

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice
Wilkinson.

KONDAPPA (PLAINTIFF), APPELLANT,

v.

SUBBA AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1889.
October 16.

Hindu law—Revival of a barred debt by the widow of a deceased Hindu.

Although a managing member of a joint Hindu family cannot as such revive a barred debt as against his coparceners, it is competent to the widow of a deceased member of the family, who represents the inheritance for the time being and in whom it is a pious duty to pay her husband's debts, to bind the reversion by a mortgage executed to secure such debts though they were barred at the time of its execution.

When therefore the managing members of an undivided Hindu family, after the death of the widow, sold family property for the purpose of discharging such a mortgage :

Held, that the sale was binding on the coparcenary.

SECOND APPEAL against the decree of R. Sewell, Acting District Judge of Bellary, in appeal suit No. 134 of 1888, confirming the decree of V. Subramanyam, District Munsif of Penukonda, in original suit No. 403 of 1887.

Suit to establish the plaintiff's right to, and to recover possession of, certain land.

The plaintiff and his undivided brothers (deceased) were members of a joint Hindu family. Their grandfather and one Gurumurthi Bhotlu were undivided brothers. Gurumurthi Bhotlu died leaving only a widow Papamma, and the plaintiffs were the reversionary heirs to his estate. In 1877 Papamma executed an usufructuary mortgage of part of his lands to secure a debt (which was then barred by limitation) incurred by him to the defendants; and in 1880 Papamma having died, and the plaintiff's family having succeeded to the estate of Gurumurthi Bhotlu, the elder brother of the plaintiff executed a sale-deed for the purpose of discharging the mortgage. The plaintiff now charged that the sale-deed was void as against him.

* Second Appeal No. 229 of 1889.

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The District Munsif dismissed the suit, and his decree was upheld on appeal by the District Judge.

The plaintiff preferred this appeal.

Rama Rau for appellant.

Rangacharyar for respondents.

The arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment of the Court.

JUDGMENT:—The Judge is wrong in holding that the manager of a joint Hindu family can *quâ* manager revive a barred debt as against his coparceners, and his decision is at variance with the Full Bench ruling in *Chinnaya v. Gurunatham*(1). But the decision of the Judge is right, inasmuch as the barred debt was revived, not by the appellant's brother, but by the widow of Gurmurti Bhotlu. That a widow is at liberty to pay her husband's debts, although barred by limitation, is recognised by the Bombay High Court in a series of cases *Bhala Nahana v. Parbhu Hari*(2), *Chinnaji Govind Godbole v. Dinkar Dhondev Godbole*(3), *Bhau Babaji v. Gopala Mahipati*(4). The discharge of her husband's debt, whether barred or not, was clearly a pious duty, and she was also the representative of the inheritance for the time being. A mortgage by her would, therefore, clearly bind the reversion by Hindu law, provided it was executed *bonâ fide*. In the present case the appellant's brothers *bonâ fide* sold a portion of the property to discharge such a mortgage and to save the rest of the property from litigation, and we concur in holding that the sale was binding on the appellant.

The appeal is dismissed with costs.

(1) I.L.R., 5 Mad., 169.

(2) I.L.R., 2 Bom., 67.

(3) I.L.R., 11 Bom., 320.

(4) I.L.R., 11 Bom., 325.