

occasion specified how they were to be appropriated, and there appears to be no other indication whatsoever to show that he made these payments towards interest as such. In this view the claim of the plaintiff is not saved from the operation of limitation by the payments made by the defendant. The appeal however must fail upon the second ground.

The document of the 25th of May 1906 shows that the defendant promised to pay the balance of Rs. 954-9-0 within one month. It is an agreement such as is contemplated in section 25 (3), of the Contract Act being an agreement to pay a debt which was time-barred. The plaintiff waited for that one month before he brought his suit, so that there was a clear acceptance by him of the promise : indeed there is a clear acceptance in writing on the letter itself. It is urged that the plaintiff did not sue on the basis of this document, but when reference is made to the plaint, it is seen most clearly that he did sue on the basis thereof. The document was unstamped but the plea which was first urged on this point was not pressed in view of the terms of section 36 of the Stamp Act, No. II of 1899. In this view of the case the appeal must fail. It is dismissed with costs.

Appeal dismissed.

PRIVY COUNCIL.

KARIMUDDIN (DEFENDANT) *v.* GOBIND KRISHNA NARAIN AND ANOTHER
(PLAINTIFFS)

and four other appeals consolidated.

[On appeal from the High Court at Allahabad.]

Hindu law—Alienation by Hindu widow—Debt justifying alienation—Legal necessity—Transfer to satisfy decree—Construction of—Preservation of family estate—Costs of litigation—Construction of compromise creating division of estate—Nature of estate taken by daughters through father with imperfect title.

The plaintiffs were the sons of the sole surviving daughter of a Hindu widow in possession of her husband's estate who had in 1857 executed, in favour of the plaintiffs' paternal grandfather, a bond for money advanced to the widow for family purposes including the costs of litigation which was eventually successful in preserving the estate of her husband. The defendants were purchasers from the same creditor to whom in 1869, the mother of the

Present :—Lord MACNAGHTEN, Lord ATKINSON, Lord COLLINS, and Sir ANDREW SCOBLE.

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plaintiffs, in satisfaction of a decree obtained against her on the bond as representing her father's estate, transferred the property in suit. In her petition to the court for permission to settle the claim in that way, she stated that the property to be assigned was "owned and possessed" by her, and that the judgment creditor was to "enter into possession as a proprietor like the petitioner."

Held by the Judicial Committee that on the construction of the transfer it was intended to convey an absolute estate.

Held also that the debt was one for which she was justified in alienating the family property. The preservation of the estate of her husband and the costs of litigation for that purpose were objects which justified a widow in incurring debt and alienating a sufficient amount of the property to discharge it; [Maynes' Hindu law, 7th edition, para. 327] and the general principle of Hindu law that he who takes the estate becomes liable for the debts of the estate was especially applicable in a case like the present, where, but for the debt, the estate would have been lost to the plaintiffs.

Disputes which arose as to the succession to the property in suit, which originally belonged to the maternal great grandfather of the plaintiffs, were settled by a compromise made on 21st July 1860, between the claimants, namely, his daughter's son, and the two daughters of a son, who predeceased him, whereby certain shares of the estate were allotted to each of them; and on the death of her sister in 1866, the surviving daughter (the mother of the plaintiffs) succeeded to her share by survivorship.

Held on the construction of the compromise that the grand daughters acquired under it only a life-interest in the property, their right to which must be taken to have been derived through their father notwithstanding that his own father survived him, his title, in whatsoever way it was defective, being *pro tanto* cured by the agreement of compromise.

FIVE consolidated appeals from a judgment and decrees (29th April 1903) of the High Court at Allahabad which reversed a judgment and decrees (30th March 1900) of the Court of the Subordinate Judge of Bareilly which latter court had dismissed the respondents' suits.

