

The judgment given in this way is a nullity, and must be cancelled; its existence therefore was and is no bar to the re-admission of the appellant's appeal (s. 558), if it was not barred by limitation or otherwise inadmissible. We must allow this appeal, and direct the restoration to the file of the application for re-admission under s. 558 on the merits, the costs of this appeal being costs in the cause.

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ZAINAB
BEGAM
v.
MANAWAR
HUSAIN
KHAN.

Appeal allowed.

Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Tyrrell.

LAL SINGH AND ANOTHER (DEFENDANTS) v. DEO NARAIN SINGH
AND OTHERS (PLAINTIFFS). *

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Hindu Law—Joint Hindu family—Alienation by father—Suit by sons to set aside alienation—Duty of sons to pay father's debts—Burden of proof.

The rule enunciated by the Privy Council in *Muddun Thakoor v. Kantoo Lall* (1) and *Suraj Bansi Koer v. Sheo Persad Singh* (2), "that where joint ancestral property has passed out of a joint family, either under a conveyance executed by a father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they show that the debts were contracted for immoral purposes to the knowledge of the vendee or mortgagee," is limited to antecedent debts, *i.e.*, to debts contracted before the sale or mortgage sought to be impeached by the sons; and it does not cover cases in which a sum in ready money has been paid over to the father by the vendee or mortgagee. The authorities seem to come to this, that in those cases where a person buys ancestral estate, or takes a mortgage of it from the father, whom he knows to have only a limited interest in it, for a sum of ready money paid down at the time of the transaction, such person, in a suit by the sons to avoid it, must establish that he made all reasonable and fair inquiry before effecting the sale or mortgage, and that he was satisfied by such inquiry, and believed, in paying his money, that it was required for the legal necessities of the joint family, in respect of which the father, as head and managing member, could deal with and bind the joint ancestral estate.

The three plaintiffs in this case were the sons of Ram Dihal, the first defendant, and on the 3rd October, 1883, when the suit was instituted, they were, so it was stated, aged respectively as follows:—Deo Narain Singh, 23; Ram Narain Singh, 18 years and 2 months; Jagat Narain Singh, 15 years and 2 months. On the 12th December, 1864, Deo Narain alone having been born, Ram

* Second Appeal No. 286 of 1885, from a decree of E. B. Thornhill, Esq., District Judge of Jaunpur, dated the 30th January, 1885, reversing a decree of Maulvi Muhammad Nasir-ul-lah Khan, Subordinate Judge of Jaunpur, dated the 22nd December, 1883.

(1) 14 B. L. R. 187; L. R., 1 Ind. Ap. 333. (2) I. L. R., 3 Calc. 148.

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Dihal made a conditional sale of two annas out of a four annas ancestral zemindari share in favour of one Naipal Singh for Rs. 1,200. The consideration given by the conditional vendee was that he paid off some prior incumbrances created by Ram Dihal, and also gave him a sum in cash. The two annas were to be held to be sold if the Rs. 1,200 were not re-paid by the 25th June, 1877. On the 28th November, 1871, Ram Narain Singh and Jagat Narain Singh then having been born, Ram Dihal sold to the other defendants in this suit the entire four annas share, the consideration being Rs. 1,200, left with the vendees to pay off the conditional sale of 1864, Rs. 232 due to the vendees under a mortgage, and Rs. 1,500 in cash. The plaintiffs sued to set aside this sale to the extent of three annas, upon the ground that it was made without legal necessity and for immoral purposes, and that Ram Dihal had no power to sell the whole property. The defendants pleaded, among other matters, that they gave good consideration for the sale, and that, as regards the sum in cash handed over to Ram Dihal, it was taken for the necessary expenses of the family. The Court of first instance (Subordinate Judge of Jaunpur), holding that the *onus* lay on the plaintiffs to prove that the sale was made for improper purposes, and that the money had been taken for necessary purposes of the family, dismissed the suit. On appeal by the plaintiffs the District Judge of Jaunpur, holding that it lay with the defendants to establish the necessity for the sale, reversed the first Court's decree and decreed the claim of the plaintiffs.

The defendants appealed to the High Court, contending that the District Judge was wrong in placing the burden of proof on them, and that it was for the plaintiffs to acquit themselves of their obligation under the Hindu law to pay their father's debts, by showing that they were contracted for purposes which, under that law, were not binding upon them.

