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limitation for suits. The plaintiff, appellant here, has only himself to thank if he had any merits in this suit. He brought his suit at the last moment of a twelve years' limitation. He inserted a ridiculous valuation which no Court would accept. He delayed presenting his plaint in the Court of the Munsif until that Court was about to rise for the day and until the office from which he could have obtained stamped paper had closed for the day. We hold that his suit was barred by limitation, and we dismiss his appeal and affirm the decree of the Court below with costs.

Appeal dismissed.

FULL BENCH.

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February 8.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Tyrrell, Mr. Justice Knox, Mr. Justice Blair, Mr. Justice Burkitt and Mr. Justice Aikman.

BADRI PRASAD AND ANOTHER (PLAINTIFFS) *v.* MADAN LAL AND OTHERS (DEFENDANTS.)*

Hindu Law—Joint Hindu family—Liability of sons during their father's lifetime for his antecedent debts.

Held by the Full Bench that the sons in a joint Hindu family were liable to be sued along with their father upon a mortgage bond given by the father alone after the sons were born which purported to mortgage the joint family property, the consideration having been, with a trifling exception, money advances antecedently made by the mortgagee to him not as manager of the family or with the authority of the sons or for family purposes, but not for purposes of immorality or for purposes which if the father was dead would exonerate the sons from the pious obligation of paying such debts of the father.

Held also that the decree in such a suit should be a decree for sale of the mortgaged property under s. 88 of Act No. IV of 1882.

THIS was a reference to the Full Bench made under an order of Edge, C. J., and Tyrrell, J., dated the 7th of November 1892. The facts of the case are fully stated in the judgment of Edge, C. J.

Mr. *A. Strachey*, Munshi *Jwala Prasad*, Munshi *Ram Prasad*, Munshi *Madho Prasad* and *Babu Becha Ram*, for the appellants.

* Second appeal No. 20 of 1890, from a decree of F. E. Elliot, Esq., District Judge of Allahabad, dated the 7th December 1889, confirming a decree of Pandit Bansidhar, Subordinate Judge of Allahabad, dated the 6th September 1888.

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Babu *Jogindro Nath Chaudhri*, Pandit *Baldeo Ram* and Munshi *Jokhu Lal*, for the respondents.

EDGE, C.J.—This second appeal which has been referred to a Full Bench of all the Judges of the Court raises two very important questions affecting Hindus. One is—can the sons in a joint Hindu family be sued along with their father upon a mortgage bond given by the father alone after the sons were born which purported to mortgage the joint family property, the consideration having been, with a trifling exception, money advances antecedently made by the mortgagee to him not as manager of the family or with the authority of the sons or for family purposes, but not for purposes of immorality or for purposes which if the father was dead would exonerate the sons from the pious obligation of paying such debts of the father?

The second question is—if the suit is maintainable, what is the decree which can be given to the representatives of the mortgagee, who are the plaintiffs?

The facts of the case, as admitted or found by the Lower Appellate Court, so far as they are material, are as follows :—

On the 30th of December 1884, Madan Lal executed in favour of Lala Ram Kishan a bond by which he purported to mortgage the immovable property in suit. The consideration for the bond was Rs. 1,457-3-0, due by Madan Lal to Lala Ram Kishan under a prior mortgage bond, of the 7th of October 1881, Rs. 181-4-0 interest due by Madan Lal to Lala Ram Kishan under the first mortgage bond and a then present advance of Rs. 11-9-0 made by Lala Ram Kishan to Madan Lal on the execution of the bond in suit. By the mortgage in suit Madan Lal agreed to pay the principal moneys, amounting to Rs. 1,650, with interest thereon at the rate of one per centum per mensem, in a year from the 30th of December 1884. The property included in the mortgage of the 30th of December 1884 was the whole of the ancestral joint family property of the family of Madan Lal. Lala Ram Kishan died prior to the institution of the suit, which was brought upon the mortgage bond of the 30th of December 1884, by his heirs against Madan Lal and his sons, Kunji Lal, Muni Lal, Kandhai Lal and Shankar Lal. In the plaint

