

It is argued that by custom a lease of this kind entitles the grantee to hold permanently. It may or may not be so, but the criterion for registration is what is expressed on the face of the document.

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If we had to go into the question of what incidents are annexed by custom to grants of the kind we would have to bear in mind that one of such incidents is that the tenant can relinquish the holding at the end of any fasli and, therefore, before the expiry of five years.

The appeal therefore fails and is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Bhaskiyam Ayyangar.

JAYANTI SUBBIAH (PLAINTIFF), APPELLANT,

v.

ALAMELU MANGAMMA (DEFENDANT), RESPONDENT.*

1902.
 April 14, 22.

Hindu Law—Husband's debts binding on widow in respect of assets come to her hands as legal representative—Widow's right to reside in husband's house.

Under the Hindu Law, the maintenance of a wife by her husband is a matter of personal obligation arising from the very existence of the relation and quite independent of the possession by the husband of any property, ancestral or acquired, and his debts take precedence of her claim for maintenance.

Where the family consists of only the husband and the wife, all debts which would bind the husband personally will necessarily be binding on the widow in respect of all the assets which have come to her hands as his legal representative.

Where a debt has been incurred by the husband only as a surety and not for the benefit of the family, it will be binding on the assets in the hands of the widow just as it will bind the whole of the family property if it devolves upon a son by right of survivorship.

Where an undivided Hindu family consists of two or more males, related as father and sons, or otherwise, and one of them dies leaving a widow, she has a right of maintenance against the surviving co-parcener or co-parceners *quoad* the share or interest of her deceased husband in the joint family property which has come by survivorship into the hands of the surviving co-parcener or

* Civil Miscellaneous Appeal No. 161 of 1901 presented against the order of S. Russell, District Judge of Bellary, dated 25th July 1901, in Civil Miscellaneous Petition No. 77 of 1901, connected with Execution Petition No. 29 of 1895 and Miscellaneous Petition No. 26 of 1901, Original Suit No. 18 of 1902, on the file of Subordinate Judge's Court of Bellary.

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co-parceners, and though such right does not in itself form a charge upon her husband's share or interest in the joint family property, yet, whenever it becomes necessary to enforce or preserve such right effectually, it may be made a specific charge on a reasonable portion of such joint family property, such portion not exceeding her husband's share or interest therein.

Such right may also, in certain cases, be enforced against the transferee of joint family property. *Manilal v. Baitara*, (L.L.R., 17 Bom., 398), discussed.

The deceased husband of defendant executed a promissory note as a surety, and after his death a decree was obtained against the defendant, his widow, on the promissory note. The decree-holder attached a house which had belonged to the deceased, and in which the widow was residing, brought it to sale and purchased it. On his endeavouring to obtain possession the widow resisted on the ground that she had a right of residence in the house during her lifetime and could not, therefore, be ejected :

Held, that the decree-holder was entitled to be given possession of the house and that the widow had no right of residence therein.

PETITION under section 328 of the Code of Civil Procedure. Petitioner was plaintiff in Original Suit No. 16 of 1892 in which the present counter-petitioner, who was the widow of one Naranappa, was defendant. That suit was based on a promissory note which had been made in plaintiff's favour by the defendant's late husband, Naranappa, the counter-petitioner being sued as his widow and legal representative. Petitioner obtained a decree, in execution of which he attached, brought to sale and purchased a house of the deceased, in which the counter-petitioner had been and was living. Petitioner attempted to obtain possession under section 318 of the Code of Civil Procedure, but was resisted, under section 334, by counter-petitioner, who claimed that she had a right to reside in the residential portion of the house during her life and could not be ejected. Further facts appear from the following order of the District Judge :—

“ORDER.—The house of the deceased Naranappa has been sold in execution to satisfy a debt incurred by him on a promissory note. The question at present to be settled is whether the widow of Naranappa can be ejected from the house. The promissory note was dated February 1892. Suit (Original Suit No. 16 of 1892) was filed against the widow Alamelu Mangamma. The first issue in that suit was :—(I) Whether the promissory note sued on is genuine and was executed for consideration or not? From the judgment in the case, it appears that two brothers Govindappa and Venkappa owed the plaintiff Rs. 1,500, and they further obtained a loan of Rs. 1,000 (at the request of

