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P.
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passed under the execution-sale. The claim was not for a joint family debt, but a personal claim against Gopal, who was alone represented in the suit, and the decree was against him personally for a money-claim, and it was only his right, title, and interest that was put up for sale and bought by the appellant. I would dismiss the appeal with costs.

STRAIGHT, J.—I concur in the judgment of my honorable colleague entirely on the ground that the decree was purely a personal one against Gopal, and that all that was put up and brought to sale was his right, title, and interest. The appeal should be dismissed with costs.

Appeal dismissed.

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May 26.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.

CHIMMAN SINGH (PLAINTIFF) v. SUBBAN KUAR AND OTHERS (DEFENDANTS)*

*Act XL of 1858, s. 18—Mortgage by certificate-holder without sanction—
Act IX of 1872 (Contract Act), s. 23.*

A mortgage by a person holding a certificate of administration in respect of the estate of a minor under Act XL of 1858 of immoveable property belonging to the minor, without the sanction of the Civil Court previously obtained, is void with reference to s. 18 of that Act and s. 23 of the Indian Contract Act, even though the mortgage-money was advanced to liquidate ancestral debts and to save ancestral property from sale in the execution of a decree.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Lala Lalta Prasad and Munshi Kashi Prasad, for the appellant.

Mr. Niblett and Babu Beni Prasad, for the respondents.

The High Court (STUART, C. J., and OLDFIELD, J.,) delivered the following

JUDGMENT.—The widows of Thamman Singh and guardians of his son the plaintiff, and of another son, Sirdar Singh, since deceased, executed on 19th July, 1870, three deeds of mortgage of property left by Thamman Singh in favour of the defendants or persons now represented by defendants. The sons of Thamman Singh were

* First Appeal, No. 18 of 1879, from a decree of Maulvi Abdul Qayum Khan, Subordinate Judge of Bareilly, dated the 13th December, 1878.

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minors, and the widows had obtained a certificate under Act XL of 1858 in respect of the minors' estates. The plaintiff has brought this suit on attaining majority to set aside these deeds on the ground of their illegality and to recover possession of property conveyed by two of them. The deeds are (i) mortgage of 10 biswas in Dharanpur, (ii) mortgage of 10 biswas in Beharipur, (iii) mortgage of 35 biswas 4 biswansis of resumed mutai land in Dharanpur; and a ground taken by the plaintiff in the Court below was that the widows had no power to make the mortgages without the sanction of the Civil Court. The defence is that the money was advanced by defendants on the mortgages to satisfy ancestral debts and to save from sale in execution of a decree the ancestral property which had been attached and put up for sale. The Court below has held that the ground urged by the plaintiff was not one on which the deeds could be set aside, and has found this defence to be good in respect of the first and second deeds, but not in respect of the third, and the Court decreed the claim only in respect of the third deed. There are separate appeals preferred by both parties.

The plaintiff has again urged in appeal that the deeds are invalid with reference to the provisions of Act XL of 1858, and this plea is good and disposes of both appeals. The deeds of mortgage were executed by persons holding a certificate under Act XL of 1858 without the sanction of the Civil Court previously obtained, and the contracts so made are void with reference to s. 23, Indian Contract Act, since their object is of such a nature that if permitted it would defeat the provisions of s. 18, Act XL of 1858, which enacts that no person taking a certificate under the Act shall have power to sell, mortgage, &c., without the order of the Civil Court previously obtained. The following cases in point may be referred to:—S. A. No. 180 of 1870, decided the 25th March, 1870 (1); S. A. No. 1078 of 1878, decided the 17th April, 1879 (2); *Surut Chunder Chatterjee v. Ashootosh Chatterjee* (3); *Dabee Dutt Shahoo v. Subodra Bibi* (4). The appeal on the part of the plaintiff is decreed with costs, and that on the part of defendants is dismissed with costs.

(1) Unreported.

(3) 24 W. R. 46.

(2) Unreported.

(4) 25 W. R. 449.