1930.

MUSSAMMAT BECHNI v. SHEIKH SADIQUE.

JAMES, J.

his evidence on this point and treated the insolvent as having failed to prove that the transfer was for consideration. It is argued that even if the insolvent failed to prove the amount of dower due from him, there is still a presumption that he owed something to his wife on account of dower; but here the insolvent set up a definite case that the dower was three hundred rupees, which the learned District Judge has found to be untrue. In all the circumstances of the case, and in view of the fact that the transfer was made within six days of the application in the Subordinate Judge's Court for attachment of the insolvent's property, the learned District Judge was justified in inferring that the transfer was fraudulent, made in order to defeat the claim of the creditor who instituted the suit.

I would accordingly affirm the decision of the District Judge and dismiss this appeal with costs. Hearing fee one gold mohur.

ADAMI, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Adami and Wort, JJ.

1930.

March, 24, 25.

JAGDAMBIKA PRASAD SINGH
v.
KALI SINGH.*

Hindu Law—antecedent debt, whether time-barred debt constitutes—test—debt legally recoverable from father.

A time-barred debt constitutes a valid antecedent debt binding on the son for the purpose of supporting an alienation by the father of the ancestral joint property of the family, provided the debt was legally recoverable from the father, were he alive.

*Appeal from Original Decree no. 95 of 1928, from a decision of M. Amir Hamza, Subordinate Judge of Gaya, dated the 20th November, 1927.

1930.

JAGDAMBIKA PRASAD SINGH v. KALI SINGH.

Gajadhar v. *Jagannath* (1), followed.

Brij Narain v. *Mangal Prasad* (2), referred to.

Appeal by defendants nos. 9—12 and 17.

The facts of the case material to this report are stated in the judgment of Wort, J.

Sarjoo Prosad, for the appellants.

Sambhu Saran and *P. P. Verma*, for the respondents.

WORT, J.—This is an appeal by defendants nos. 9—12 and no. 17 in a mortgage suit in which the plaintiff has obtained a decree. The mortgage bond was executed by one Janki Prosad Singh who was the father of defendants 1—3. The date of the mortgage bond was 14th February, 1916. The consideration was Rs. 1,000 and the subject-matter of the claim amounts now to a sum of Rs. 5,998-12-0. The consideration of Rs. 1,000 was made up as to Rs. 346 cash; as to Rs. 200 a handnote, dated the 26th March, 1909, which is Exhibit 3 in the case; a chita for Rs. 65-11-0 bearing interest at the rate of two per cent. per mensem and another chita exhibit 4, dated the 17th December, 1912, for Rs. 20 bearing interest at the rate of two per cent. per mensem. The defences which were set up by the defendants in the suit were, first of all, that the mortgage deed was not a genuine document, that there was no consideration and that there was no legal necessity or family benefit in respect of the consideration of the bond; there was also a question raised as to the rate of interest before the learned Subordinate Judge to which no reference is made in this Court.

In substance, however, the two questions which are argued before us are first, whether the consideration of Rs. 346 in cash was actually paid; and secondly, whether as regards the handnote and the

(1) (1924) I. L. R. 46 All. 775, F. B.
(2) (1923) I. L. R. 46 All. 95, P. C.

two chitas they could in the circumstances form a valid consideration for the mortgage deed binding upon the legal representatives of the mortgagor. I will first of all deal with the question of cash payment of Rs. 346. It is contended by the learned Advocate for the appellants that it was for the plaintiff in the suit to establish this payment and that having regard to the evidence which has been adduced in the case in his behalf to support this part of the case the discrepancies are such that the evidence cannot be accepted. The position shortly is this that as regards this payment the evidence consisted first, of the plaintiff himself and secondly, of one Nilkanta the scribe who not only wrote out the mortgage bond but who wrote out the handnote and the two chitas. The discrepancies which are referred to by the learned Advocate refer to the question of whether in fact when the plaintiff paid over Rs. 346 to Janki Prosad there was any witness of that actual payment. It is true that the plaintiff in his evidence states:

"I have got no witness of the time when I paid Rs. 346 but petition of satisfaction was filed at the time when I paid the money."

