PRIVY COUNCIL.

P. C.
1893
March 10
and 14.
April 28.

BALGOBIND DAS (PLAINTIFF) *v.* NARAIN LAL AND OTHERS (DEFENDANTS).

On appeal from the High Court at Allahabad.

Hindu law—Mitakshara.—Joint-Hindu family—Mortgage—Attempt by one co-sharer to mortgage his undivided share on his own account.—Effective sale of part of such a share in execution of a decree against the co-sharer.—Interest allowed on the mortgage debt according to the contract.

Under the Mitaksbara, as administered by the High Courts of the North-West Provinces and Bengal, an undivided share in ancestral estate, held by a member of a joint family in coparcenary, cannot be mortgaged by him on his own private account, without the consent of those who share the joint estate. An attempted mortgage by one of them does not create a charge which can have priority over purchases at execution sales made *bonâ fide*, and without notice of it; such purchasers having acquired the right of compelling the partition which the debtor might have compelled, had he been so minded, before the alienation by the sale of his share.

As to the invalidity of the attempted mortgage, *Sadabart Prasad Sahu* v. *Foolbash Koer* (1), referred to, and approved. As to the right of the purchaser of the share at a judicial sale, *Deen Dyal Lal* v. *Jugdeep Narain Singh* (2), followed, and reference made to the distinction, mentioned in the latter case, between a voluntary alienation without such consent, and an involuntary one as the result of the execution of a decree against the co-parcener, and a judicial sale thereunder.

A father and son composed a joint family, holding a share of ancestral lands. The son mortgaged to a banker, to secure a loan, his interest in the undivided share. His father, without having notice of the mortgage, purchased, in good faith, portions of the estate forming part of the son's joint share, at sales in execution of decrees against the latter, obtained by his creditors.

Held, that the son's interest in the portions so sold passed to the father, whose rights therein as purchaser at the judicial sales were not affected by the mortgage. The mortgagee could, in execution of a money decree, which he might obtain against the mortgagor, personally attach and bring to a judicial sale such parts of the mortgaged property as had not already been sold, but not in virtue of the mortgage.

Interest on the money lent was contracted to be payable,—"even if a suit should be instituted" at the rate fixed for the period for which the money was lent. *Held*, that interest must be decreed at this rate, according to the contract, down to the institution of the suit.

Present: LORD WATSON, LORD MORRIS, Sir R. COUCH, and the Hon. GEORGE DENMAN.

(1) 3 B. L. R., 31.

(2) L. R., 4 I. A. 247; S.C. I. L. R., 3 Calc. 198.

1893

BALGOBIND DAS v. NARAIN LAL.

APPEAL from a judgment and decree (13th February 1889) of the High Court, affirming, with a variation as to the amount of interest allowed, a decree (4th February 1887) of the Subordinate Judge of Benares.

No fact was in dispute on this appeal; which related to an attempted mortgage of the right and interest in joint ancestral estate by a co-sharer, and the distinction between voluntary and compulsory alienations by him, the latter being sales in execution of decrees against him.

The suit was brought by the appellant Balgobind Das, a banker in Benares, who, between 1873 and 1879, had lent money, from time to time, to the first defendant, now the respondent, Narain Lal, who was joint in estate with his father, Naunidh Lal, the third defendant, now respondent. The question raised was whether a simple mortgage by a member of a joint Hindu family, for his own private debt, of his share in the ancestral estates, created a charge valid against purchasers of parts of the same share sold in execution of decrees against him. Some of the ancestral estate, forming portions mentioned in the first schedule of the plaint, had been sold before the date when the mortgage was made, so that there was no doubt that they were not affected by the mortgage. The question was as to other parts sold in execution of decrees against Narain Lal, to *bonâ fide* purchasers, after the date of the mortgage, but without notice or their knowledge of it. As to this property, mentioned in a second schedule, the question was whether the mortgage was effective against the claim under the judicial sales, or whether the purchasers under the latter, the principal of whom was Naunidh Lal, father of Narain Lal, had acquired such a right that their title was valid, notwithstanding the prior mortgage.

