PRIVY COUNCIL.

CHET RAM AND OTHERS (DEFENDANTS) *v.* RAM SINGH AND OTHERS (PLAINTIFFS).

* *J. C.* 1922 *April*, 10.

[On appeal from the High Court at Allahabad.]

Hindu Law—Joint family property—Alienation—Antecedent debt—Usufructuary mortgage—Sale of equity to mortgagee—Pious obligation to pay grandfather's debts.

A member of a Mitakshara joint family in 1904 gave a usufructuary mortgage over part of the ancestral property to secure an advance then obtained by him. In 1907 he sold the equity of redemption to the mortgagee, the mortgage being discharged out of the price and a balance paid to the mortgagor. There was no legal necessity for either transaction, but it was not proved that the money was applied by the alienor to immoral purposes. After his death, but during the life of his sons, his grandsons sued to recover the property.

Held that there was no such antecedent debt as made either the mortgage or the sale binding upon the grandsons, and that they were not, as a condition to recovering the property, under a pious duty to repay to the vendees the money received by their grandfather. *Sahu Ram Chandra* v. *Bhup Singh* (1), *Lachhman Prasad* v. *Sarnam Singh* (2) and *Jogi Das* v. *Ganga Ram*, (3) followed.

Judgment of the High Court affirmed.

APPEAL (No. 62 of 1921), from a judgment and decree of the High Court (March 11th, 1919) varying a decree of the Subordinate Judge of Meerut (March 31st, 1916).

The suit was brought in 1915 by the respondents to recover possession of certain immovable property. The property in suit had been ancestral property of a Hindu (Mitakshara) joint family, consisting of Amar Singh (till his death in 1909), his two sons (who were made formal defendants), and his grandsons, the respondents. In 1904 Amar Singh executed a usufructuary mortgage for ten years over part of the property in favour of the principal defendants to secure an advance of Rs. 8,000 then made to Amar Singh. In 1907 Amar Singh sold to the mortgagees the equity of redemption for Rs. 13,500, of which Rs. 8,000 was applied to discharging the mortgage debt and Rs. 5,500 was paid to Amar Singh

The facts more fully appear from the judgment.

Present :—Lord SHAW, Lord PHILLIMORE, Sir JOHN EDGE, and MR. AMEER ALI.

(1) (1917) I. L. R., 39 All., 437 : L. R., 44 I. A., 126.
(2) (1917) I. L. R., 39 All., 500 ; L. R., 44 I. A., 168.
(3) (1917) 21 C. W. N., 957.

The Subordinate Judge found that there was no legal necessity for incurring the mortgage or for selling the equity. He, however, took the view that under the Mitakshara law the debt was an "antecedent debt" for which Amar Singh was competent to alienate the joint property. As regards the Rs. 5,500 received upon the sale, the learned Judge held that the plaintiffs had failed to prove that it was applied to immoral purposes, and that consequently by Hindu law they were under a pious duty to pay that sum to the defendants. He made a decree dismissing the claim as to a 16/27 share of the property, (viz. the proportion of Rs. 8,000 to Rs. 13,500); as to the remaining 11/27, the decree set aside the sale and provided that the plaintiffs should have possession if within three months they paid Rs. 5,500 to the vendees, but that otherwise their claim to that share should also be dismissed.

Upon appeal to the High Court the decree was varied. The learned Judges (RAFIQ and LINDSAY, JJ.) dealing first with the question of antecedent debt referred to the judgment of the Judicial Committee in *Sahu Ram Chandra* v. *Bhup Singh* (1) and said:—"In the present case the sum of Rs. 8,000 was borrowed by Amar Singh on the security of the joint estate. There is nothing to show that the money was advanced on his personal credit; on the contrary, the mortgage was a usufructuary mortgage under which Amar Singh was under no personal liability. Applying, therefore, the test laid down in the case mentioned we find that the mortgage of 1904 cannot be considered to be an antecedent debt." Dealing with the question of pious obligation, they held that there was in Hindu law no obligation upon grandsons to pay the debts of their grandfather while their own fathers were living. In support of that view they referred to Vijnaneswara's Commentary on Yajnavalkya II, 50. It being conceded, however, that Rs. 1,000 had been applied to discharge a personal debt of Amar Singh to a Bank at Meerut, it was held that the plaintiffs were bound to pay that amount as a condition to recovering the property. The appeal to the High Court is reported at I. L. R., 41 All., 529. The defendants (vendees) appealed to the Privy Council; there was no appeal by the plaintiffs as to the Rs. 1,000.