The suits were brought for possession of certain immoveable properties claimed by the plaintiffs under a title derived from one Jai Chand Rai by whom they had been transferred by sale to the defendant (the present appellants) or to those under whom the defendants claimed. The plaintiffs stated that Ratan Singh and Daulat Singh, his son, formerly owned and possessed the property in suit; that Ratan Singh became a convert to Muhammadanism in 1845 and forfeited his right in the property which then vested in Daulat Singh; that Daulat Singh died, on 8th January 1851, and the property devolved on his widow Sen Kunwar; that Mewa Kunwar was married to Rai Aftab Rai,

the son of Jai Chand Rai; that Sen Kunwar executed a bond in favour of Jai Chand Rai for Rs. 51,359 in 1857 without any legal necessity, and on the basis of that bond Jai Chand Rai sued Mewa Kunwar and Chatar Kunwar (the daughters of Daulat Singh and Sen Kunwar) and obtained a decree after Chatar Kunwar's death against Mewa Kunwar and the assets of Chatar Kunwar's estate through Mewa Kunwar's confession of judgment; and that Jai Chand Rai having taken out execution of the decree, Mewa Kunwar on 13th December 1869, made a compromise with him, whereby she transferred to him (among other villages) the property, the subject of the present suits and the plaintiffs alleged that Jai Chand Rai's decree was merely collusive and the compromise transferred to him only the life interest of Mewa Kunwar, and on her death on 25th March 1899, the rights of the defendants in the property in suit became extinguished.

The defence in each suit so far as material was that the property in suit was the self-acquired property of Ratan Singh; that Ratan Singh continued to be a Hindu up to the time of his death; that even if he became a Muhamadan Regulation VII of 1832, prevented forfeiture of his right in his estate; that on his death on 15th September 1851, his property devolved on his widow Raj Kunwar and her name was recorded in respect of it in the revenue records up to 1860; that Raj Kunwar's possession was adverse to the right of Mewa Kunwar, Chatar Kunwar, and the plaintiffs and the suits were barred by 12 years' limitation; that Mewa Kunwar held the property as its absolute owner, and was competent to transfer it as she wished; that the plaintiffs and their grandfather, Jai Chand Rai formed a joint Hindu family, and they were bound by the alienations made by him; that the debt for which Jai Chand Rai's decree was passed, was money borrowed by Sen Kunwar for legal necessity, and the plaintiffs were bound by the decree and the compromise and that the defendants were entitled to the benefit of section 41 of the Transfer of Property Act (IV of 1882).

It appeared that after the deaths of Daulat Singh (who predeceased his father) and Ratan Singh, disputes arose as to the succession to the property, in consequence of which the estate

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was for some years taken charge of by the Court of Wards, and it was only at the end of 1858, after the deaths of Sen Kunwar, widow of Daulat Singh (in November 1857), and Raj Kunwar widow of Ratan Singh, (in November 1858) that the succession to the estate again opened out. It was then claimed by Khairati Lal, the son of a daughter of Ratan Singh who sued the two daughters of Daulat Singh (Mewa Kunwar and Chatar Kunwar) for the entire estate (and therefore not on the ground of the estate having been the joint property of Ratan Singh and Daulat Singh). Mewa Kunwar and Chatar Kunwar resisted the claim on the ground that they were entitled to the entire property as heiresses of Daulat Singh. In that suit an agreement of compromise was come to between the parties on 21st July 1860, in which the property was described as "the estate ancestral and self-acquired owned possessed and left by Raja Ratan Singh deceased in charge of the Court of Wards." Under the terms of that agreement Khairati Lal took $7\frac{1}{2}$ annas, and Chatar Kunwar and Mewa Kunwar each $4\frac{1}{4}$ annas, and a complete partition was effected on 15th December 1860.

In the petition of compromise made by Mewa Kunwar on 13th December 1869, with Jai Chand Rai, she stated that she transferred the villages "owned and possessed" by her, to him "in lieu of the money decree due to him" from her, and agreed that he should "enter into possession as a proprietor like the petitioner."

