applicable to the case of a daughter. The inquiry as to why he expressly imposed that restriction in one case and omitted to do so in the other will clearly lead us into the region of conjectures.

We therefore allow this appeal, set aside the decree of the lower appellate court and restore the decree of the court of first instance with costs in all courts.

Appeal allowed.

APPELLATE CIVIL.

Before Sir Louis Stuart, Kt., Chief Judge, and Mr. Justice Wazir Hasan.

JANG BAHADUR LAL AND OTHERS (DEFENDANTS-APPELLANTS) *v.* BHAIYA RAGHUNATH SINGH AND ANOTHER (PLAINTIFFS-RESPONDENTS).*

Hindu law—Alienation by father to satisfy debts of grandfather, whether binding on grandsons—Antecedent debts, meaning of—Consideration in part received in cash by Hindu father, when valid and binding on sons.

Held, that an alienation of joint family property made by the father to satisfy the debts of the grandfather is binding as against the grandson when such debts are neither immoral nor illegal. *Masit Ullah* v. *Damodar Prasad*, (1926) 3 O. W. N., 721, followed, *Secretary of State for India in Council* v. *Moment*, (1912) L. R., 40 I. A., 48, and *Vasudev Sadashiv Modak* v. *The Collector of Ratnagiri*, (1877) L. R., 4 I. A., 119, referred to.

Where a mortgage of joint family property is made by a Hindu father and the son makes an alienation which is wholly a renewal of the previous mortgage made by the father the alienation does not constitute an antecedent debt.

* Second Civil Appeal No. 473 of 1925, against the decree of Thakur Rachhpal Singh, District Judge of Gonda, dated the 4th of July, 1925, setting aside the decree of Shiam Manohar Nath Shargha, Subordinate Judge of Gonda, dated the 3rd of July, 1924.

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Gajadhar Bakhsh Singh v. *Baij Nath*, (1924) 27 O. C., 133, relied on.

Where part of the consideration of a sale deed by a Hindu father was received by him in cash at the execution of the deed and there was no evidence that the money was used for immoral or unauthorized purposes and direct testimony as to its appropriation was no longer available for the reason that long time had elapsed and the vendor and vendee were both dead, the reasonable presumption in the circumstances to make was that it formed a valid consideration in part of the purchase.

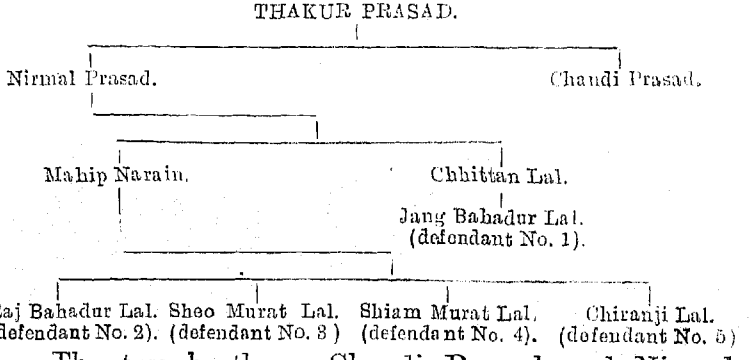
Messrs. *A. P. Sen* and *K. P. Misra*, for the appellants.

Mr. *Bisheshwar Nath Srivastava*, for the respondents.

1926 *November*, 4.

HASAN, J. :—This is the defendants' appeal from the decree of the District Judge of Gonda dated the 4th of July, 1925, reversing the decree of the Subordinate Judge of the same place, dated the 3rd of July, 1924.

It is necessary to state the following pedigree at the outset of this judgment :—



The two brothers, Chandi Prasad and Nirmal Prasad, were separate in estate and each was the owner of a 3 annas 8 pies 5 kirants zamindari share situate in mahal Pura Gur Dayal, patti Muhammad Khan in Utraula in the district of Gonda. On the

23rd of April, 1898 they sold the entire 7 annas 4 pies 10 kirants share for a consideration of Rs. 10,000 to one Bismillah Chaudhri. The vendee entered into the possession of the share by virtue of the sale just now mentioned. Bismillah Chaudhri was succeeded on his death by his son, Muhammad Khan. Under a deed of the 21st of March, 1914, Muhammad Khan mortgaged the 3 annas 8 pies 5 kirants share, which had previous to the sale of the 23rd of April, 1898 belonged to Nirmal Prasad, to one Bhaiya Sital Bakhsh Singh, who was the predecessor-in-interest of the plaintiffs-respondents. The mortgage was a simple mortgage. Subsequently the mortgage was put in suit and a decree for sale was obtained. In pursuance of that decree the 3 annas 8 pies 5 kirants share was sold by auction and purchased by the plaintiffs on the 23rd of October, 1920. Formal delivery of possession was made in favour of the purchasers on the 8th of August, 1921.