1922, February 17th, March 10th, 13th.—*DeGruyther, K. C.*, and *S. Hyam*, for the appellants:—Even if as the result of the

(1) (1917) I. L. R., 39 All., 437; L. R., 44 I.A., 126.

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decision of the Board in *Sahu Ram Chandra* v. *Bhup Singh* (1), there was no antecedent debt and consequently the sale cannot be set aside, yet the plaintiffs were not entitled to recover the property without repayment. The above decision did not affect the principle that the creditor could bring ancestral estate to sale in execution and bind the shares both of sons and grandsons. That principle is well established; *Muddun Thakoor* v. *Kantoo Lall* (2), *Bhaglut Pershad Singh* v. *Girja Koer* (3), *Suraj Bunsi Koer* v. *Sheo Persad Singh* (4), *Nanomi Babuasin* v. *Modhun Mohun* (5), *Badri Prasad* v. *Madan Lal* (6), *Ramasami Nadan* v *Ulaganatha Goundan* (7), *Govind* v. *Sakharam* (8), Mayne's Hindu Law, paras. 301, 312, 321. This principle rests upon the pious obligation of sons and grandsons to discharge their father's and grand-father's debts out of the assets. The texts set out in Sarkar's Vyvastha Chandrika, Vol. 1, pp. 238—240, show that grandsons are bound as well as sons, and although their fathers are living. That the obligation extends to grandsons is specifically stated in the passage from the judgment of WESTROPP, C. J., approved by the Board in *Suraj Bunsi Koer* v. *Sheo Persad Singh* (4). This question was not touched by the above cited decision of the Board in 1917, or by *Lachhman Prasad* v. *Sarnam Singh* (9), or *Jogi Das* v. *Ganga Ram* (10), which followed it. The debt not being shown to have been incurred for immoral purposes, it must be assumed that the grandsons got the benefit and they cannot in equity set aside the sale without refunding the money; *Muddun Gopal Thakoor* v. *Ram Buksh Pandey* (11). Further, the mortgage was an antecedent debt which made the sale binding. It is submitted on this point that *Sahu Ram Chandra* v. *Bhup Singh* (1), and the two cases which followed it, are limited to establishing that an advance made is not an antecedent debt in respect of a mortgage which it was then intended should be given to

(1) (1917) I. L. R., 39 All., 437 : L. R., 44 I. A., 126.
(2) (1874) 14 Beng. L. R., 187 ; L. R., 1 I. A., 321.
(3) (1888) I. L. R., 15 Calc., 717 ; L. R., 15 I. A., 99.
(4) (1879) I. L. R., 5 Calc., 148 : L. R., 6 I. A., 88.
(5) (1885) I. L. R., 13 Calc., 21 : L. R., 13 I. A., 1.
(6) (1893) I. L. R., 15 All., 75 (F. B.).
(7) (1898) I. L. R., 22 Mad., 49 (F. B.).
(8) (1904) I. L. R., 28 Bom., 883.
(9) (1917) I. L. R., 39 All., 500 : L. R., 44 I. A., 163.
(10) (1917) 21 C. W. N., 957 (P. C.)
(11) (1863) 6 W. R., C. R., 71.

secure it. That view has been taken by the High Court at Madras; *Peda Venkanna* v. *Srecnivasa Deekshatulu* (1), *Armugham Chetty* v. *Muthu Koundan* (2), *Kandasami Goundan* v. *Kuppu Mooppan* (3). In *Badri Prasad* v. *Madan Lal* (4), which was referred to by Sir JOHN STANLEY, C.J., in his judgment approved by the Board in *Sahu Ram Chandra's case* (5), the antecedent debt was one secured on the family property. Although the mortgage was usufructuary the property could not be recovered without paying the debt.