the deceased Naranappa) from the plaintiff. For this Rs. 2,500 the deceased Naranappa executed the promissory note, subject of the suit. It is not apparent from the judgment what consideration Naranappa received for executing the promissory note. It has been mentioned now that Naranappa executed the promissory note to oblige his relations. In order to determine the question mentioned above it is necessary to settle the question whether the debt evidenced by the promissory note was binding on the family and therefore on the widow of the deceased Naranappa. The decree is against the property of the deceased Naranappa and binds the widow as the representative of her late husband. The family consisted of the husband and wife only. There is no finding in the case that the debt was a family debt binding on the family. In fact, we might consider the finding on the first issue mentioned as tending to the conclusion that the debt was a personal debt binding on the deceased Naranappa only and his property. This would scarcely be sufficient to enable the Court now to hold that the widow had lost her right of residence. She would lose her right only if the debt was a family debt and the house was being sold to satisfy that debt. I cannot now conclude on the evidence that the debt was a family debt. Under these circumstances, I find that the widow has not lost her right of residence. She cannot therefore be ejected from the residential portion of the house. The other part of the house, I understand from the Amin's report, has been delivered to the purchaser. *Ramanadan v. Ranganmal*(1) and *Venkatammal v. Andyappa Chetti*(2) have been referred to in argument* and the decision as regards law based entirely on these decisions."

Petitioner preferred this appeal.

A. T. Ambrose for appellant.

Dr. S. Swaminadhan for respondent.

BHASHYAM AYYANGAR, J.—The appellant is the decree-holder in Original Suit No. 16 of 1892, which he brought, on a promissory note made by the deceased Naranappa, against his widow and legal representative, the respondent. In execution of that decree he attached and became the purchaser of the house of the deceased Naranappa in which the widow, the respondent, had been and was living at the time of the purchase. When he

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(1) I.L.R., 12 Mad., 260.

(2) I.L.R., 6 Mad., 130.

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proceeded to obtain delivery of the house under section 318 of the Civil Procedure Code, he was resisted under section 334 by the respondent on the ground that she had a right of residence during her lifetime and that she could not therefore be ejected from the residential portion of the house. The District Judge upheld her contention holding that Naranappa's liability under the promissory note was incurred by him only as a surety for certain debts owing by certain relations of his to the appellant, and that it was therefore not incurred for the benefit of the family consisting only of Naranappa and his wife, the respondent. We are unable to follow the reasoning of the District Judge. The family consisted only of the husband and wife and all debts which would bind the husband personally are necessarily binding upon the widow in respect of all the assets which have come to her hands as his legal representative. Even if the family had been an undivided family consisting of father and son, a debt incurred by the father only as surety and not for the benefit of the family, would bind the whole of the joint family property which may have devolved upon the son by right of survivorship (*Sitaramayya v. Venkatramanna*(1) and *Tukaram Bhat v. Gangaram*(2)) and it is difficult to see on what principle the District Judge holds that the debt is not a family debt. Under the Hindu Law the maintenance of a wife by her husband is a matter of personal obligation arising from the very existence of the relation and quite independent of the possession by the husband of any property ancestral or self-acquired (Mayne's 'Hindu Law and Usage,' 6th edition, paragraphs 451 and 455) and *Savitribai v. Luximibai* and *Sadasiv Ganoba*(3) and his debts take precedence of her claim for maintenance (Mayne's 'Hindu Law,' paragraph 464). The District Judge relies in support of his decision upon the cases of *Venkatammal v. Andyappa Chetti*(4) and *Ramanadan v. Ranganammal*(5). He appears to have misapprehended the principle of those decisions. When an undivided Hindu family consists of two or more males related as father and sons or otherwise and one of them dies leaving a widow, she has a right of maintenance against the surviving co-parcener or co-parceners, *quoad* the share or interest of her deceased husband

(1) I.L.R., 11 Mad., 373.

(2) I.L.R., 23 Bom., 454.

(3) I.L.R., 2 Bom., 573 at pp. 597 and 598.

(4) I.L.R., 6 Mad., 130.

(5) I.L.R., 12 Mad., 260.

