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paid into the Court of the Subordinate Judge within one month from the date of the receipt of the decree of this Court, otherwise the suit will stand dismissed.

*Appeal allowed.*

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 February 26.

*Before Mr. Justice Straight and Mr. Justice Brodhurst.*

RAMA NAND SINGH AND ANOTHER (DEFENDANTS) v. GOBIND  
 SINGH AND ANOTHER (PLAINTIFFS).\*

*Hindu Law—Mitakshara—Joint Hindu family—Joint family property—  
 Alienation by a member of his share.*

One member of a joint and undivided Hindu family, governed by the law of the Mitakshara, cannot mortgage or sell his share of the family property without the consent, express or implied, of the other members. *Chamaili Kuar v. Ram Prasad* (1) followed. *Deendyal Lal v. Jugdeep Narain Singh* (2) and *Suraj Bansi Koer v. Sheo Prasad Singh* (3) referred to.

THE plaintiffs in this suit claimed to set aside a mortgage by the defendant Raghunandan Singh of his interest in certain zamindari estates to the other defendants, dated the 24th August, 1880. They alleged that they and Raghunandan Singh were members of a joint undivided Hindu family; that the zamindari estates in question were joint ancestral property; and that the mortgage by Raghunandan Singh of his interest therein was void, under Hindu Law, having been made without their consent. The defendants set up as a defence to the suit that Raghunandan Singh was not a member of a joint undivided family together with the plaintiffs, but was separated from them, and was in separate possession of the mortgaged property, and was, therefore, competent to make the mortgage. The Court of first instance decided that the plaintiffs and Raghunandan Singh were members of a joint Hindu family; that the mortgaged property was a portion of the ancestral family estate; and that according to Hindu Law the mortgage was void, as it had been made without the consent of all the members of the family; and it gave the plaintiffs a decree setting aside the mortgage. On appeal by the defendants it was contended on their behalf, *inter alia*, that, notwithstanding the

\* Second Appeal No. 376 of 1882, from a decree of Pandit Soti Bohari Lal, Subordinate Judge of Azamgarh, dated the 18th December, 1881, affirming a decree of Mirza Kamar-ud-din Ahmad, Munsif of Azamgarh, dated the 5th September, 1881.

(1) I. L. R., 2 All. 267. (2) I. L. R., 3 Calc. 198.

(3) I. L. R., 5 Calc. 148.

zamindari shares were joint ancestral property, the defendant Raghunandan Singh was not precluded by Hindu Law from mortgaging his interest therein. The lower appellate Court disallowed this contention.

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In second appeal the defendants again contended that a member of a joint undivided Hindu family was competent to mortgage his interest in the family property.

The *Senior Government Pleader* (Lala Juala Prasad), for the appellants.

Munshi *Hanuman Prasad* and Pandit *Bishambhar Nath*, for the respondents.

The Court (STRAIGHT and BRODHURST, JJ.) delivered the following judgment:—

STRAIGHT, J.—It has long been the rule of decision in this Court that one member of a joint and undivided Hindu family cannot mortgage or sell his share without the consent, express or implied, of his co-parceners. The question was fully discussed in a judgment of our brother Oldfield in *Chandji Koor v. Ram Prasad* (1) and in the views expressed by him in that case we concur. Whatever may be the inferences to be drawn from the remarks of their Lordships of the Privy Council in *Deendyal's* (2) and *Susuj Bansi Koor's* (3) Cases, to which reference is so frequently made, we do not feel called upon to disturb a uniform and unbroken course of decisions, which have the advantage of being based on, and being in harmony with, the Mitakshara itself. In the present appeal, it being found as a fact that the plaintiffs-respondents and the defendant Raghunandan were joint, the former were entitled under the Hindu Law to come into Court to have the mortgage of the 24th August, 1880, set aside, and the Courts below have rightly so decided. The appeal must be dismissed with costs.

We think it as well to add that the question raised by the second plea in the memorandum of appeal must now, so far as this Court is concerned, be taken as determinately concluded.

*Appeal dismissed.*

(1) I. L. R., 2 All. 267. (2) I. L. R., 3 Calc. 198.

(3) I. L. R., 5 Calc. 148.