the expiry of three months from the date on which it was made over to him, in consequence of the amount of the loan not having been repaid to him. It thus appears that he had acquired a full proprietary right and title to the property before Kishen Das' insolvency. Accordingly we affirm the decree of the lower Courts and dismiss the appeal with costs.

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Appeal dismissed.

Before Mr. Justice Pearson and Mr. Justice Spankie.

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GANGA BISHESHAR (DEFENDANT) *v.* PIRTHI PAL (PLAINTIFF.)*

Hindu Law—Power of the Father to alienate ancestral property.

D, in pursuance of a promise to give his daughter a dowry, about two years after her marriage, made a gift of joint ancestral property to *G*, her father-in-law. *P*, *D*'s son, sued his father and *G* to have the gift set aside as invalid under Hindu law. *Held* that the gift, not having been made with the plaintiff's consent, and not being for any purpose allowed by Hindu law, was invalid, and that the plaintiff was entitled to have it set aside, not to the extent only of his own share in such property, but altogether.

ON the 25th April, 1872, about two years after the marriage of his daughter, one Debi Prasad executed a deed of gift of a certain share in a certain village, being the ancestral property of his family, in the favour of the defendant Ganga Bisheshar, the father-in-law of his daughter. The property purported to be transferred as the marriage portion of the daughter. In July, 1878, Pirthi Pal, the plaintiff, the son of Debi Prasad, sued his father and the defendant Ganga Bisheshar to have this deed of gift cancelled, on the ground that the alienation was invalid under Hindu law. The defendant Ganga Bisheshar set up as a defence to the suit, amongst other things, "that the deed of gift had been executed not only with the consent and knowledge of the plaintiff, but also with his aid, and the defendant had obtained possession by means of mutation of names, to which the plaintiff never took any exception," and that the plaintiff was not entitled to claim the cancellation of deed of gift in respect of the whole property, but in respect only of his own share. The Court of first instance determined that

* Second Appeal, No. 706 of 1879, from a decree of R. G. Currie, Esq., Judge of Gorakhpur, dated the 17th March 1879, affirming a decree of Hakim Rahat Ali, Subordinate Judge of Gorakhpur, dated the 24th December, 1878.

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the plaintiff had not consented to the gift, observing as follows:—"The consent of the plaintiff has not been proved in any way: had he consented he would have been made to affix his signature to the deed of gift; no documentary evidence is forthcoming to establish his consent." It further determined that the deed of gift should be cancelled altogether. The lower appellate Court concurred in the opinion of the Court of first instance, observing as follows:—"I do not consider it is proved that the deed was executed with the consent and admission of the plaintiff; it was so necessary a point to legalise the father's action in this particular, that if the son, the plaintiff, had been a consenting party, it is scarcely credible that this should not have been clearly shown at the time by some entry in the body of the deed or by making the son a witness to the deed: this is the finding of the lower Court, and I concur in it: I quite acknowledge that the oral testimony in this point is decidedly better for the defendant, appellant, than for the plaintiff, respondent, but I cannot credit it sufficiently against strong probabilities and the absence of all documentary evidence, nor can I accept the copy of a deposition of Pirthi Pal, dated 24th July, 1874, as sufficient to prove his knowledge and acquiescence: it is too roundabout a story, and even if allowed that the plaintiff did know at that time, I cannot admit that by the law-texts quoted, he can be held to have ratified the act and to be barred from bringing this suit: the first quotation is from Tagore Law Lectures, 1871, p. 7:—'He can interdict acts of waste, but if he does not do so and is cognisant of the transaction, and specially if he derives any benefit from it, he will be held to have impliedly consented to it.'—Well, he most certainly did not derive any benefit, and the force of the passage, I take it, turns upon that, as does also the quotation in the case of *Gopal Narain Mozoomdar* v. *Muddomutty Guptee* (1)—'of which he is aware and of which he has had the benefit.' The appellant making so great a point of the son's consent and admission virtually acknowledges that without such consent and admission the act of the father is illegal, and the quotations and precedents,—Tagore Law Lectures, 1871, p. 12, 'As early as 1824, the question, &c': Woodman's Digest of Bengal Law Reports, p. 284, 16: Vyavastha Chandrika, vol. i, pp. 35 and

(1) 14 B. L. R. 32.

