PRIVY COUNCIL.

*J. C. 1925 *Dec. 4.*

JAWAHIR SINGH (DEFENDANT) *v.* UDAI PARKASH AND ANOTHER (PLAINTIFFS).*

(On Appeal from the High Court at Allahabad).

Hindu law—Alienation of joint family property—Sale by father—Antecedent debt—Limitation—Suit by younger son to set aside sale—Suit by elder son barred—Indian Limitation Act (IX of 1908) ss. 7, 8.

Where a Hindu father has contracted to sell part of the joint family property in order to discharge a mortgage upon other parts of it, but the mortgage has been discharged before receiving the purchase price which the father applies to his own purposes, the sale cannot be supported as having been made to discharge an antecedent debt.

A suit brought by the younger son within three years of attaining majority to avoid the sale is not barred by limitation, although the elder son attained his majority more than three years earlier and had taken no steps to question the alienation.

Semble:—*Ganga Dayal* v. *Mani Ram* (1), approved; and *Vigneswara* v. *Bapayya* (2), and *Doraisami* v. *Nondisami* (3), disapproved.

Decision of the High Court affirmed.

APPEAL (No. 22 of 1924) from a decree of the High Court (May 3, 1922), varying a decree of the Subordinate Judge of Meerut (August 6, 1920).

The respondents, the two younger sons of Harbans Singh, brought the suit in 1919, to recover possession of a moiety share in a village which had been sold by their father Harbans Singh in circumstances which appear from the judgement of their Lordships. Harbans Singh, his eldest son Fateh Singh and the respondents constituted a joint Hindu family governed by the Mitakshara. The appellant defendant was successor in title to Dalip Singh, the purchaser. The

* *Present*: Lord SHAW, Lord PHILLIMORE, Sir JOHN EDGE and Mr. AMEER ALI.

(1) (1908) I.L.R., 31 All., 156. (2) (1893) I.L.R., 16 Mad., 436.
(3) (1912) I.L.R., 38 Mad., 118.

plaintiffs joined as defendants their father (since deceased) also their elder brother Fateh Singh. Plaintiff respondent No. 1, who attained his majority on July 9, 1919, sued on behalf of himself and his younger brother.

The Subordinate Judge held that the deed was executed for an antecedent debt and was binding upon the plaintiffs. He found that it was not established that the purchase money was applied to immoral purposes. He was also of opinion that the suit was barred by limitation.

On appeal to the High Court the learned Judges (the CHIEF JUSTICE and PIGGOTT, J.) found that Harbans Singh owed Rs. 1,400 to Dalip Singh before the sale in question, and that he could alienate ancestral property only for the purpose of discharging that debt. They further held that the suit was not barred by limitation, following upon that question previous decisions of their own Court in preference to decisions of the Madras High Court applied by the trial Judge. In the result they made a decree for the recovery of the property in suit subject to the payment of Rs. 1,400.

1925, Oct. 30. *Dube* for the appellant: On the question of limitation it is submitted that the view of the Madras High Court in *Vigneswara* v. *Bapayya* (1) and *Doraisami* v. *Nondisami* (2) was correct, and the decision in *Ganga Dayal* v. *Mam Ram* (3) erroneous. But as Harbans Singh was alive when the suit was brought, Fateh Singh had not been managing member; it is conceded, therefore, that the failure of Fateh Singh to bring a suit probably did not render the present suit barred. The sale was, however, valid since it was made " in order to raise money to pay off

(1) (1893) I.L.R., 16 Mad., 436. (2) (1912) I.L.R., 38 Mad., 118.
(3) (1908) I.L.R., 31 All., 156.

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an antecedent debt." *Sahu Ram Chandra* v. *Bhup Singh* (1). The judgement in that appeal is not in that respect affected by the judgement in *Brij Narain* v. *Mangal Prasad* (2). It was not necessary for the purchaser to see that the money was applied in discharge of those debts; it is immaterial that the debts were discharged before the purchase money was paid over.

The respondents did not appear.