Dunne, K. C., and *Dube*, for the respondents:—The judgment of the Board in *Sahu Ram Chandra* v. *Bhup Singh* (5) is conclusive that in this there was no such antecedent debt as would support the sale. There was no debt owing by Amar Singh at the date of the sale, having regard to the terms of the mortgage. The argument as to the pious obligation of the sons was advanced in the case mentioned and rejected. But in any case the High Court rightly held that there was no pious obligation on the grandsons while their fathers were living. (They were stopped.)

April, 10th. The judgment of their Lordships was delivered by Lord SHAW.

This is an appeal from a decree, dated the 11th of March, 1919, of the High Court of Judicature at Allahabad, which varied a decree, dated the 31st of March, 1916.

The suit was brought on the 24th of July, 1915, in the court of the Subordinate Judge of Meerut. The plaintiffs were minors and sued through their guardian, Ram Singh.

No pedigree need be given. It is sufficient to bear in mind that Amar Singh succeeded on the death of his father, Nawal Singh, to a half of Nawal's property. This half, thus ancestral family property, was, at the date of the mortgage and sale after mentioned, the joint family property of Amar, of his two sons, Bharat and Kehar, and of Ram, son of Bharat, and Mahabir and Gajraj, the two sons of Kehar. This ancestral joint undivided estate was thus owned by two sons and three grandsons. The two sons as well as the three grandsons, the plaintiffs, were

(1) (1917) I. L. R., 41 Mad., 196.
(2) (1919) I. L. R., 42 Mad., 711 (F. B.)
(3) (1919) I. L. R., 43 Mad., 421.
(4) (1893) I. L. R., 15 All., 75 (F. B.)
(5) (1917) I. L. R., 39 All., 497; L. R., 44 I. A., 126.

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all alive at the date of the mortgage and sale after mentioned, and they are still alive. Amar, the grandfather, died in 1909.

On the 23rd of March, 1904, Amar executed a mortgage over this family property for Rs. 8,000. It is a fact beyond dispute that Amar, whom the Subordinate Judge finds to have been a man of extravagant habits, not leading a moral life and addicted to drink, incurred this debt for his own personal purposes. It was, with the doubtful exception of Rs. 1,000 to be presently referred to, neither incurred nor used for family purposes or necessity, nor was it an antecedent debt. It was scheduled upon the mortgage as "Received in cash at the village before registration, Rs. 1,000. Cash at the time of registration, Rs. 7,000." (As to the Rs. 1,000, the High Court has allowed it with certain interest as a good charge, and the respondents do not present any cross appeal. The item may accordingly be dismissed from further consideration.)

In short, Amar treated the property as his own and violated the well-known rule of the Mitakshara, under which, as clearly laid down in *Sahu Ram Chandra* v. *Bhup Singh*(1), joint family property "cannot be the subject of a gift, sale or mortgage by one coparcener except with the consent, express or implied, of all the other coparceners. Any deed of gift, sale or mortgage granted by one coparcener on his own account of or over the joint family property is invalid; the estate is wholly unaffected by it, and it stands entirely free of it." This law has been, in substance, repeated again and again. It is in entire accord with the ancient texts. It was accepted law long prior to *Sahu Ram Chandra's case*—a convenient instance being Lord WATSON'S judgment in *Madho Parshad* v. *Mehrban Singh* (2); and it has been followed by the cases after referred to.

The exception to this rule is where the consideration for the transaction is an antecedent debt of the vendor or mortgagor. And the judgment of Sir JOHN STANLEY on this part of the law in *Chandradeo Singh* v. *Mata Prasad* (3), and expressly affirmed by this Board in *Sahu Ram Chandra's case* (1) appears to this Board exactly to cover the present case.

(1) (1917) I. L. R., 39 All., 437 : L. R., 44 I. A., 126.
(2) (1890) I. L. R., 18 Calc., 157 : L. R., 17 I. A., 194.
(3) (1909) I. L. R., 31 All., 176 (196).