It does not appear to be something in the nature of a contradiction when Nilkanta goes in the witness-box and actually deposes to the effect that he did see the payment of Rs. 346. It is to be remembered that the witnesses are speaking of a time which was at least eleven years before the date on which they were giving their evidence and in any event it does not seem to be a discrepancy of such a grave character as to make it incumbent upon this Court to disbelieve their evidence. It is contended, as I have already indicated, that their evidence ought not to be accepted by reason of this discrepancy; but a witness is not proved to be stating that which is untrue by reason of the fact that in some detail, whether material or otherwise, he does not agree with another witness who is called on the same side. Rather it would appear to show that the evidence was not concocted,

1930.

JAGDAMBIKA PRASAD SINGH v. KALI SINGH.

WORT, J.

and that the witnesses were deposing to the best of their belief; it would be, in my judgment, rather an indication that they were speaking the truth. In any event the position is this that whereas there are at least two witnesses to prove the payment of this Rs. 346 there is no evidence to rebut that part of the defence. It makes no difference that defendants nos. 9—12 and 17 are not in a position to call such rebutting evidence. The fact remains that there is prima facie evidence of the payment of Rs. 346 and no valid reason is adduced why that evidence should not be accepted as it was accepted by the learned Subordinate Judge.

As regards the question of whether the two chitas and the handnote can form the consideration for this mortgage deed, two or three questions arise. It is first contended on the part of the appellants that in each of these cases, that is to say, the handnote and the two chitas, they are all time-barred. The learned Subordinate Judge has come to the conclusion, and there is no contention to the contrary, that the handnote of the 26th March, 1909, was in fact barred by limitation. As regards the chita Exhibit 4(*a*), dated the 30th May, 1912, the question of whether this is barred by limitation depends upon the construction to be placed thereon. The chita recites :

> " On adjustment of account, Rs. 65-11-6 is found due by me to you up to this date, on account of miscellaneous expenses, etc., I shall pay you the said amount principal with interest thereon at 2 per cent. per mensem from the crops of the 1320 Fs."

The date of the document is the 29th Jeth, 1319 Fs., which is equivalent to 30th May, 1912. The year 1320, as I understand, commences on the 27th September, 1912, and it is contended by the learned Advocate on behalf of the appellants that when the expression " crops of 1320 Fs. " is used, it was intended to provide that the payment should be made from the paddy crops which were being reaped at the beginning of 1320, that is to say, September,

1912. In my judgment it is quite clear that the provision as regards the payment of the money from the crops was a provision which to a greater or a lesser extent extended the time to the debtor for the payment of the sum due. Now it is quite obvious that when the expression "crops of 1320 Fs." was used it would include all the crops of 1320. It is quite clear that any contention to the contrary could not be sustained. That being so, one of the crops of the year 1320 would be rabi crop which would be reaped about February or March of 1913. As the bond was executed in February, 1916, as the time for payment was on my construction of the chita extended to at least February or March, it is equally clear that the due date of the chita was within the period of limitation.

As regards the chita, dated the 17th October, 1912, the provision is:

"Therefore I execute this chithi under my signature bearing interest and do declare that I shall pay the principal with interest thereon at two per cent. per mensem from the crops."

The date is 21st Assin, 1320. It is true that the year of the crops is not stated as in the previous document, but it seems to me that the same argument as to its construction would apply to this chita also, when it is remembered that the date of the document itself is the 17th October, 1912. In other words, when the expression "from the crops" is used, it is intended to mean that the crops which will be reaped and not those which have already been reaped in the past. If this construction is not to be placed on the chita, it is perfectly obvious that the mention of payment from the crops would be entirely unnecessary. In any event the same question is raised by reason of the fact which I have already stated, namely, that at least one of those documents must be considered to have been time-barred at the time of the mortgage bond.

Here arises the most important and substantial question in the case. Shortly put, it is contended

1930.

JAGDAMBIKA PRASAD SINGH v. KALI SINGH.