The Subordinate Judge held (a) that the property in suit was the self-acquired property of Ratan Singh; (b) that Ratan Singh became a convert to the Muhammadan religion in 1845; (c) that the effect of such conversion did not by Hindu law, as modified by Regulation VII of 1832, deprive Ratan Singh of his estate, and that he remained owner thereof till his death; (d) that Raj Kunwar acquired a title by adverse possession; (e) that on her death Khairati Lal became owner and by the compromise of 21st July 1860 granted their shares to Mewa Kunwar and Chatar Kunwar; and (f) that Mewa Kunwar thus being absolute owner had full power to transfer the property in suit to Jai Chand Rai through

whom the defendants claimed. As to the two last findings he said :—

“ Khairati Lal, daughter's son of Ratan Singh, was entitled under Hindu law to succeed to his maternal grandfather's estate. An agreement was made by Khairati Lal with Mewa Kunwar and Chatar Kunwar whereby he kept with him $7\frac{1}{2}$ annas share in Ratan Singh's estate and gave to each of the two ladies $4\frac{1}{2}$ annas share. As Khairati Lal was legal heir of Ratan Singh, after his widow's death he in fact was owner of the estate, Mewa Kunwar and Chatar Kunwar had no right to inherit it or any portion of it under the Hindu law. They must be supposed to have acquired the $8\frac{1}{2}$ annas in the estate through a grant from the rightful owner Khairati Lal. The share of $8\frac{1}{2}$ annas should be treated as the self-acquisition of the two ladies. Mewa Kunwar and Chatar Kunwar possessed the estate as owners. Mewa Kunwar also became legal owner of Chatar Kunwar's share. When she got its possession she was competent to deal with the whole $8\frac{1}{2}$ annas in the estate as she liked. As it did not belong to the plaintiffs maternal grandfather, they have no right to question the validity of the transfers made by their mother. ”

Decrees were accordingly made dismissing all the suits.

On appeal the High Court (SIR JOHN STANLEY, C. J. and BURKITT, J.) held it proved that Ratan Singh was converted in the year 1845 ; that the property in suit was the joint property of the family and not the self-acquired property of Ratan Singh, and that whether self-acquired or not it passed to Daulat Singh, as the effect of Ratan Singh's conversion ; that Mewa Kunwar, therefore, succeeded only to a Hindu female's estate of inheritance and as such was incompetent to convey the property to Jai Chand Rai, that Raj Kunwar was never in possession of the property, the Court of Ward's holding possession not for an individual but for the proper heir ; and that the compromise of 1860 did not operate as a grant from Khairati Lal to Daulat Singh's daughters.

The decrees made by the Subordinate Judge were consequently reversed and the suits decreed.

The judgment of the High Court in the report of the cases before the High Court will be found in I. L. R., 25 All., 546.

On these appeals

Cowell for the appellants contended that Mewa Kunwar and her sister Chatar Kunwar, took absolute estates under the compromise of 21st July 1860, in which they were described as the daughters of Daulat Singh. Mewa Kunwar afterwards inherited Chatar Kunwar's share and thus obtained an absolute interest in $8\frac{1}{2}$ annas of the estate which must be taken to be her self-acquired