in the joint family property which has come by survivorship into the hands of the surviving co-parcener or co-parceners and though such right does not in itself form a charge upon her husband's share or interest in the joint family property, yet when it becomes necessary to enforce or preserve such right effectually, it could be made a specific charge on a reasonable portion of the joint family property such portion of course not exceeding her husband's share or interest therein (*Ramanadan v. Rangammal*(1)). Such right may also, in certain cases, be enforced against the transferee of joint family property (*vide* section 39 of the Transfer of Property Act). In *Venkatanmal v. Andyappa Chetti*(2), the son, after the death of the father, incurred considerable debts and on mortgage bonds executed by him suits were brought and the properties brought to sale in execution of decrees passed in such suits. It was not shown that the debts were incurred for purposes which could bind his mother who, on the death of her husband, had a right of maintenance against her son *quoad* the share of her husband in the joint family property which the son mortgaged for a debt of his own and which was brought to sale for realisation of such debt. It was held that the house must be sold subject to her right to continue to reside in the house which she had been occupying till then. In *Ramanadan v. Rangammal*(1), the question was considered by a Full Bench. In that case the undivided family consisted of a father, sons and grandsons and on the death of the father the sons or some of them contracted a debt and in execution of a decree passed against the sons and grandsons for the recovery of such debt, the house in which the widow of the father was living was sold. An issue was sent as to the nature of the debt and it was found that the debt was incurred for the benefit of the whole family and no objection was taken to that finding. The Judges were unanimous in holding that the widow of the father had no right as against the purchaser to reside in the house of her late husband's family. *Muttusami Ayyar, J.*, observed as follows:—"I am also of opinion that the purchase is valid as against the respondent. It is found that the judgment debt is a family debt and I take it that the debt though contracted only by the male co-parceners, was contracted by them, not for their exclusive benefit, but for the benefit

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generally of the joint family consisting of themselves and their mother. A sale for the payment of her own debt would bind her interest in the house whatever it might be, and the decree in Original Suit No. 3 of 1882, was one which executed the hypothecation of 1875, and which was passed against the representatives of the joint family. In those circumstances the respondent is not entitled to set aside the sale unless she shows that the debt which has led to it is not binding upon her." He then distinguishes the case of *Venkatanmal v. Andyappa Chetti*(1) on the ground that there was no finding in that case that the debt was a family debt, that is to say, "a debt contracted for the joint benefit of the mother and her sons." A debt contracted by the husband himself as in the present case is necessarily binding upon her and on his death without male issue his estate devolves upon her by right of inheritance, in the absence of any undivided kinsmen of his. It is a mistake, under such circumstances, to regard her as having a right of maintenance (which includes right of residence) against her husband's estate. She takes it as heir and must administer it as such. It is only the residue that is left after discharging her husband's debts that will belong to her. During her husband's lifetime she had, no doubt, a right of maintenance against him, but that was only a matter of personal obligation on the part of the husband, quite independent of the possession of any property and it did not form a charge upon his property. Kernan, J., in the Full Bench case states that "if the debt in respect of which the sale took place was *a debt due by her husband, no doubt could be entertained that she had no such right.* The only doubt there could be, as it appears to me is whether her right to reside in the house had not accrued as against the manager who succeeded her husband and whether such manager could have, by any act of his, voluntarily affected her right. However the finding is, that the debt incurred by the manager was for the benefit of the family." The italics in the above quotation are mine. In the case of *Datsukhram Mahasukhram v. Lallubhai Motichand*(2), the father left not only a widow but a son who sold the house. It was held that the sale would be subject to the right of the widow to continue to reside therein, it being found that there were no proper reasons for the alienation by

(1) I.L.R., 6 Mad., 190.

(2) I.L.R., 7 Bom., 282.

the son and that the purchaser bought the house admittedly with full knowledge that the widow was residing therein. In *Bhikham Das v. Pura*(1) the owner of the dwelling house, who mortgaged the same, died leaving him surviving his wife and mother. In a suit brought against both of them after the death of the mortgagor to enforce the mortgage, it was held that it could be enforced by sale of the dwelling house. Apparently it was left an open question as to whether the widow (query mother) could be ousted by the auction purchaser. If the dwelling house devolved upon the mortgagor from his father, who left surviving him his widow, the mortgagor's mother, her right of residence could not be defeated by a sale made in satisfaction of a debt which was not incurred by the son for a purpose which would bind also his mother. In *Manilal v. Baitara*(2) the house was mortgaged by the husband in his lifetime and in execution of a decree enforcing such mortgage, it was sold and purchased by the defendant with knowledge that the mortgagor's widow was residing in the house at the time of the Court's sale. In a suit brought by the widow to establish her right to continue to reside during her lifetime in the house, her claim was negatived in the absence "of any allegation that the mortgage effected by the plaintiff's husband was not for the family advantage or was in any way in fraud of her rights." It does not appear from the report of the case whether there was any male member of the family other than the husband. If from the decision in that case it is to be implied that, in the view of the learned Judges who decided it, the widow would have a right to continue to reside in the house after it has been sold in satisfaction of a debt owing by her husband; unless the debt was incurred for a purpose which would be beneficial to and binding upon his wife, I am unable to concur in that view. The appeal is therefore allowed and the order of the District Judge is modified by directing that the respondent be ejected also from that portion of the house purchased by the appellant in which she has been residing. The order of the District Judge is affirmed in other respects. Each party will bear his or her own costs of this appeal.

BENSON, J.—I concur.

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(1) I.L.R., 2 All., 141.

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