Dec. 4. The judgement of their Lordships was delivered by Mr. AMEER ALI.

This is an *ex parte* appeal from a decree of the High Court at Allahabad dated July 3, 1922, and arises out of a suit brought by the plaintiffs on September 14, 1919, for a declaration that a sale effected by their father, Harbans Singh, in 1906, in favour of one Dalip Singh, was not justified by any such necessity as would validate the transaction against the other members of the joint family of which Harbans Singh was the head. Dalip Singh's interests have been acquired by the present appellant, Jawahir Singh. The Trial Judge held that the plaintiffs had not made out a sufficient case to invalidate the sale to Dalip Singh. He was also of opinion that the plaintiffs' claims were barred by the Indian Limitation Act (IX of 1908) as Fateh Singh, their eldest brother, had attained majority long ago and had not questioned the sale. He accordingly dismissed the plaintiffs' suit.

On appeal to the High Court the learned Judges overruled the plea of limitation. They relied on the decisions of their own Court (*Ganga Dayal* v. *Mani Ram* (3) and in a later case), and differing from the

(1) (1917) I.L.R., 39 All., 437, 446; L.R., 44 I.A., 126, 133, 134.
(2) (1923) I.L.R., 46 All., 95; L.R., 51 I.A., 129.
(3) (1908) I.L.R., 31 All., 156.

view taken by the Madras High Court in *Vigneswara* v. *Bapayya* (1) and *Doraisami* v. *Nondisami* (2) on which the Subordinate Judge had rested his judgement, they held that the conduct of Fateh Singh, the eldest brother, did not affect the undoubted rights of the plaintiffs. They also held that, save and except Rupees 1,400, the defendant appellant had failed to establish that the consideration for the transfer of the property to Dalip Singh was for any such necessity as would make the transaction valid against the sons. They accordingly set aside the order of the first court and made a decree in favour of the plaintiffs for recovery of the property in suit, subject to their paying into Court within three months from the date of their decree, for the benefit of the defendant, Jawahir Singh, the sum of Rs. 1,400. They further directed that if payment should not be made within the prescribed period the suit should stand dismissed with costs throughout.

From this decree Jawahir Singh has appealed to His Majesty in Council. The same contentions that were urged in the High Court have been advanced before the Board. It becomes necessary, therefore, to set out some of the facts which have either been established or admitted in these proceedings.

Harbans Singh, the father, at the time he sold the property to Dalip Singh, owned a moiety of the village of Shikohpur, in the District of Meerut. The property was admittedly ancestral, in which his sons were jointly entitled. The family consisted of himself and three sons, the eldest of whom, Fateh Singh, is defendant No. 3.

Sometime in 1900 Harbans Singh became involved in debt, and he appears to have executed a mortgage of the property in favour of three money-lenders, Girwar

(1) (1893) I.L.R., 16 Mad., 436. (2) (1912) I.L.R., 38 Mad., 118.

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Singh and two others. In order to discharge this debt Harbans Singh entered into negotiations with one Udai Singh for the sale of the family property. A sale deed was actually drawn up in his favour for a consideration of Rs. 13,000. Thereupon Dalip Singh put forward a claim of pre-emption in respect of the property that was going to be sold. His right of pre-emption was based on the village custom which, being questioned, came before the Court and was judicially affirmed. The price of Rs. 13,000 was fixed for the joint family's moiety. The pre-emption decree in favour of Dalip Singh bears date the 27th of August, 1906. Dalip Singh, it is admitted, paid Rs. 13,000 to Harbans Singh, which he unquestionably appropriated to his own use. It further appears that whilst the pre-emption suit was proceeding the debt to Girwar Singh and the two other money-lenders was admittedly paid off. At the time of the pre-emption sale Harbans Singh executed a receipt for Rs. 13,000, dated December 19, 1906, in favour of Dalip Singh, stating the particulars of the moneys received by him from Dalip Singh.