The family property consisted of an eight anna share of land and houses situate in the districts of Benares, Patna, Tirhut, Sarun, Motihari, Hajipur, Champarun, Gaya, Monghyr and Muzaffarpur, and the father and son, who were under the Mitakshara, had each a four anna share in the undivided estate. On the 27th November 1879, Narain Lal executed a bond, with a mortgage of his four

1893

BALGOBIND DAS v. NARAIN LAL.

anna share to the plaintiff, Balgobind Das, to secure a debt of Rs. 93,000, which with interest at Re. 1-8 a month, or eighteen per cent., he bound himself to pay within two years. The money not having been paid, this suit was brought on the 12th of February 1886, for a decree "enforcing the hypothecation," and ordering a sale, and also payment of the debt by Narain Lal personally. The total amount claimed was Rs. 2,01,484, consisting of Rs. 93,000 principal, and Rs. 1,08,484 interest. With Narain Lal were joined two other defendants, who had purchased at execution sales held after the date of the mortgage, the right, title and interest of Narain Lal in parts of the property. They alleged for their defence, amongst other things, that Narain Lal, as one member of the joint Hindu family, was not entitled to mortgage his undivided share in the joint family property. In consequence of this, the plaintiff applied to have Naunidh Lal, the father, till then not a party, added as a defendant. This was ordered by the Subordinate Judge on the 24th of September 1886. Naunidh's defence was that, he and his son being each entitled to a one-half share, and no partition, separation or specification of their shares having taken place, the son had not been competent to mortgage his share without his, Naunidh's, consent.

The Subordinate Judge found that the mortgage had been executed and that the money was due. On the question as to the right of Narain Lal to mortgage, he applied the rule, citing *Sadabart Parshad Sahu* v. *Foolbash Koer* (1), and *Rama Nand Singh* v. *Gobind Singh* (2), that one member of a joint undivided family could not mortgage or sell his share without the consent, express or implied, of his co-parceners. In this case, he saw no reason why the obtaining a share of one of the members by another, as the result of causes beyond the control of the former (for instance, as the result of a judicial sale), should change the character of the remainder of the estate, rendering the co-proprietors separate as to their respective shares. He decreed the claim personally against Narain Lal for the money, with interest at the rate agreed upon only down to the day fixed for the repayment of the principal.

(1) 3 B. L. R., (F.B.), 31. (2) I. L. R., 5 All., 384.

1893

BALGOBIND DAS v. NARAIN LAL.

The two questions before the High Court (SIR JOHN EDGE, C.J., and TYRRELL, J.,) were, according to the judgment given on the plaintiff's appeal, *first*, whether the mortgage-deed of the 27th of November 1879 effected what it professed, namely, to mortgage the property: *secondly*, whether the Subordinate Judge was right in disallowing the interest after the date fixed for repayment of the principal. The High Court, on the first point, held, with the Court below, that the deed did not operate so as to affect the property as a mortgage of it. They added that it had been argued before them that defendants, the auction-purchasers took under Narain Lal, and therefore could not be heard to say that he, as a member of a joint Hindu family, with only a right unexercised by him to demand a partition, was without the power, consequently, to mortgage. In one sense, no doubt, auction-purchasers did take under the judgment-debtor, but, in another sense, they took adversely to him. In an auction sale in execution of decree the purchaser did not take by a voluntary conveyance;—on the contrary, he took by operation of the decree obtained against the judgment-debtor. The Judges therefore held, in concurrence with the Subordinate Judge, that it was open to the auction-purchaser in this case to rely on the invalidity of the mortgage attempted by Narain Lal, and that the decree must be in favour of his father Naunidh Lal as such purchaser, in good faith, and without notice.

On the second point, they were of opinion that it was not the intention of the parties that interest should be payable on the debt beyond the date fixed for repayment, at the same rate as that charged down to that date. They fixed five per cent. from that date down to the institution of the suit.