it was alleged that Madan Lal was the head and manager of the family, and in his capacity of manager and for family purposes gave the bond in suit to Lala Ram Kishan. The prayer of the plaint was in effect for a decree under s. 88 of the Transfer of Property Act, 1882, and if the nett proceeds of the sale of the mortgaged property should be found insufficient to pay the amount due on the mortgage, the prayer in effect further asked for a decree under s. 90 of that Act against the other property of Madan Lal. It was not sought by the plaint to make the sons of Madan Lal personally liable. Madan Lal did not defend the suit. He admitted the validity of the claim. The defendants Kandhai Lal and Shankar Lal are minors. The defendants other than Madan Lal have defended the suit. They have denied that Madan Lal was the head and manager of the family, and have alleged that the moneys were not lent to Madan Lal as the manager or for the purposes of the family, and that the bond in suit was given without their consent and without any valid necessity, and that Madan Lal borrowed the money for and spent it in immorality, and that they have not received any benefit from the loans. The plaintiffs' suit was dismissed with costs by Pandit Bansidhar, the Subordinate Judge of Allahabad, and their appeal was dismissed with costs by the District Judge. From the decree of the District Judge this appeal has been brought.

It has been found that the property included in the bond was the whole ancestral property possessed by the family. It has also been found that Madan Lal paid no attention to the family or their interests, and did not, as a matter of fact, act as the managing head of the family; that the defendants Kunji Lal and Muni Lal discharged his functions as head and manager of the family, and were not only of full age when the bond was executed, but had carried on business on their own account for some six years previous to its execution; that there were no ancestral debts, and that the debts in respect of which the bond was given were all personal to Madan Lal, and that the money from first to last was received by Madan Lal for his own personal use, and that the plaintiffs could not but

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have been aware of those facts. From the judgments of the two courts I think the District Judge was referring to Lala Ram Kishan as well as to his sons when he found that the plaintiffs could not but have been aware of the facts. It was also found that Madan Lal had grossly neglected his duty to his sons, but that it was not shown that the debts were tainted with immorality. The bond in suit was given on the 13th day of Sudi Pus, Sambat 1941, and the Subordinate Judge found, and the District Judge did not dissent from the finding, that "the answering defendants have proved that since the latter part of Sambat 1935, or the beginning of Sambat 1936, the said defendants have not stood in need of being looked after or cared for by their father. In the first place, the defendant No. 1, *i.e.*, the principal debtor (Madan Lal), does not seem to have ever attended to his family necessities. Since his father's death he has passed a life of luxury, and in this state of his inattention his family passed its days ill or well as fell to their lot. But from the time above mentioned his elder son, and, from a short time after, his other son took to business themselves, and thus they, their minor brothers and their mother supported themselves. The parties do not only belong to a brotherhood, but are collaterally related also. Their houses also are close to each other. It is somewhat hard to believe that the plaintiffs may have remained unaware of the conduct and manners of the defendant No. 1, their debtor."

From the findings to which I have referred it appears that at no time did Madan Lal ever act as the manager of the family; that he never fulfilled the duties of the head of a Hindu family; and that since a time prior to the giving of the bond of the 7th of October 1881 the sons, Kunji Lal and Munni Lal, performed the duties which their father ought to have performed for the family, and by their exertions in business supported themselves, their mother and their minor brothers, the other two defendants. As I read the judgments of the Courts below, Lala Ram Kishan and his heirs, the plaintiffs in this suit, must have been well aware of the circumstances of the family. I confess that my sympathies are entirely with the defendants, the sons of Madan Lal.