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property. The title of Daulat Singh, whatever it was, was admitted and confirmed by that compromise. Reference was made to *Lala Oudh Beharce Lal v. Mewa Koonwar* (1), and *Mewa Koonwar v. Hulas Kunwar* (2). From Mewa Kunwar, the property passed under the transfer of 13th December 1869 to the appellant's vendor Jai Chand Rai absolutely, in execution of the decree obtained by him against her as representing her father's estate. By that transfer, it was submitted the respondents were bound. That decree was obtained on a bond executed by Sen Kunwar the maternal grandmother of the respondents and it was upheld in a contested suit brought after her death by Jai Chand Rai against her daughters in which it was decided that the decree, as well as a mortgage-deed to secure interest accrued thereon were binding in Daulat Singh's estate. All the evidence showed that the loans in respect of which the decree had been obtained were justified by legal necessity and there was no evidence the other way. The transfers by Mewa Kunwar, to Jai Chand Rai, therefore passed not merely her life estate to the latter but the whole interest of Mewa Kunwar in the property. Reference was made to *Jagullishore v. Jotendro Mohun Tagore* (3); *Ishan Chunder Mitter v. Bukhsh Ali Soudagur* (4); *General Manager of Darbhanga Raj v. Maharaja Coomar Ramaput Singh* (5); *Bissessur Lall Sahoo v. Luchmessur Singh* (6), and the *Transfer of Property Act* (IV of 1882), section 41. The respondents were the paternal grandsons of Jai Chand Rai and members of the joint family of which he was the Manager, and they were bound by his transfers to the appellants.

De Gruyther, K. C., and *B. Dube* for the respondents contended that Mewa Kunwar succeeded to a Hindu daughter's estate of inheritance, and that namely a life estate, was all she was competent to convey to Jai Chand Rai and through him to the appellants. For the reasons given by the High Court, it was submitted that there was no legal necessity for the loans made by Jai Chand Rai to Sen Kunwar and the bond (which was not produced)

- (1) 1867 3 Agra, H. C. Rep. 83; S. C. in (4) (1863) Marshalls Rep. 614.
 Lower Court (1867) 2 Agra, H. C. Rep.
 311.
 (2) (1874) L. R. 1 I. A. 157. (5) (1872) 14 Moore's I. A., 605.
 (3) (1887) I. L. R., 10 Calc., 985 (991); (6) (1879) L. R. 6 I. A., 233.
 L. E. 11 I. A. 66 (73).

did not bind her husband's estate. The decree on it was obtained by Mewa Kunwar admitting the debt after the death of her sister Chattar Kunwar who had strongly contested the claim. In satisfaction of it Mewa Kunwar voluntarily conveyed to Jai Chand Rai the property in suit, but passed only her life interest in it. *Lala Amarnath Sah v. Achchan Kuar* (1) was referred to. *Cowell* replied.

1909, July 1st:—The judgment of their Lordships was delivered by SIR ANDREW SCOBLE:—

The five actions in ejectment, which have been consolidated for the purposes of these appeals, all raise the same question. The plaintiffs (the present respondents) in each case are the sons of Rani Mewa Kunwar, deceased; and the defendants (the present appellants) severally claim as purchasers from one Jai Chand Rai, who, in his turn, claimed to have become entitled to the property sold, in satisfaction of a decree obtained by him against the same Rani Mewa Kunwar, for money advanced by him to her mother for family purposes. The point for decision is whether Rani Mewa Kunwar conveyed to Jai Chand Rai an absolute, or only a daughter's estate in the villages in suit.

It is unnecessary to enter into the earlier history of this family, as it will be found summarized in the judgment of this Committee in the case of *Rani Mewa Kunwar v. Rani Hulas Kunwar*(2). For the purposes of these appeals it is sufficient to state that, disputes having arisen as to the succession to the estate of one Raja Ruttun Singh, Rani Mewa Kunwar's grandfather, a compromise was effected between the rival claimants, the terms of which were embodied in an agreement, dated the 21st July, 1860. Under this agreement, the property being treated "as if it were one rupee," a share of $7\frac{1}{2}$ annas was awarded to Khairati Lal, his grandson, as share of $4\frac{1}{4}$ annas to his granddaughter Rani Mewa Kunwar, and a share of $4\frac{1}{4}$ annas to her sister, Rani Chittar Kunwar. As to the effect of this agreement their Lordships observe that it "assumes that the parties were severally claiming by virtue of some right of inheritance the property of the Raja Ruttun Singh; that there were questions

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(1) (1893) I. L. R., 16 All., 124. (2) 1874, L. R., 1 I. A., 157.