Mr. *T. H. Cowie, Q.C.*, and Mr. *J. H. A. Branson*, for the appellant, argued that Narain Lal's mortgage, of the year 1879, effected a valid charge upon the share which he held comprising the property in the deed mentioned. The question was, as had been stated by the first Court, whether the mortgagor was competent to mortgage his share without his father's consent, aad whether purchasers, in good faith, at judicial sales of part of the property

1893

BALGOBIND DAS v. NARAIN LAL.

subject to the son's undivided interest, had obtained a title superior to the charge which the son had attempted to make before the sale to them. No doubt a course of decisions, in the North-Western Provinces and Bengal, had established the principle that so long as family estate was undivided, the one co-parcener had no power to transfer his share without the consent of the other. They referred to—*Appovier* v. *Rama Subba Aiyan* (1), *Sadabart Parshad Sahu* v. *Foolbash Koer* (2), *Suraj Bunsi Koer* v. *Sheo Proshad Singh* (3), *Chunderkanth Roy* v. *Ram Ruttun Ghosal* (4), [SIR R. COUCH referred to *Madho Parshad* v. *Mehrban Singh* (5)].

The inability of a co-parcener to mortgage was the result of his not being entitled to any specific, or defined, part of the joint property, he being, till partition, entitled only to an interest in the whole joint estate, and not to an ascertained part of it. His interest also was subject to the right of survivorship in others. But on the other hand, each co-parcener could claim to have a partition;—the right of partition which the purchaser at an execution sale under a decree against the co-parcener could claim to work out; and the son, in his father's lifetime, could insist upon having his share. Here, inasmuch as the son, Narain Lal, had an interest ascertainable by his own act, there was a right in him on which the mortgage could operate. The right to insist on a partition had been applied to the purpose of obtaining satisfaction of decrees, and should be held available to the mortgagee, who was prior in time. What should be the operation of the mortgage was expressed in Act IV of 1882, section 58, sub-section 6, showing the nature of the simple mortgage, (as it was formerly as well as now,) *viz* :—the mortgagor, without delivering possession of the mortgaged property, bound himself personally to pay the mortgage money and agreed, expressly or impliedly, that in the event of his failing to pay according to his contract, the mortgagee should have the right to cause the property to be sold, and that the proceeds should be applied, so far as might be necessary, in payment of the mortgage money.

(1) 11 Moo, I. A., 75.
(2) 3 B. L. R. (F.B.) 31.
(3) L. R., 6 I. A., 88; I. L. R., 5 Calc., 148.
(4) 2 S. D. A., 1860 (Bengal) 265.
(5) L. R., 17 I. A., 194; I. L. R., 18 Calc., 157.

1893

BALGOBIND DAS v. NARAIN LAL.

They referred to—

Ganraj Dubey v. *Sheozore Singh* (1), *Chamaili Kuar* v. *Ram Prasad* (2), *Rama Nand Singh* v. *Gobind Singh* (3), *Madho Parshad* v. *Mehrban Singh* (4), and argued that the right to call for a partition was capable of being transferred. They referred to *Suraj Bunsi Koer* v. *Sheo Proshad Singh*, (5), *Mussumat Phoolbas Koonwar* v. *Lala Jogeshur Sahoy* (6), *Deendyal Lal* v. *Jugdeep Narain Singh*, (7). Part of the judgment in *Mahabeer Persad* v. *Ramyad Singh* (8), showed that, as between alienor and alienee of an interest in joint property, there were equities which might be dealt with so as to become equivalent to an alienation. There had been no dissent expressed by this committee from the decision in *Sadabart's* case, but there had hardly been any such complete affirmation of it as to cover the present one. Their contention now was that there was no real and practical distinction between the rights of a purchaser at an execution sale to insist on a partition of the share of the judgment debtor, on the one hand, and on the other, the rights of a purchaser under a voluntary alienation, such as this mortgage; where the share alienated was capable of being, as was the case here, sufficiently defined. A charge had here been created in the undivided fourth share which gave the mortgagee a prior right. They referred to the difference between the law laid down in the decisions of the High Courts of Madras and Bombay, on the one hand, and the decisions in Bengal and the North-Western Provinces, on the other, and that part of the judgment in *Suraj Bunsi Koer* v. *Sheo Proshad Singh* (9), which related to this subject.

