marriage of his minor daughters.

7. On this point, it was submitted by the learned counsel appearing for the appellant-defendant No. 1 that the debt was taken by the defendant No. 2 for the purposes of marrying his minor daughters, after executing mortgage deeds EX.A/1 and EX.A/2 in favour of the appellant defendant No. 1 and the debt incurred by major members for marriage of a minor though restrained under the Act of 1929 is a debt for legal necessity. Thus, taking of debt by the defendant No. 2 from the appellant defendant No. 1 for the purposes of marrying his minor daughters was legal necessity. Hence, the findings of the courts below that the properties were not mortgaged by the defendant No. 2 in favour of the appellant defendant No. 1 for legal necessity are wholly erroneous one and cannot be sustained. In this respect, he has placed reliance on the decision of the Allahabad High Court in Parasram's case (supra), where it was held :-

"Marriage of a Hindu male below 18 years of age with a Hindu girl below 15 years of age is not invalidated or rendered illegal by the force of Child Marriage Restraint Act, 1929. The object of the Act is to restrain a marriage of minors but does not prohibit the marriage rendering it illegal or invalid. A debt incurred by major members of joint Hindu family for marriage of minor is not for an illegal purpose, as the marriage is legal. The debt is binding on joint family property."

He has further placed reliance on the decision of Punjab and Haryana High Court in Rulia's case (supra), where it was held that where the Karta effected sale of the ancestral land to make provision for the marriage of his son who was nearing the age when he could have been lawfully married, the sale was a valid sale for necessity. It was further held that where the necessity for two thirds of the sale price of the ancestral land was shown to exist and the balance of the sale price was proved to have been paid to the alienor the alienation was one for necessity.

8. On the other hand, the learned counsel appearing for the respondents submitted that the debt was taken by the defendant No. 2 from the appellant defendant No. 1 for the purposes of marrying his minor daughters and since the child marriage was prohibited under the Act of 1929, therefore, the debt was not lawful debt and alienation on that ground cannot be regarded as lawful alienation binding upon the minors. The expenses incurred in connection with marriage of minor child cannot constitute legal necessity, in view of the prohibition of child marriage under the Act of 1929. In this respect, he has placed reliance on the following decisions :-

(1) Panmull Lodha and Ors. v. R.B. Gadhmull, AIR 1937 Calcutta 257.

(2) Hansraj Bhuteria and Anr. v. Askaran Bhuteria and Anr., AIR 1941 Calcutta 244.

(3) Rambhau Ganjaram v. Rajaram Laxman and Ors., AIR 1956 Bombay 250.

(4) Maheswar Das v. Sakhi Dei (supra)

9. It may be stated here that the Manager of a joint Hindu family has power to alienate for value, joint family property, so as to bind the interest of both adult and minor coparceners in the property, provided that the alienation is made for legal necessity or for the benefit of the estate.

10. An alienation by the Manager of a joint family made without legal necessity is not void, but voidable at the option of the other coparceners.

11. The marriage expenses of male coparceners and of the daughters of coparceners with no doubt can be termed as legal necessity.

12. In the case of Panmuil Lodha's case (supra), the Calcutta High Court held as under :-

"The Child Marriage Restraint Act makes punishable the marriage of a minor when performed in British India.

The Court should not facilitate conduct Which the Legislature has made penal as being socially injuripus merely on the ground that the parties agree to perform it at a place where the performance of such marriage is not punishable by the law of the place. More so when the minor's estate is in the hands of the receiver appointed by the Court and an application is made on behalf of the minor for the sanction of expenditure for the marriage of his minor sister with a minor boy, the Court should not sanction such expenditure for facilitating the child marriage within the meaning of the Act is British India or elsewhere."

13. In the case of Hansraj Bhuteria (supra), the Calcutta High Court further held that the application could not be granted as the Court should not facilitate conduct which the legislature in British India had made penal even if such marriage was not punishable according to law of Bikaner.

14. In the case of Rambhau Ganjaram (supra), the Bombay High Court held that where the marriage of the minor was performed in violation of the provisions of Child Marriage Restraint Act of 1929, the debt, having been incurred by the de facto guardian for purposes which were not lawful, the alienation effected for purposes of satisfying those debts cannot be regarded as a lawful alienation binding upon the minors.

15. The Orissa High Court in Maheswar Das's case (supra) held that where the consideration under sale deed was for marriage expenses of minor girl (under age of 14), the sale was a void transaction being opposed to public policy.