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between them which might disturb the rights which each claimed and it was better instead of a long litigation to settle these rights (p. 164). The compromise is based on the assumption that there was an antecedent title of some kind in the parties, and the agreement acknowledges and defines what that title is" (p. 166).

For the purposes of the present appeals, it is necessary to enquire what was the "antecedent title" of Rani Mewa Kunwar and her sister to the property of their grandfather, which is disclosed by the agreement. In it they are described as the daughters of Kunwar Daulat Singh, and their title must be taken to have been derived through him, notwithstanding the fact that he predeceased his father. This was the view taken by Mewa Kunwar herself, when she successfully claimed to take by survivorship the share of her sister, who died on the 13th April 1866, on the ground that the property in suit descended from Daulat Singh through his widow to his daughters. It is, at all events, clear that whatever may have been the original imperfection of Daulat Singh's title, that imperfection was *protanto* cured by the agreement, which secured to his daughters a considerable portion of the family estate.

Assuming, then, that the daughters took a share in their grandfather's property under the agreement in right of their father, what was the nature of the estate which so devolved upon them? Mr. *Cowell*, for the appellants, argued that they took absolutely, and that the property, in their hands, must be treated as self-acquired. Mr. *De Gruyther*, for the respondents, contended that they took only a daughter's estate, that is to say, a life interest. This was the view adopted by the learned Judges of the High Court at Allahabad, who say in their judgment—

It is to us perfectly clear that the title which Mewa Kunwar and her sister claimed, and which was the title by virtue of which they took the 8½ annas of the property under the agreement with Raja Khairati Lal, and by virtue of which Mewa Kunwar subsequently defeated her sister's husband, was that they, as daughters of Daulat Singh, were entitled to succeed to a daughter's estate in his property on the death of their mother as a single heir, with a right of survivorship *inter se*,

With some hesitation, their Lordships have come to the conclusion that this is the correct view.

Turning now to the transaction between Rani Mewa Kunwar and Jai Chand Rai, upon which the title of the appellants is based, it appears from the judgment of this Committee already referred to (*ubi supra*, p. 160), that after the death of Raja Ruttun Singh,

questions arising out of this alleged conversion to Mahomedanism of the Rajah, and respecting the confiscation [of his estate in Oudh by the King of Oudh] were contested between the widows of the deceased Ruttun Singh and of his son, Daulat Singh; and after their deaths, the controversies were renewed between Khairati Lal and Mewa Kunwar and her sister.

These controversies were put an end to by the agreement of the 21st July, 1860; but as Ruttun Singh died on the 14th September 1851, the litigation lasted for nearly nine years, and as the estate was large, the expenses were correspondingly heavy. To meet these and other expenses, Sen Kunwar, Daulat Singh's widow, is alleged to have borrowed from Jai Chand Rai, in the six years from September 1851 to October 1857, sums amounting to Rs. 51,366—upon which Rs. 20,528 were due for interest—and to have executed in his favour a bond for Rs. 51,369 and a mortgage-deed for Rs. 20,525. In 1861, Jai Chand Rai brought a suit upon the mortgage-deed in the District Court at Bareilly, against Sen Kunwar's two daughters, Chittar Kunwar and Mewa Kunwar, which, on appeal to the Sadr Court at Agra, was decided in his favour, the learned Judges holding that there could be "no question then as to the validity of the consideration for which the deed in suit was executed," and that the loans had not been exclusively made on account of the litigation between Raj Kunwar and Sen Kunwar in the British Courts, but it might "be reasonably believed that portions of it were applied to the recovery from attachment of Ratan Singh's property in Lucknow, and to the maintenance of the family in a style suited to their social position and antecedents." It should be mentioned that, although Mewa Kunwar did not contest this claim, it was hotly contested by Chittar Kunwar upon every possible ground, and that there was no appeal against this decision.