Mr. *J. D. Mayne*, for the respondent, Naunidh Lal, argued that according to the law administered in the North-Western Provinces, the mortgage was ineffectual to charge any part of the share of Narain Lal on the joint estate. In a long course of

(1) I. L. R., 2 All. 898.
(2) I. L. R., 2 All. 267.
(3) I. L. R., 5 All. 384.
(4) L. R., 17 I. A., 194; I. L. R., 18 Calc., 157.
(5) L. R., 6 I. A., 88; I. L. R., 5 Calc., 148.
(6) L. R., 3 I. A., 7; I. L. R., 1 Calc., 226.
(7) L. R., 4 I. A., 247.
(8) 12 B. L. R., 90.
(9) L. R., 6 I. A., 88, at p. 103; I. L. R., 5 Calc. 148, at pp. 166, 167.

decisions in the S. D. A., and in the High Court, it had been held that a coparcener could not alone alienate his share. Such a share only became alienable when a specific part of the property to which it related had been defined as belonging to it. Its ascertainment resulted in the case of execution of a decree against a coparcener, by his right to a partition being worked out. It had been part of the law of procedure at one time that the right, title, and interest of a judgment-debtor could be attached, though later legislation had not been in the same terms as to this. [SIR R. COUCH inquired if this expression had been brought into the Code, VIII of 1859), from any of the earlier Acts or Regulations.] This might have been introduced from the earlier practice, before 1859, but it was not known if it appeared in any of the Regulations. Since 1882 what was sold under the Procedure Code was the estate of the judgment-debtor, and it was for the appellant to establish that, by some means or other, the share, which was the subject of this mortgage, in joint ancestral property, had been withdrawn from the general rule governing coparcenary estates. The proposition stated in *Sadabart Prasad Sahu* v. *Foolbash Koer* (1) rested on earlier authority. It had been followed by a series of decisions, of which *Chunder Coomar* v. *Hurbuns Sahai* (2) was a late one. In Allahabad there had been *Chamaili Kuar* v. *Ram Prasad* (3), and *Ramanand Singh* v. *Gobind Singh* (4). Also were referred to, *Vasudev Bhat* v. *Venkatesh Sanbhav* (5), *Bhugwandeen Doobey* v. *Myna Baee* (6), *Madho Parshad* v. *Mehrban Singh* (7), *Mussumat Phoolbas Koonwur* v. *Lalla Jogeshur Sahoy* (8).

In *Madho Parshad* v. *Mehrban Singh* (9), it was decided that where a coparcener had sold his undivided share to a purchaser, the rights of a surviving coparcener prevailed by survivorship over those of the purchaser. Reference was made to the judgment in *Lakshman Dada Naik* v. *Ramchandra Dada Naik* (10), in which the

(1) 3 B. L. R., (F. B.) 31.
(2) I. L. R., 16 Calc., 137.
(3) I. L. R., 2 All., 267.
(4) I. L. R., 5, All., 384.
(5) 10 Bom., H. C. Rep., 139.
(6) 11 Moo. I. A., 487 at p. 516.
(7) L. R., 17 I.A., 194; I. L. R., 18 Calc., 157.
(8) L. R., 3 I. A., 7; I. L. R., 1 Calc. 226.
(9) L. R., 17 I. A., 194; I. L. R., 18 Calc. 157.
(10) L. R., 7 I. A., 181; I. L. R., 5 Bom. 48.

1893

BALGOBIND DAS v. NARAIN LAL.

committee declined to extend the power of a coparcener to alienate. A mortgage by a coparcener did not create any immediate interest in the joint property, and resulted in being merely a personal contract between the mortgagor and the individual coparcener, though a lien might attach when the coparcenary interest of the shares came, afterwards, to be ascertained by partition of the joint estate. But there could be no charge on the estate till partition, the coparcenary state of things lasting, and the right of survivorship remaining.

The mortgagee's remedy should have been to obtain a decree upon the mortgage debt, and to have attached the land in execution of his decree. But the right to enforce the mortgage was inconsistent with the requirement that partition should precede any transfer. The share might vary, and it was uncertain whether the mortgagor's share was to be taken as it existed at one period, or another. In *Rangasami* v. *Krishnayyan* (1), it was held that the purchaser's right to partition of a share applied to the share as computed with reference to the state of the family at the date of suit. The charge could only take effect when there should be either a voluntary partition, or one upon the compulsion of a judicial sale. He referred to Strange's Hindu Law, Vol. I, p. 202 [SIR R. COUCH referred to *Udaram Sitaram* v. *Ranu Panduji* (2), and the statement of the question in that case by SIR M. R. WESTROPP, C. J.]