Mr. *Strachey*, on behalf of the plaintiffs-appellants, has contended that they are entitled on the findings and on the authority of decisions of their Lordships of the Privy Council, to the decree which they seek by the prayer in their plaint. Mr. *Chaudhri*, on the other hand, on behalf of the sons of Madan Lal, has contended that the pious duty of a Hindu son to pay debts contracted by the father does not arise except when the father is dead, is abroad, or is immersed in difficulties, and in support of that contention he cited texts and passages to be found at page 205 of Mandlik's Hindu Law. "The Vyavahara Mayukha, &c., &c.," edition of 1880; at pages 42 and 263 of the Sacred Books of the East, Volume 33, and verses 27, 28 and 29 of the translation of the Mitakshara, at page 255 of MacNaghten's Mitakshara, edition of 1870. Our attention was also drawn to pages 642, 643, 644 and 645 of West and Bühler's Hindu Law, 3rd edition, and Mr. *Chaudhri* contended that this suit, so far as it related to the interests of the sons of Madan Lal in the family property, was premature. He also contended that the debts in respect of which the bond of the 30th December 1884 was given were not antecedent debts within the meaning of the expression "antecedent debt" as used in the decision of their Lordships of the Privy Council in *Mussamat Nanomi Babuasin and others* v. *Modun Mohun and others* (1), the argument being that by "antecedent debt" was meant a prior debt due by the father to a person other than the person to whom he subsequently alienated family property in order to obtain money with which to discharge such prior debt; and the debts not having been contracted by Madan Lal as manager of the family or for family purposes and without the consent of his sons, and the sons having derived no benefit from the advances, Madan Lal had no power to mortgage the family property, and the mortgage could not be enforced in this suit. In support of that contention Mr. *Chaudhri* cited a judgment of a Full Bench of the High Court at Calcutta in *Modhoo Dyal Singh* v. *Golbur Singh and others* (2).

Whatever may have been the rule of Hindu Law, I agree with the opinion of Pontifex and McDonell, JJ., expressed in their judg-

(1) L. R. 13, I.A., 1; s.c., I. L. R., 13, Calc., 21. (2) 9 W. R., c. R., 511.

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ment in *Laljee Sahoy* v. *Fakeer Chand and others* (1) in respect of a son governed by the rules of the Mitakshara, "But by the decisions of the Privy Council it has now been established that it is the pious duty of the son to pay his father's debts out of the ancestral estate even in the father's lifetime." In speaking of the "father's debts" those learned Judges were not referring to debts tainted with immorality.

The expressions "antecedent debts" and "antecedent debt" are expressions which, unless there is something to restrict their meaning, would undoubtedly include a prior debt due by the father to the person to whom he mortgaged or conveyed family property. I assume that when their Lordships of the Privy Council, on the 18th of December 1886, in *Mussamat Nanomi Babuasin and others* v. *Modun Mohun and others* (2) at page 18 of the report in L. R., 13, I. A., said, "the decisions have for some time established the principle that the sons cannot set up their rights against their father's alienation for an antecedent debt, or against his creditors' remedies for their debts, if not tainted with immorality," they used the expression "antecedent debt" as it had been used by their Lordships of the Privy Council in *Suraj Bunsi Koer* v. *Sheo Proshad Singh and others* (3) when, in referring to the decision in *Girdharee Lall* v. *Kantoo Lall* (4) their Lordships at page 106 of the report say: "This case then, which is a decision of this tribunal, is undoubtedly an authority for these propositions: 1st. 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. . . ." That passage in my opinion shows that the expression "antecedent debt" is not to be restricted

(1) I. L. R., 6 Calc., at p. 139.
(2) L. R., 13 I. A., 1. s. c., I. L. R., 13 Calc., 21.
(3) L. R., 6 I. A., 88.
(4) 14 B. L. R., 187; s. c., L. R., 1, I. A., 321.

to a prior debt due to a person other than the purchaser or mortgagee, as their Lordships put as cases of antecedent debts the case of an antecedent debt being the consideration for the conveyance, and the case of the consideration for the conveyance being money raised by the sale in order to pay off an antecedent debt. Pontifex and McDonell, JJ., in their judgment in *Laljee Sahoy* v. *Pikeer Chand and others* (1), referred to prior debts of the father to the mortgagee as "antecedent debts." In *Hanuman Kamat* v. *Dowlut Mundar and others* (2), Tottenham and Norris, JJ., held that the purchase money itself, which was the consideration for the conveyance, could not be said to be an antecedent debt. I know of no other restriction of the expression "antecedent debt."