WORT, J.

on behalf of the appellants that these debts, being time-barred, cannot constitute a valid antecedent debt for the purpose of supporting an alienation by the father of the ancestral joint family property. In this connection in the first place the case of *Achutanand Jha* v. *Surjanarain Jha* (1) is relied upon. The proposition which was laid down in that case was that the pious obligation of a Hindu son to pay his father's debts, does not extend to the payment of his father's time-barred debts; and reference is made by the appellants to a passage in the judgment of Sir Dawson Miller to the effect: "His second point is based upon the contention that the pious obligation of a son to pay his father's debts extends even to a time-barred debt. Whatever may be the duty or the powers of a Hindu widow succeeding to her husband's estate with regard to the payment of her husband's debts, when barred by limitation, the pious obligation of the son does not extend to the payment of his father's time-barred debts". But it will be seen that this case is not directly in point having regard to the further statement of the learned Chief Justice to this effect: "If the debt could not have been enforced against the father, were he alive, the son is not bound". It is contended by the respondents that having regard to the passage to which I have just made reference and to the circumstances of this being that in this case by reason of the acknowledgment contained in the mortgage bond of 1916, the father in his lifetime was bound to pay this debt.

Now the learned Subordinate Judge has relied for his decision in this matter on the case of *Gajadhar* v. *Jagannath* (2). There the facts were similar to those of the present case. It was a decision of the Full Bench of the Court and the question which was to be determined is the question which we have to determine in this case, namely, whether a time-barred

(1) (1926) I. L. R. 5 Pat. 746.
(2) (1924) I. L. R. 46 All. 775, F. B.

debt can constitute a valid antecedent debt for the purpose of supporting an alienation by the father of the ancestral joint property of the family. In the course of the judgment Kanhaiya Lal, J. makes the following statement, quoting from Katyayana: "The Judge shall compel a son to pay the debt of his father, provided he be involved in no distress, be capable of property and liable to bear the burden, but in no other case shall he compel the son to pay his father's debt". The learned Judge then goes on to state that there was a further restriction introduced by the law of limitation. A son is not liable for the payment of a debt due by his father, if it was not legally recoverable from him had he been alive. As I have already indicated, the real question we have to determine in this case is whether as against the father this debt was recoverable. The learned Judge, to whom I have just made reference, then goes on to refer to section 25 of the Contract Act which provides that an agreement is void unless it is a promise made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. The learned Judge further states that by reason of section 25 the debt, in spite of the law of limitation, still existed and assumed a new garb and gained a fresh vitality. The real point, as I have already stated, is whether the father was bound to liquidate this debt and, undoubtedly if he was, it was a debt which the sons were under a pious obligation to discharge. There can be in my judgment no doubt of that proposition. The decision in the Allahabad case is decided on the basis that although by the law of limitation it was barred, under section 25 it was revived and became a debt for which the father was liable. In those circumstances it seems to me that in this case it was one of the pious obligations of the sons to discharge this debt having

1930.

JAGDAMBIKA PRASAD SINGH v. KALI SINGH.

WORT, J.

regard to the fact that it was a debt for which the father himself was liable.

Reference is further made to the decision of the Judicial Committee of the Privy Council in *Brij Narain* v. *Mangal Prosad* (1). Lord Dunedin at the end of an elaborate judgment states that their Lordships may sum up the proposition which they would wish to lay down as the result of these authorities on this question:—

(1) The managing coparcener of a joint undivided estate cannot alienate or burden the estate qua manager except for purposes of necessity: but

(2) if he is the father and the reversionaries are the sons he may, by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceeding upon a decree for payment of that debt:

(3) if he purports to burden the estate by mortgage, then unless that mortgage is to discharge an antecedent debt, it would not bind the estate.

Now the decision being, it appears, the only decision that we can come to in the case, having regard to the authority to which I have referred, that this was a valid antecedent debt, the question whether it can form consideration for this mortgage bond, must, in my judgment, be answered in the affirmative. As that is the only substantial question, in my judgment, it disposes of the appeal which must be dismissed with costs.

ADAMI, J.—I agree.

Appeal dismissed.

(1) (1923) I. L. R. 46 All. 95, P. C.