Mr. *T. H. Cowie, Q.C.*, replied.

Their Lordships' judgment was afterwards, on the 28th of April, delivered by SIR R. COUCH :—

The respondent, Narain Lal, is the son of the respondent Nannidh Lal, and they are governed by the law of the Mitakshara as administered in the North-Western Provinces. On the 27th of November 1879, Narain Lal executed what is known in India as a simple mortgage, whereby, in consideration of a debt of Rs. 86,834-12-3, then due to Balgobind Das, the appellant, and a further advance of Rs. 6,165-3-9, making together Rs. 93,000,

(1) I. L. R., 14 Mad., 408. (2) 11 Bom. H. C. Rep., 76.

Narain Lal pledged a 4 anna share owned by him under the Hindu law out of the 8 anna share of his father, Naunidh Lal, in the ancestral property situate in the districts of Benares, &c., of which a detail was given at the end of the deed. And he bound himself to pay the principal sum and interest at Re. 1-8 per cent. per mensem within two years from the date of the bond. Neither the principal sum nor any part of the interest was paid within the two years nor subsequently, but the appellant did not take any steps to enforce the bond until the 12th of February 1886, when he brought a suit in the Court of the Subordinate Judge of Benares to recover the principal money and interest by enforcement of the hypothecation lien and sale of the mortgaged property. The defendants in the suit were Narain Lal and two others, Balkishen Lal and Gopal Das, who were joined as being in possession of portions of the mortgaged property. By an order dated the 22nd of June 1886 Bhola Singh was made a defendant instead of Gopal Das, and by another order dated the 22nd of September 1886 Naunidh Lal was made a defendant. The real contest in the suit was between him and the appellant. The defence set up in his written statement is that he and his son were under the law of the Mitakshara, and that the mortgage deed was invalid; that out of the properties mentioned in the plaint the properties in the first schedule to the written statement were sold to the extent of the rights and interests of Narain Lal in execution of decrees held by third parties before the date of the plaintiff's mortgage bond sued on, and were purchased by him with his own money in the name of his wife; that the rights of Narain Lal in the properties mentioned in the second schedule were purchased in good faith by him with his own money, some in his own name, some in the name of his wife, and some through his mukhtar. The whole of the purchases were made at sales by auction in execution of decrees, and it was found by the first Court that the defendants were *bonâ fide* purchasers who had no notice or knowledge of the mortgage to the plaintiff. It was admitted by the learned Counsel for the appellant that there was no fact in dispute in this appeal. There is no question as to the properties in the first schedule. They are clearly not affected by

1893

BALGOBIND DAS v. NARAIN LAL.

the mortgage deed. As to the properties in the second schedule, the purchasers, according to the judgment of this board in *Deen Dyal Lal* v. *Jugdeep Narain Singh* (1), acquired the right of compelling the partition which the debtor might have compelled had he been so minded before the alienation by the sale of his share took place. The main question in the case is whether the mortgage is valid, and creates a charge which is to have priority over purchases at execution sales made *bonâ fide*, and without notice of it.

The Subordinate Judge held that Narain Lal was not competent to mortgage his undivided share in the joint estate without the consent of his father for a debt incurred for his own individual benefit, and made a decree that the plaintiff should recover Rs. 1,26,480 out of the amount claimed from Narain Lal personally, dismissing the rest of the suit. The High Court, on appeal, affirmed this decree with a variation of the interest.