Meanwhile the defendants by means of certain proceedings in court taken against the heirs of the vendee, the details of which are not necessary for the purposes of this judgment, had obtained possession of the share in question. The object of the present suit is to recover possession of the 3 annas 8 pies 5 kirants share from the hands of the defendants.

The chief defence, with which we are concerned in the present appeal, is that the property in suit being the ancestral joint family property of Nirmal Prasad and his descendants under the law of the Mitakshara did not validly pass out of the family by the sale of the 23rd of April, 1898 effected by Nirmal Prasad in favour of Bismillah Chaudhri.

On the above question in controversy the trial court held that the sale was invalid, and on the basis

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of that finding dismissed the plaintiffs' suit. On appeal the learned District Judge of Gonda came to the conclusion that the sale of the 23rd of April, 1898 was valid for the reason that it was effected in lieu of antecedent debts and was, therefore, binding on the defendants' interests in the family property. He therefore allowed the appeal. reversed the decree of the court of first instance and gave a decree for possession in favour of the plaintiffs-respondents. The sole question for decision in the appeal is as to whether the sale of the 23rd of April, 1898 was a valid alienation of the family property by Nirmal Prasad.

Now the facts in relation to this matter are as follows :—

Under the sale of the 23rd of April, 1898, Nirmal Prasad sold his share of 3 annas 8 pies 5 kirants for a consideration of Rs. 3,333-5-4. This amount of Rs. 3,333-5-4 was appropriated according to the finding of the lower appellate court in the following manner :—

(1) Rs. 1,111 in part payment of a mortgage dated the 10th of June, 1886, made by Thakur Prasad.

(2) Rs. 55-10-8 in part payment of a mortgage dated the 10th of June, 1886, made by Thakur Prasad.

(3) Rs. 579-2-0 in part payment of a mortgage dated the 6th of June, 1889, made by Thakur Prasad.

(4) Rs. 420-3-0 in part payment of a mortgage dated the 27th of July, 1889, made by Thakur Prasad.

(5) Rs. 100-7-0 in part payment of a simple money bond executed by Nirmal Prasad himself on the 29th of November, 1889.

(6) Rs. 100 left with the vendee for the purpose of being paid to one Basant Lal on account of a zar-peshgi lease executed by Nirmal Prasad and Chandi Prasad on the 14th of April, 1895.

(7) Rs. 966-4-8 received by Nirmal Prasad as his share of the cash payment of the purchase money.

Hasan, J.

In respect of items Nos. 5 and 6 the courts below are agreed and the finding was not challenged in appeal before us that they constitute antecedent debts of Nirmal Prasad for the satisfaction of which he could make a valid alienation of the ancestral family property.

As regards items Nos. 1 to 4 the court of first instance on the authority of a decision of a Bench of the late Court of the Judicial Commissioner of Oudh, to which I was a party, came to the conclusion that they do not constitute antecedent debt, and as regards the last item No. 7 that court found that the validity of it was not established. The lower appellate court in respect of the first four items has held that they were antecedent debts, and as regards the last item No. 7 its opinion is that in the circumstances of the case it should be presumed that the amount was borrowed for legal necessity. The correctness of the opinion of the court below is challenged in appeal before us.

Now according to the decision in *Gajadhar Bakhsh Singh* v. *Baij Nath* (1), the first four items of the consideration on which the sale of the 23rd of April, 1898 rests do not constitute antecedent debt as the trial court had held, but the learned District

(1) (1924) 27 O.C., 133 : S. C. 1 O.W.N., 60.

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Judge thinks that they do. I still adhere to the opinion expressed in the case just now mentioned that they do not constitute antecedent debt and I have nothing to add to the reasons in support of that opinion to what I stated in that case. The further question decided in that case was as to the validity of the alienation on the pure ground of pious obligation on the part of the sons to satisfy the debts of their deceased father. The fact that the alienation in suit was wholly a renewal of the previous mortgage made by the father had an important bearing on the decision of that question. In the circumstances the essence of the matter lay in the fact that the sons were sought to be bound by the previous mortgage made by the father on the sole ground of pious obligation. It was held that they were not so bound. I am still of the opinion that that was a right decision.