Mr. T. Conlan, Munshi *Hanuman Prasad* and Munshi *Kashi Prasad*, for the appellants.

Pandit *Ajudhia Nath* and Pandit *Sundar Lal*, for the respondents.

STRAIGHT, Offg. C.J., and TYRRELL, J. (After stating the facts, the judgment continued):—It seems to us that the principle enun-

ciated by their Lordships of the Privy Council in *Suraj Bansi Kher's Case* (1) as to the effect of an earlier decision of that tribunal in *Muddun Thakoor v. Kantoo Lall*, (2) must be our guide in the present instance. It is as follows:—"That where joint ancestral property has passed out of a joint family, either under a conveyance executed by a father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they show that the debts were contracted for immoral purposes, and that the purchasers had notice that they were so contracted." It will be seen from this passage that where an antecedent debt is the consideration for a sale by the father of the ancestral property, or it is charged by him to raise money to pay off an antecedent debt, it rests with the sons to show that such debt was contracted for immoral purposes to the knowledge of the vendee or mortgagee. But it is to be observed that this rule is limited to antecedent debts, that is to say, debts contracted before the sale or mortgage sought to be impeached by the sons; and it does not cover cases in which a sum in ready money has been paid over to the father by the vendee or mortgagee. As we understand it, the distinction drawn by their Lordships is founded on the view that while in the one instance the vendee or mortgagee is not to "be expected to know or to come prepared with proof of the antecedent economy and good conduct of the owner of an ancestral estate," on the other hand, "he may reasonably be expected to prove the circumstances of his own particular loan"—*Hunooman Pershad Panday's Case* (3). The authorities therefore seem to come to this, that in those cases where a person buys ancestral estate or takes a mortgage of it from the father, whom he knows to have only a limited interest in it, for a sum of ready money paid down at the time of the transaction, such person, in a suit by the sons to avoid it, must establish that he made all reasonable and fair inquiry before effecting the sale or mortgage, and that he was satisfied by such inquiry, and believed, in paying his money, that it was required for the legal

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(1) I. L. R., 3 Calc. 148. (2) 14 B. L. R. 137; L. R., 1 Ind. Ap. 333.

(3) 6 Moo. I. A. 419.

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necessities of the joint family, in respect of which the father, as head and managing member, could deal with and bind the joint ancestral estate.

Adopting this rule and applying it to the present case, it is obvious that the Judge below in dealing with it did not appreciate the distinction to be drawn as indicated above, and that his decision does not meet the difficulties of the position. It seems to us therefore that the proper course for us to adopt is to remand the following issues under s. 566 of the Code for determination :—

1. As to the Rs. 1,200, and Rs. 232 antecedent debts, part of the consideration for the sale to the defendants, have the plaintiffs established that those debts were contracted for immoral purposes, and that at the time the sale was impeached the defendants had notice they were so contracted ?

2. As to the Rs. 1,500 paid in cash to Ram Dihal by the defendants, have they proved that they made reasonable and proper inquiries before handing it over, and that they did it believing it was required for the legal necessities of the joint family of which the plaintiffs were members, and that Ram Dihal, as managing member and head, required it for purposes of the joint family ?

The findings, when recorded, will be returned into this Court, with ten days for objections from a date to be fixed by the Registrar.

Before Mr. Justice Mahmood and Mr. Justice Oldfield.

MUHAMMAD SALIM (PLAINTIFF) v. NABIAN BIBI AND OTHERS
(DEFENDANTS). *

Civil Procedure Code, s. 13—Res judicata—Dismissal of suit under s. 10, cl. ii, Act VII of 1870 (Court Fees Act)—Dismissal of suit for misjoinder—Dismissal of suit “in its present form.”

The purchaser of certain immoveable property in execution of a decree sued for possession of the same. The suit was dismissed “in its present form” (*ba haisiyat manjuda*), upon two grounds: first, with reference to s. 10 of the Court Fees Act (VII of 1870), that the suit was undervalued and the plaintiff had failed to pay, within the time fixed, additional court-fees required by the Court, and secondly, for misjoinder. The purchaser subsequently brought a second suit.

* Second Appeal No. 1366 of 1885, from a decree of J. M. C. Steinbelt, Esq., District Judge of Azamgarh, dated the 2nd June, 1885, confirming a decree of Maulvi Ahmad-ullah, Subordinate Judge of Azamgarh, dated the 23rd December, 1884.

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