As to the defence that the mortgage deed is invalid, the leading case upon the Mitakshara law as administered in Bengal and the North-Western Provinces is *Sadabart Prasad Sahu* v. *Foolbash Koer* (2). In that case two questions had been referred to a Full Bench, the second being :—" Bhagwan Lal (a member of a Hindu family governed by the Mitakshara law) in his lifetime, executed an ordinary zur-peshgi mortgage in respect of his undivided share in a portion of the joint family property, in order to raise money on his own account, and not for the benefit of the family. Can the nephew of Bhagwan Lal (who had died) recover from the mortgagee, without redeeming the same, possession of the mortgaged share, or any portion of it?" Sir Barnes Peacock in delivering the judgment of the Full Bench (the other Judges concurring) upon this question observed that there were conflicting decisions on the subject, cases in the reports of the High Courts of Bombay and Madras being in the affirmative, and a case in the High Court at Calcutta in the negative, and said that the decision of the Calcutta High Court was founded upon a current of authorities supported by the Vyavashtas of Pandits which it was too late for the Courts

(1) L. R., 4 I. A., 247. (2) 3 B. L. R., (F B.), 31.

to overrule even if they were disinclined to agree in the principle established by them. Then, after referring to reported decisions of the Sudder Courts, the earliest of which in Bengal was in 1822, and in the North-Western Provinces (formerly part of Bengal) was in 1860, and to the parts of the Mitakshara bearing upon the question, he concluded by saying:—"Whatever our opinions might be, in the absence of the decided cases to which I have referred, I am of opinion that we should not be justified in unsettling the law by overruling that current of authorities by which, for nearly half a century, the law appears to have been settled, and in accordance with the principles of which it appears to have been generally understood and acted upon. I am of opinion that upon the simple fact stated in the second question, Bhagwan Lal had no authority, without the consent of his co-sharers, to mortgage his undivided share in a portion of the joint family property, in order to raise money on his own account, and not for the benefit of the family."

In the judgment in *Deen Dyal's* case the distinction between the voluntary alienation and a sale in execution is referred to thus:—"Their Lordships finding that the question of the rights of an execution creditor, and of a purchaser at an execution sale, was expressly left open by the decision in *Sadabart's* case, and has not since been concluded by any subsequent decision which is satisfactory to their minds, have come to the conclusion that the law, in respect at least of those rights, should be declared to be the same in Bengal as that which exists in Madras. They do not think it necessary or right in this case to express any dissent from the ruling of the High Court in *Sadabart's* case as to voluntary alienations. But, however nice the distinction between the rights of a purchaser under a voluntary conveyance and those of a purchaser under an execution sale may be, it is clear that a distinction may, and in some cases does, exist between them." It appears to have been sometimes suggested that the law in Madras and Bombay is a logical consequence of the decision in *Deen Dyal's* case, and some argument of this kind seems to have been urged in the present case before the Subordinate Judge. Upon this there is an important passage in

1893

BALGOBIND DAS v. NARAIN LAL.

the judgment of this committee in *Lakshman Dada Naik* v. *Ramchandra Dada Naik* (1) where the question related to an alienation by will upon which the authorities in Bombay and Madras were then in conflict. At page 193 their Lordships say, "The argument (that the will should be treated as a disposition by the co-sharer in his lifetime of the undivided share) is founded upon the comparatively modern decisions of the Courts of Madras and Bombay which have been recognized by this committee as establishing that one of several coparceners has, to some extent, a power of disposing of his undivided share without the consent of his co-sharers," and at p. 195, "Their Lordships are not disposed to extend the doctrine of the alienability by a coparcener of his undivided share without the consent of his co-sharers beyond the decided cases. In the case of *Suraj Bunsi Koer* above referred to they observed :—'There can be little doubt that all such alienations, whether voluntary or compulsory, are inconsistent with the strict theory of a joint and undivided family (governed by the Mitakshara law); and the law as established in Madras and Bombay has been one of gradual growth founded upon the equity which a purchaser for value has to be allowed to stand in his vendor's shoes, and to work out his rights by means of a partition.' The question therefore is not so much whether an admitted principle of Hindu law shall be carried out to its apparently logical consequences, as what are limits of an exceptional doctrine established by modern jurisprudence."

The reported decisions as to the law in the North-Western Provinces do not go so far back as those in Bengal, but in *Chamaili Kuar* v. *Ram Prasad* (2) Mr. Justice Oldfield says :—"The question cannot be said to be at this time an open one on this side of India. There is no doubt a current of decisions by this Court, invalidating sales by one coparcener without the consent, express or implied, of his coparcener, and I have not been able to find any case where a voluntary sale was held valid to the extent of the seller's own interest ... ... The law may be said to have been settled by a course of decisions and it would be undesirable to disturb it."