It would in my opinion be useless to discuss what may have been or may have been considered to have been the law in India affecting the power of a father in a joint Hindu family, governed by the law of the Mitakshara, to convey or mortgage joint family immovable property in satisfaction of an antecedent debt, or in order to raise money to discharge an antecedent debt, not tainted with immorality, as I consider the question has been concluded by the decisions of their Lordships of the Privy Council, which are binding on this Court. In *Mussamat Nanomi Babuasin and others* v. *Modun Mohun and others* their Lordships (at page 17 of L. R., 13, I. A., and at page 35 of I. L. R., 13, Calc.) said: "There is no question that considerable difficulty has been found in giving full effect to each of two principles of the Mitakshara law, one being that a son takes a present vested interest jointly with his father in ancestral estate, and the other that he is legally bound to pay his father's debts, not incurred for immoral purposes, to the extent of the property taken by him through his father. It is impossible to say that the decisions on this subject are on all points in harmony, either in India or here. But the discrepancies do not cover so wide a ground as was suggested during the argument in this case.

"It appears to their Lordships that sufficient care has not always been taken to distinguish between the question how far the entirety

(1) I. L. R., 6 Calc., at p. 189. (2) I. L. R., 10 Calc., 528.

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of the joint estate is liable to answer the father's debt, and the question how far the sons can be precluded by proceedings taken by or against the father alone from disputing that liability. Destructive as it may be of the principle of independent coparcenary rights in the sons, the decisions have for some time established the principle that the sons cannot set up their rights against their father's alienation for an antecedent debt, or against his creditors' remedies for their debts, if not tainted with immorality. On this important question of the liability of the joint estate their Lordships think that there is now no conflict of authority."

The debts in the present case were, with the exception of Rs. 11-9-0, antecedent debts. I regard the finding of the Court below, which was arrived at after hearing evidence on both sides, as a finding that no portion of the consideration, including the sum of Rs. 11-9-0, was tainted with immorality, and I am of opinion that the plaintiffs' remedy on this bond can be obtained and enforced in this suit. In the view of the law, as pronounced by their Lordships of the Privy Council, the false averment in the plaint that Madan Lal executed the bond in his capacity of manager and for family purposes is on the findings of fact, immaterial.

The next question to be considered is the nature of the decree to which the plaintiffs are entitled. On that point we have been pressed with the decision of a Full Bench of the Calcutta High Court in *Luchmun Dass* v. *Giridhur Chowdhry* (1). That case arose and was decided before the Transfer of Property Act, 1882 (Act No. IV of 1882), came into force. The plaintiffs in this case are undoubtedly mortgagees within the meaning of s. 99 of that Act. By reason of s. 99 the plaintiffs could not bring the mortgaged property to sale except by instituting a suit, as they have done here, under s. 67 of that Act. In that suit, as they sought a decree for sale against not only Madan Lal's interest in the mortgaged property but against the interest of his sons, they having notice that the sons had an interest in the mortgaged property, properly and in accordance with s. 85 of that Act joined the sons as parties to the

(1) I. L. R., 5 Calc., 855.

suit. If the plaintiffs in this suit, which was commenced after the Transfer of Property Act, 1882, came into force, having notice that the sons had an interest in the property had omitted to join them, they could have obtained a decree against the father's interest only, and could not have obtained a decree for sale which would have affected the interests of the sons in the mortgaged property. When a mortgagee is entitled to succeed in a suit brought under s. 67 of the Transfer of Property Act, 1882, he has "a right to obtain from the Court an order that the mortgager shall be absolutely debarred of his right to redeem the property, or an order that the property be sold."

I would give the plaintiffs a decree under s. 88 of the Transfer of Property Act, 1882, for sale of the mortgaged property, or a sufficient part thereof, if the defendants make default in paying to the plaintiffs or into Court within six months from the date of notice to them that the account has been prepared in the office of this Court, the principal money of Rs. 1,650 and the agreed interest thereon of one per centum per mensem for twelve months from the date of the bond, the 30th of December 1884, and damages by way of interest at the rate of six rupees per centum per annum from the due date of the bond, *viz.*, the 30th of December 1885, up to the date of the decree of this Court. Having regard to the false averment contained in the plaint, the consideration of which occupied much time in the Courts below, I would not allow the plaintiffs any costs either in this Court or in the Courts below. To the above extent I would allow this appeal. The application for a decree under s. 90 of the Transfer of Property Act, 1882, is premature.

TYRRELL, KNOX, BLAIR, BURKITT and AIKMAN, J.J.—We fully concur in this judgment and in the degree as proposed by the learned Chief Justice.

Appeal decreed.