As the learned Judges of the High Court point out, save and except the third item in the receipt relating to a promissory note for Rs. 1,000, dated the 30th of March, 1904, executed by Harbans in favour of Dalip which, together with interest, amounted to Rs. 1,400, it showed no consideration of an antecedent character so as to make it binding on the sons. With reference to this part of the transaction the learned Judges say as follows :—

"What we are concerned with is the position of Dalip Singh, who deliberately took it upon himself to thrust himself into this matter by asserting his claim to pre-empt the sale. He, therefore, made himself liable for any legal consequences which might result from

the fact that he was intermeddling with a sale contracted by a Hindu father who had minor sons living jointly with him. He handed over Rs. 2,000 to Harbans Singh in cash on the 19th of December, 1906. He arranged with certain other persons to pay Harbans Singh Rs. 5,000 more in cash and he gave Harbans Singh a mortgage of property of his own for Rs. 4,600, the consideration of which was set down as forming part of the Rs. 13,000 which he was bound to pay under the decree in the pre-emption suit. There remains only a small sum of Rs. 1,400 which was set off against an antecedent debt, that is to say, against money previously advanced by Dalip Singh to Harbans Singh, not on the security of any alienation of joint family property in the hands of the latter, but on a simple promissory note. The date of this promissory note was more than 2½ years prior to the execution of the receipt of the 19th of December, 1906. There seems no reason to doubt that there was real disassociation in fact as well as in point of time between the two transactions."

It is contended that certain expressions used by their Lordships in the case of *Sahu Ram Chandra* v. *Bhup Singh* (1), that debts contracted by the father "in order to raise money to pay off an antecedent debt" support the view that in the present case the sale to Dalip Singh was to pay off an "antecedent debt," viz., the money due to Girwar Singh and his associates. In their Lordships' opinion the contention is wholly untenable; as the High Court point out, the debt to Girwar and others had already been paid off: and no portion of the Rs. 13,000 which Harbans Singh received from Dalip Singh was applied to its discharge.

The doctrine of "antecedent debt" has been carried far enough; if the present contention is acceded to, it would mean that a contract for loan which never was completed, to pay off a previous debt otherwise discharged, would become "an antecedent debt." The contention is, on the face of it, absurd.

(1) (1917) I.L.R., 39 All., 437, 446; L.R., 44 I.A., 127, 133, 134.

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On the question of limitation their Lordships concur with the High Court. They are of opinion that there is no substance in this appeal and that it should be dismissed; but without costs, as there is no appearance on behalf of the respondents, and their Lordships will humbly advise His Majesty accordingly.

Solicitor for appellant: *H. S. L. Polak.*

Appeal dismissed.

APPELLATE CIVIL.

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June, 12.

Before Mr. Justice Lindsay and Mr. Justice Kanhaiya Lal.

MAHADEO SAHU (PLAINTIFF) *v.* SARJU PRASAD TIWARI AND ANOTHER (DEFENDANTS).*

Act No. II of 1863 (*Religious Endowments Act*), *section* 14—*Suit against mutawalli who had sold endowed property—Nature of reliefs which can be granted in such suit.*

In a suit under section 14 of the Religious Endowments Act, 1863, it is not competent to the Court to set aside a deed of sale of the property alleged to be endowed property, nor can a decree for possession be given.

Where such a suit was brought against a mutawalli who had removed certain idols and sold the endowed property, he was ordered to restore the idols and carry on the duties of mutawalli within a time limited; failing this he was to be removed from his office.

THIS was a suit filed under the provisions of section 14 of the Religious Endowments Act, 1863. The plaintiff alleged that certain premises in the city of Gorakhpur had been dedicated to religious uses as a temple: idols were installed therein and the public were in the habit of worshipping there. He stated that the first mutawalli was one Girdhari Lal Khattri. He was succeeded by his son Mul Narain, and he in turn by his son Gorakh Prasad *alias* Babban. Gorakh

* First Appeal No. 132 of 1922, from a decree of H. E. Holme, District Judge of Gorakhpur, dated the 24th of January, 1922.