Now the question which has arisen for decision in the present appeal is as to whether an alienation of the joint ancestral family property in satisfaction of the debts of an ancestor when such debts were neither immoral nor illegal and when the ancestor was the father of the member making the alienation and the grandfather of one of the defendants and the great-grandfather of the other defendants is an alienation for legal necessity or not. This question was neither raised nor decided in the case mentioned above. That case therefore is no authority for a decision in the present case. In the case of *Secretary of State for India in Council* v. *Moment* (1), Viscount HALDANE, L. C., in delivering the judgment of the Privy Council observed :—" It was suggested in the course of the argument for the appellant that a different view must have been taken by this Board in the case of *Vasudev Sadashiv Modak* v. *The Collector of Ratnagiri* (2).

(1) (1912) L.R., 40 I.A., 48. (2) (1877) L.R., 4 I.A., 119.

The answer is that no such point was raised for decision."

The answer to the question set forth above must be given in the affirmative having regard to the recent decision of their Lordships of the Privy Council in the case of *Masit Ullah* v. *Damodar Prasad* (1). As observed in that case "the law of the Mitakshara proceeds on a logical basis; rights are created by birth up to the third generation, viz., son, grandson and great-grandson. The son of a grandson is entitled equally with his father to question the validity of debts contracted by the ancestor after his death. His obligation to discharge the valid debts of that ancestor is therefore co-extensive with the rights." No argument was addressed to us on the ground that the great-grandsons of Thakur Prasad have received no assets from the deceased ancestor.

As regards the last item of Rs 966-4-8 received in cash by Nirmal Prasad from the vendee at the execution of the deed of sale of the 23rd of April, 1898, I agree with the lower appellate court that in the circumstances of the case it is a reasonable presumption to make that it formed a valid consideration in part of the purchase. This view is also supported by the decision of their Lordships of the Privy Council just now mentioned. There is no evidence that the money was used for immoral or unauthorized purposes. Direct testimony as to its appropriation is no longer available for the reason that long time has elapsed since and the vendor, Nirmal Prasad, and the vendee, Bismillah Chaudhri, are both dead.

On the above grounds I would dismiss this appeal with costs.

STUART, C. J. :—Whatever doubts there may have been upon the point in the past, the recent decision of

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(1) (1926) 3 O.W.N., 721.

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their Lordships of the Judicial Committee in *Masit Ullah* v. *Damodar Prasad* (1), has now clearly established the law as to the binding nature of an alienation of joint family property made by the father to satisfy the debts of the grandfather as against the grandson when such debts are neither immoral nor illegal. The item of Rs. 966-4-8 was, in the circumstances of the case, a valid consideration in part for the purchase. I therefore agree with my learned brother in dismissing this appeal with costs.

1926 *November*, 8.

By Court.—This appeal is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Sir Louis Stuart, Kt., Chief Judge, and Mr. Justice Wazir Hasan.

1926 *December*, 16.

NAWAB SHARAF JEHAN BEGAM (DECREE-HOLDER-APPELLANT) *v.* NAWAB MIRZA MOHAMMAD SADIQ ALI KHAN (JUDGMENT-DEBTOR-OBJECTOR-RESPONDENT).*

Rents and profits of the estate of a deceased, whether liable for the satisfaction of his debts—Assets of a deceased, whether include rents and profits of the deceased's estate —Receiver, appointment of—Decree-holder not willing to leave any margin for the maintenance of the judgment-debtor—Appointment of a receiver of the whole estate of the judgment-debtor, whether just or convenient.

The applicant obtained a decree for her dower debt against the assets of her deceased husband and in execution of her decree applied for the appointment of a receiver of the estate of her deceased husband in the hands of his other heirs.

Held, that it being admitted that the villages in question were the assets of the deceased, it follows that the rents and profits accruing from those villages were also his assets, for rents and profits are legal incidents of immovable property

* Execution of Decree Appeal No. 45 of 1926, from the order and decree of Mahmud Hassan Khan, Subordinate Judge of Sitapur, dated the 17th of September, 1926, allowing the objection of the judgment-debtor and dismissing the decree-holder's application.

(1) 3 O.W.N., p. 721.