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36, s. 31—put forward by the respondent are, I think, conclusive and definitive, this being undeniably joint undivided property: but the appellant does deny it or attempts to throw doubt on the applicability of the above quotations and precedents by quoting the cases—*Venkataramayyan* v. *Venkatasubramania Dikshater* (1) and *Deendyal Lal* v. *Jugdeep Narain Singh* (2). But these are special cases relating to forcible sales not to free-will transactions, and in the heading of the latter is this—'*Quære.*—Whether, under the law of the Mitakshara, in Bengal, a voluntary alienation by one co-sharer, without the consent of the rest, of his undivided share in joint ancestral property is valid'? I hold these precedents as irrelevant and the latter telling rather against than for the appellant who put it forward."

The defendant appealed to the High Court.

Lala *Lalta Prasad*, for the appellant.

The *Senior Government Pleader* (Lala *Juala Prasad*) and Shah *Asad Ali*, for the respondent.

SPANKIE, J.—The appellant before us was the appellant before the Judge, and he urged, first, that the deed impeached had been executed with the consent and admission of the plaintiff, respondent, who had remained silent from 1872 to 1878, having thus ratified his father's act; secondly, that the plaintiff could not sue under any circumstances to set aside the gift save with respect to his own share, *viz.*, two annas and two pies in the property in suit. The Subordinate Judge held that there was no proof of consent on the part of the plaintiff and no sufficient evidence of acquiescence in what was done by the father. He also appears to hold that the plaintiff could sue to set aside the deed altogether, and not only in regard to his own share. We must not lose sight of these objections which the Court below had to determine. Before us the first plea goes beyond the objections urged before the lower appellate Court and contends that, as the transfer was not made for any illegal or immoral purposes, the suit was not maintainable. The other pleas go to the plea of consent and acquiescence and

(1) I. L. R. 1 Mad. 358. (2) I. L. R. 3 Calc. 198.

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that of the limitation of plaintiff's right to sue to the extent of his own share only.

With respect to the plea of consent and acquiescence, I do not think that we can interfere with the Judge's finding. The admission of the Judge that the evidence on this point on the part of appellant is preferable to that on the part of defendant does not extend beyond the parol evidence. He assigns reasons for not crediting this evidence, and on the entire evidence before him he arrives at the same conclusion at which the first Court had arrived. The finding therefore is not one with which we could interfere on this appeal. I understand the finding of both the lower Courts to be that the transfer was not made for any necessary purpose allowed by the Hindu law. The deed of gift appears to have been made by the father in performance of a promise to give a dowry to his daughter. But I am not aware that the performance of such a promise can be regarded as a lawful purpose justifying alienation under the Hindu law. It was not necessary for the support of the daughter, it was not for any religious or pious work, nor was it a pressing necessity. Daughters must be maintained until their marriage and the expenses of their marriage must be paid. But in this case the gift was not made at the time of the marriage. It was not executed until two years after the marriage. There is, I think, force in the Subordinate Judge's observations that the great stress laid upon the alleged consent, acquiescence, and aid of the plaintiff in effecting the transfer, is a circumstance going to show that without such consent the transfer was illegal. The first plea, upon the Subordinate Judge's finding, in my opinion, fails.

I have already given my opinion regarding the second plea. As to the third, the property being admittedly joint and undivided, and the gift not having been made with the consent of the plaintiff, and not being for any purpose allowed by the Hindu law, the plaintiff was at liberty to set it aside altogether; and in arriving to this conclusion the lower appellate Court does not appear to have misunderstood any of the precedents cited before him. I would dismiss the appeal and affirm the judgment with costs.

PEARSON, J.—I concur.

Appeal dismissed.