Before passing from the mortgage however, their Lordships desire to note that it was, by its terms, a usufructuary mortgage, and was for the period of ten years running from its date—that is, from 1907 to 1917. It is stipulated that, possession and occupation being given to the mortgagee—"The profits of the mortgaged land will be equal to the interest of the amount of mortgage until redemption of the mortgage . . . Whenever, after the expiry of ten years, I, the executant, shall have paid the entire amount of mortgage in a lump sum to the mortgagee, I shall get the property mortgaged by me redeemed. I shall not have power to redeem the mortgage before the expiry of ten years."

Apparently, however, the profuse scale of the father's personal expenditure continued, and he was again willing to put, or attempt to put, in jeopardy the joint family property. Notwithstanding the ten years' provision of the usufructuary mortgage, he (Amar Singh) within three years from its date—namely, on the 16th of July, 1907—sold his equity of redemption in the property to the mortgagees for Rs 13,500. In the specification of the consideration he "allowed credit" to the vendees for the Rs. 8,000 obtained from the mortgagee, and the balance was put down "Received in cash at the time of the registration."

Beyond all question with regard to this latter sum, here was a sale in flat defiance of the law. For what is not pretended to be any family purpose or necessity, he had improperly and illegally sold the family property; and such a sale cannot stand.

This case is singularly clear because it is not affected by other considerations such as the property having been publicly sold: there are no rights of execution creditors or auction purchasers to be considered.

But an argument was submitted, supported by the judgment of the Subordinate Judge, to the effect that, although by the rules of the Mitakshara law a mortgage is at its date an invalid deed in so far as purporting to encumber the joint family property, yet when it purports to become the consideration for a sale it then becomes a just and a legal consideration on the principle of "antecedent debt." The family property could not be affected by such an invalid mortgage, but it could be sold next year or next day to the mortgagee for an "antecedent" debt—

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namely, the mortgage debt itself! Thus by turning the "antecedent debt" simply into a debt "antecedent" to the sale, the whole doctrine of antecedent debt is reduced *ad absurdum* the principle of the Mitakshara law is circumvented, and the rights of the junior members of a Hindu family are no longer protected but can be easily destroyed. Their Lordships cannot hold that this is in accordance with law. The views of the Board have been expressed quite recently in *Sahu Ram Chandra's case* (1) and in *Jogi Das* v. *Ganga Ram* (2), about to be referred to.

As to the matter of the antecedency of debts, it is clear beyond question that the antecedency is antecedency to the mortgage itself. And it is more than that - it is disconnection with the mortgage in fact as well as in time. In no other way can the law of Indian joint family property protect itself against being undermined.

These sentences from *Sahu Ram Chandra's case* (3) may be quoted as particularly applicable to the circumstances of this appeal. "In their Lordships' opinion these expressions, which have been the subject of so much difference of legal opinion, do not give any countenance to the idea that the joint family estate can be effectively sold or charged in such a manner as to bind the issue of the father, except where the sale or charge has been made in order to discharge an obligation not only antecedently incurred, but incurred wholly apart from the ownership of the joint estate or the security afforded or supposed to be available by such joint estate. The exception being allowed, as in the state of the authorities it must be, it appears to their Lordships to apply, and to apply only, to the case where the father's debts have been incurred irrespective of the credit obtainable from immovable assets which do not personally belong to him, but are joint family property. In their view of the rights of a father and his creditors, if the principle were extended further, then the exception would be made so wide as in effect to extinguish the sound and wholesome principle itself, namely, that no manager, guardian or trustee can be entitled for

(1) (1917) I. L. R., 39 All., 437 : L. R., 44 I. A., 126.
(2) (1917) 21 C. W. N., 957 (P. C.).
(3) (1917) I. L. R., 39 All., 437, (447) : L. R., 44 I. A., 126 (134).

his own purposes to dispose of the estate which is under his charge."