(1) L. R., 7 I. A., 181. (2) I. L. R., 2 All., 267.

The reason which has led to the recognition by this committee of the law in Madras and Bombay applies as strongly to the recognition of the settled law of Bengal and the North-Western Provinces, and the judgment in the 7th Indian Appeals appears to their Lordships to be a recognition of that law. This is confirmed by the judgment of this committee in *Madho Parshad* v. *Mehrban Singh* (1). There a Hindu, without the consent of his coparcener, had sold his undivided share in the family estate for his own benefit, and received the purchase money to his own use; on his death the surviving coparcener sued to recover the share. In the judgment delivered by Lord Watson it is said that the counsel for the appellant conceded in argument that the rules of the Mitakshara law, which prevail in the Courts of Bengal are applicable in Oudh to the alienation of interests in a joint family estate; and that he likewise conceded that the sales being without the consent of the coparcener, and not justified by legal necessity, were, according to that law, invalid; but he maintained that the transactions being real, and the prices actually paid, the respondent could only recover the shares sold subject to an equitable charge in the appellant's favour for the purchase monies. It was held that it might have been quite consistent with equitable principles to refuse to the seller restitution of the interest which he sold, except on condition of its being made at once available for the repayment of the price which he received, but that the respondent who took by survivorship was not affected by any equity of that kind, and that an equity which might have been enforced against the seller's interest whilst it existed could not be made to affect that interest when it has passed to a surviving coparcener except by repealing the rule of the Mitakshara law. In the present case the interest has passed to Naunidh, not by survivorship but by purchases at sales in execution of decrees. Although it is not the same interest as he would acquire by survivorship, it is sufficient to entitle him to set up the invalidity of the mortgage deed. If any portion of Narain Lal's share is still unsold, the appellant may attach and sell it in execution of the decree against Narain Lal personally, but

(1) L. R. 17, I. A. 194.

1893

BALGOBIND DAS v. NARAIN LAL.

not by virtue of the mortgage. The decision in this suit is not intended to prejudice that right. But for the above reasons their Lordships hold that the suit against the other defendants was rightly dismissed. The High Court altered the decree of the Subordinate Judge by giving to the Appellant interest on the Rs. 93,000 at 5 per cent. per annum, from the 27th of November 1881 to the 13th of February 1889, the date of its decree. In the mortgage deed it is covenanted that even if a suit is instituted, interest shall be paid on the whole or part of the principal amount at the rate of Re. 1-8 per cent. per mensem (18 per cent. per annum), and the decree should be varied by giving interest at that rate instead of 5 per cent. to the 12th of February 1886 the date of the institution of the suit.

Their Lordships will humbly advise Her Majesty accordingly. The appellant having substantially failed will pay to the respondent, Naunidh Lal, his costs of this appeal.

Solicitor for the appellant :—*Mr. J. F. Watkins.*

Solicitors for the respondent :—*Messrs. Pyke and Parrott.*

P. C. 1893 *March* 17. *April* 28.

RAJA MOHKAM SINGH AND OTHERS, (APPELLANTS) *v.* RAJA RUP SINGH AND OTHERS, (RESPONDENTS).

[On appeal from the High Court at Allahabad.]

Agreement to supply money for another person's suit—Excess of the reward rendering such agreement inequitable—Champerty.

A fair agreement to supply money to a suitor to carry on a suit, in consideration of the lender's having a share of the property sued for, if recovered, is not to be regarded as necessarily opposed to public policy, or merely, on this ground, void. But in agreements of this kind the questions are, (*a*) whether the agreement is extortionate and unconscionable, so as to be inequitable against the borrower; or (*b*) whether the agreement has been made, not with the *bonâ fide* object of assisting a claim, believed to be just, and of obtaining reasonable compensation therefor, but for improper objects, as for the purpose of gambling in litigation, or of injuring others, so as to be, for these reasons, contrary to public policy. In either of these cases, effect is not to be given to the agreement. Here, upon the facts the above case (*b*) did not arise, and this agreement was not contrary to public policy. But this agreement fell

Present: LORD WATSON, LORD MORRIS, SIR R. COUCH and the HONOURABLE GEORGE DENMAN.