16. In this case, both the courts below came to the conclusion that the debt was taken by the defendant No. 2 from the appellant defendant No. 1 for the purposes of marriage of his minor daughters and since the marriage of minor daughters was prohibited by the provisions of the Act of 1929, therefore, the debt was opposed to the public policy, in view of the prohibition of child marriage under the Act of 1929. In this respect, the learned first appellate court placed reliance on the decision of the Orissa High Court in the case of Maheshwar Das (supra) and the law laid down by the Allahabad High Court in Parasram's case (supra) and by the Punjab & Haryana High Court in Ralia's case (supra) was not found favourable by the learned first appellate court.

17. Both the courts below further came to the conclusion that though the money as per the both mortgage deed EX.A/1 and EX.A/2 WAS taken by the defendant No. 2 from the appellant defendant No. 1 for the purposes of marrying minor daughters, but that amount was not spent by him on their marriages and thus, the properties were not mortgaged by the defendant No. 2 in favour of the appellant- defendant No. 1 for legal necessity of the joint Hindu family. Hence, the loan taken by the defendant No. 2 from the appellant defendant No. 1 cannot be termed as taking of loan for legal necessity of the joint Hindu family.

18. In my considered opinion, where the marriage of the minor was performed in violation of the provisions of the Act of 1929, the debt having been incurred for that purpose, which was not lawful, cannot be regarded as a lawful debt and alienation on that ground cannot be regarded as lawful alienation binding upon the minors. If the property was mortgaged or sold for the purpose of marrying minors, such transactions would be opposed to public policy, in view of the prohibition of child marriage under the Act of 1929. This Court is in full agreement with the view expressed by the Calcutta High Court in the cases of Hansraj Bhuteria (supra) and Panmuil Lodha (supra), Bombay High Court in the case of Rambhau (supra) and Orissa High Court in the case of Maheswar Das (supra). The law laid down by the Allahabad High Court in the case of Parasram (supra) and Punjab and Haryana High Court in the case of Rulia (supra) does not appear to be sound law.

19. In the present case, since the debt was taken by the defendant No. 2 from the appellant defendant No. 1 for the purposes of marrying his minor daughters and as the child marriage is prohibited under the Act of 1929, therefore, such debt is opposed to the public policy and cannot be termed as lawful debt and alienation on that ground cannot be regarded as a lawful alienation binding upon the minors. The expenses incurred in connection with the marriage of a child cannot constitute legal necessity.

20. Thus, both the courts below were right in holding that since the child marriage is prohibited under the Act of 1929, therefore, taking of debt by the defendant No. 2 from the appellant defendant No. 1 for the purposes of marriages of his minor daughters cannot constitute legal necessity and such debt cannot be regarded as lawful debt. The findings of fact recorded by both the courts below on that point are based on correct appreciation of fact and law. It cannot be said that the above findings of fact recorded by both the courts below are based on no evidence or indisregard of evidence or on inadmissible evidence or against the basic principles of law or on the face of it there appears error of law or procedure.

21. Thus, the substantial question No. 1 is answered in the manner that taking of debt by the defendant No. 2 from the appellant defendant No. 1 for the purposes of marrying his minor children cannot be regarded as lawful debt and cannot constitute legal necessity.

22. It may be stated here that a debt may be contracted by a Hindu male for his own private purpose, or it may be contracted by him for the purposes, of the joint family.

23. In the present case, as already held above, the debt was not taken by the defendant No. 2 for the purposes of legal necessity of the family.

24. Both the courts below have concurrently held that the properties in the present case were not alienated by the defendant No. 2 in favour of the appellant-defendant No. 1 for the payment of antecedent debt. Now, these findings are to be judged.

25. "Antecedent debt" means antecedent in fact as well as in time, that is to say, that the debt must be truly independent of and not part of the transaction impeached. A borrowing made on the occasion of the grant of a mortgage is not an antecedent debt. The father of a joint Hindu family may sell or mortgage the joint family property including the son's interest therein to discharge a debt contracted by him for his own personal benefit, and such alienation binds the sons provided.-

(a) the debt was antecedent to the alienation, and

(b) it was not incurred for an immoral purpose.