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In 1865, Jai Chand Rai brought a suit in the Court of the Civil Judge at Lucknow claiming Rs. 96,368 as due upon the bond executed by Sen Kunwar in 1857. To this suit Chittra Kunwar and Mewa Kunwar were made defendants. Mewa Kunwar again admitted the claim but Chittar Kunwar resisted it. She died, however, while the suit was pending, and eventually the full claim was admitted by Mewa Kunwar, who had inherited her sister's share, and a decree was passed accordingly. In satisfaction of this decree, Mewa Kunwar, with the sanction of the Court, assigned certain villages, including those in question in this suit, to the judgment creditor. In her petition to the Court, for permission to settle the claim in this way, she says that the judgment creditor is to "enter into possession as a proprietor like the petitioner," and it was suggested at the bar that this meant that he was to take her life-estate only; but as there is a previous statement in the same document that the villages to be transferred were "owned and possessed" by her, the more reasonable construction is that she intended to convey an absolute estate.

The question remains—Was the debt which was due to Jai Chand Rai a debt which, according to Hindu law, Mewa Kunwar was justified in paying? It was a debt which her mother, the widow of Daulat Singh, had incurred for family purposes, and of which the family had had the benefit; for the result of the litigation, which could not have been carried on without borrowed money, was the compromise which secured to the family a large share of the estate. The preservation of the estate and the costs of litigation for that purpose, are objects which justify a widow in incurring debt, and alienating a sufficient amount of the property to discharge it. *Mayne Hindu law* (7th ed.), para. 327. Moreover, the general principle of Hindu law that he who takes the estate becomes liable for the debts of the estate, is especially applicable in a case like the present where, but for the debt, the estate would have been lost to the respondents.

For these reasons, their Lordships will humbly advise His Majesty that these appeals should be allowed, the decrees of the

High Court discharged with costs, and the decrees of the Subordinate Judge in the five original suits restored.

The respondents must pay the costs of the appeals.

Appeals allowed.

Solicitors for the appellants:—*Ranken Ford, Ford, and Chester.*

Solicitors for the respondents:—*T. L. Wilson & Co.*

J. V. W.

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APPELLATE CIVIL.

1909
April, 18.

Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Banerji.

KALI SHANKAR (PLAINTIFF) v. NAWAB SINGH AND OTHERS (DEFENDANTS).*

*Hindu Law—Mitakshara—Mortgage of ancestral property by one member—
No decree can be passed against his share.*

A member of a joint Hindu family governed by the *Mitakshara* cannot validly mortgage his undivided share in ancestral property held in co-parcenary on his own private account without the consent of his co-sharers.

Hence, where a father in such a family purports to mortgage the ancestral property neither for a lawful necessity nor for an antecedent debt, *held* that a decree for sale cannot be passed even in respect of the share of the father alone. *Chandra Deo v. Mata Prasad* (1), and *Balgobind v. Narain* (2) followed.

The material facts will appear from the judgment.

Hon'ble Pandit *Sundar Lal*, for the appellant.

Babu *Jogindra Nath Chaudri* and Pandit *Moti Lal Nehru*,
for the respondents.

The following judgments were delivered:—

BANERJI, J.—This appeal arises out of a suit for sale brought upon three mortgages. The first of these is dated the 25th of June 1894, and is for Rs. 6,200, the second dated the 30th of March 1895, is for Rs. 3,000 and the 3rd is dated the 8th of July 1895, and is for Rs. 2,000. The suit was brought not only against the mortgagor but also against his sons and grandsons. The latter contested the claim and urged that their interests in the mortgaged property could not be affected by the mortgages.

* First Appeal No. 143 of 1907 from a decree of Ishri Prasad, Subordinate Judge of Mainpuri, dated the 13th of February 1907.

(1) (1909) I. L. R., 31 All., 176. (2) (1899) I. L. R., 15 All., 339, P. C.