The law thus laid down was followed in *Lachhman Prasad* v. *Sarnam Singh* (1). Further, to employ the résumé made by the learned Judges of the High Court—"The point was again considered by their Lordships of the Privy Council in the case of *Jogi Das* v. *Ganga Ram* (2), where Lord HALDANE interpreted the judgment in the case of *Sahu Ram Chandra* v. *Bhup Singh*(3) as follows:—'In that case it was laid down in effect that joint property could not be alienated as against co-sharers by way of mortgage or otherwise, except for necessity, or for payment of an actual antecedent debt, quite distinct from the debt incurred in the mortgage itself, and that in consequence the transaction in that case could not stand, and it was added that the mere circumstance of a pious obligation does not validate the mortgage'."

This body of law is rightly followed and applied by the High Court, and their Lordships fully approve of the judgment delivered.

A separate and protracted argument was laid before the Board to the effect that the respondents, the grandsons of Amar Singh, are not entitled *without making* repayment to have their property against his invalid proceedings by reason of "pious obligation." It is sufficient to say that no such doctrine can be invoked in the circumstances of the present case. In *Sahu Ram Chandra's case* (3) a similar appeal to the "pious obligation" doctrine was made during the father's life-time, and the point was thus dealt with:—"While the father, however, remains in life, the attempt to affect the sons' and grandsons' shares in the property in respect merely of their pious obligation to pay off their father's debts, and not in respect of the debt having been truly incurred for the interest of the estate itself, which they with their father jointly own, must fail; and the simplest of all reasons may be assigned for this—namely, that before the father's death he may pay off the debt, or after his death there may be ample personal estate belonging to the father himself out of which the debt may be discharged. In short, responsibility to meet the father's

(1) (1917) I. L. R., 39 All., 500. (2) (1917) 21 C. W. N., 957 (P.C.)
(3) (1917) I. L. R., 39 All., 437 (444): L. R., 44 I.A., 126 (131).

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debts is one thing, and the validity of a mortgage over the joint estate is quite another thing."

In the present case the doctrine is invoked against grandsons and in the life-time of sons. Nothing more need be said. The invocation of the doctrine entirely fails.

Their Lordships will humbly advise His Majesty that the appeal should be refused with costs.

Solicitors for the appellants: *Barrow, Rogers* and *Nevill.*

Solicitor for the respondents: *H. S. L. Polak.*

APPELLATE CIVIL.

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February, 1.

Before Mr Justice Gokul Prasad and Mr. Justice Stuart.

MANPAL SINGH (DEFENDANT) *v.* RAJA PARTAB SINGH AND ANOTHER (PLAINTIFFS).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), section 22—Occupancy rights created under Act No. X of* 1859*—Tenant succeeded by widow in* 1868*—Widow's death after passing of Act No. II of* 1901*—Succession.*

The holder of an occupancy tenancy died about the year 1868. After his death, his widow took possession of the holding and remained in possession until 1898, when she made a gift of it. The widow died in 1915, and the reversioners then sued the donees to recover possession.

Held that the widow did not succeed to a heritable estate, but acquired by virtue of possession an estate in herself. Succession to this estate was governed by the present Agra Tenancy Act of 1901, and the plaintiffs, not being sharers in the cultivation at the date of the death of the widow, were not entitled to succeed.

THE facts of this case are fully set forth in the judgment of GOKUL PRASAD, J.

Babu *Piari Lal Banerji*, for the appellant.

Munshi *Gulzari Lal*, for the respondents.

GOKUL PRASAD, J.:—This appeal arises out of a suit for possession of a certain cultivatory holding. The plaintiffs came to court on the allegations that one Nanhe Singh, who owned a large area of occupancy holding and fixed rate holding, died about 1868, that after him his widow Musammat Nankai entered into possession of the occupancy holding as a life-tenant with limited rights only, that she made a gift of the said property to Manpal

* Second Appeal No. 600 of 1920, from a decree of B. J. Dalal, District Judge of Allahabad, dated the 9th of February, 1920, confirming a decree of Abdul Halim, Subordinate Judge of Mirzapur, dated the 19th of August, 1918.