26. In the present case, the courts below came to the conclusion that the debt taken by the defendant No. 2 from the appellant defendant No. 1 cannot be regarded as debt for payment of antecedent debt. The properties were not mortgaged or sold by the defendant No. 2 in favour of the appellant-defendant No. 1 for the purpose of discharging a debt contracted by him for his own personal benefit, but for the purposes of marrying his minor children and since the loan was taken by the defendant No. 2 from the appellant defendant No. 1 for the purposes of marriage etc., the present transactions cannot be regarded as transactions for payment of antecedent debt.

27. Apart from that, as already held above, the debt taken by the defendant No. 2 from the appellant defendant No. 1 for the purposes of marriages of his minor children, which were not lawful, was not a lawful debt. Furthermore, expenses incurred in the marriage of minor children, which has taken

place in contravention of the Act of 1929, cannot constitute legal necessity.

28. In my considered opinion, both the courts below have rightly held that the debt taken by the defendant No. 2 from the appellant defendant No. 1 cannot be termed as debt for payment of antecedent debt because the debt was taken by the defendant No. 2 for the purposes of marriage of his minor children. The findings of fact recorded by both the courts below on that point are based on correct appreciation of fact and law. It cannot be said that the findings of fact recorded by both the Courts below are based on no evidence or indisregard of evidence or on inadmissible evidence or against the basic principles of law or on the face of it there appears error of law or procedure.

29. Hence, the substantial question No. 2 is answered in the manner that the debt incurred by the defendant No. 2 for satisfying the earlier mortgages should not be considered to have been incurred for legal necessity,

30. As already stated above, since the debt taken by the defendant No. 2 from the appellant defendant No. 1 WAS not a lawful debt and it was not taken for the welfare of the joint Hindu family and furthermore, the debt was not taken for the payment of antecedent debt, therefore, in these circumstances, the learned first appellate court rightly held that the sale deed Ex.A/3 dated 12.5.1967 was void against the interest of the plaintiffs.

31. Thus, in view of the discussion made above, the substantial question No. 3 is answered in the manner that the sale for satisfying the earlier mortgage debt of the Joint Hindu Family and for performing the marriage of a minor member of the family was rightly held to be void by the learned first appellate court.

32. It has been submitted by the learned counsel appearing for the appellant defendant No. 1 that since the sale deed Ex.A/3 was executed not only by the defendant No. 2, but also by defendants No. 3 to 5, therefore, it should be held as legal sale deed so far as the defendants No. 2 to 5 are concerned and it could not be set aside against them.

33. In my considered opinion, this argument is not tenable because of the fact that the sale deed Ex.A/3 has been challenged in this case by the plaintiffs, who were minors when the said sale deed Ex.A/3 was executed and, therefore, no doubt the sale is not per se void, but becomes voidable as soon as the option is exercised by the minors through their guardian and same thing has happened in this case and in these circumstances, the plaintiffs have got right to challenge that sale deed Ex.A/3 in toto. In this respect, the decision of the Hon'ble Supreme Court in Faqir Chand v. Sardarni Harnam Kaur, AIR 1967 SC 727, may be referred to where it was held that mortgage of Joint family property by father as manager for discharging his debt not for legal necessity or for payment of antecedent debt, his son is entitled to impeach mortgage even after mortgagee has obtained preliminary or final decree against his father or mortgage meaning thereby since in this case, both courts below have come to the conclusion that the transactions were not for legal necessity and not for payment of antecedent debt, therefore, present plaintiffs are entitled to challenge the sale deed Ex.A/3 in toto.

34. The learned counsel appearing for the appellant defendant No. I placed reliance on the Full Bench decision of the Andhra Pradesh High Court in Plnninti Venkataramana and Anr. v. State, AIR 1977 Andhra Pradesh 43, where it was held that marriage in contravention of Clause (iii) of Section 5 of the Hindu Marriage Act is neither void nor voidable. The point involved in that case and the present case Is somewhat different In nature and therefore, this ruling would not be helpful to the appellant defendant No. 1.

35. So far as the ruling relied upon by the learned counsel appearing for the appellant defendant No. 1 in Fakirappa and ors. v. Venkatesh and Anr., AIR 1977 Karnataka 65, is concerned, the same would not be helpful to the appellant defendant No. 1, inasmuch as, in this case, neither legal necessity nor theory of antecedent debt was accepted.

36. In view of the discussions made above, this second appeal deserves to be dismissed and the findings of the courts below are liable to be confirmed.

Accordingly, this second appeal filed by the appellant defendant No. 1 isdismissed, after confirming the judgment and decree dated 15.9.90 passed by the learned Civil Judge, Bikaner. No order as to costs.