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against the remaining defendants and the executors for the decision of all the matters in dispute between the parties including the question of the Will, but Mr. Agarwala explained that the suit was filed as a matter of precaution, in view of the result of the present proceeding in the lower court, and in order to save limitation. The filing of this suit is no obstacle to the plaintiff's success in this appeal, the result of which is that both the objections taken to the award must fail. I would, therefore, allow this appeal and direct that the award be filed and made a decree of the court. The plaintiff is entitled to costs of both courts against defendants nos. 1 and 4.

KHAJA MOHAMAD NOOR, J.—I agree.

*Appeal allowed.*

J. K.

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## APPELLATE CIVIL.

*Before Khaja Mohamad Noor and Madan, JJ.*

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*Sept.*, 30.

DAROGA RAI

*v.*

BASDEO MAHTO.*

*Hindu Law.—"legal necessity," meaning and significance of—female owner, whether entitled to alienate property for payment of time-barred debt incurred for legal necessity—karta, power of, whether differs from that of limited owner—appellate court, power of, to interfere with part of decree not appealed against—Code of Civil Procedure,* 1908 *(Act V of* 1908), *Order XLI, rule* 33.

In deciding the question of what constitutes "legal necessity" under the Hindu law, the court must include all

* Appeal from Appellate Decrees nos. 1110 and 1136 of 1933, from a decision of Maulavi Abdush Shakur, Additional District Judge of Muzaffarpur, dated the 9th February, 1933, modifying a decision of Babu Harihar Charan, Subordinate Judge of Muzaffarpur, dated the 10th August, 1931.

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those "necessities" which the Hindu law-givers have recognised as legal, justifying an alienation of property by a limited owner.

Hindu law does not recognise law of limitation.

*Held*, therefore, that a female owner, having a limited interest, is entitled to alienate the property in her possession for the payment of a debt, incurred by her for legal necessity, although the debt may have become time-barred.

*Makhanlal* v. *Musammat Sardar Kunwar*(1), dissented from.

*Ashutosh Sikdar* v. *Chidam Mandal*(2), *Lala Soni Ram* v. *Kanhaiya Lal*(3) and *Hunnomanpersaud Pandey* v. *Musummat Babooee Munraj Koonwaree*(4), referred to.

The power of a karta of a joint family differs from that of a limited owner; the former acts under an implied authority of the co-parceners which authority does not extend to his paying a barred debt, but the latter, within certain limits, is an owner and there is nothing to debar her from paying up a debt which she has legally incurred.

*Obiter*.—Although the power of the appellate court is wide, the cases in which it should interfere with the decree which has not been appealed against are those in which the portion of the decree appealed against is so inseparably connected with the decree not appealed against that justice cannot be done unless the portion against which no appeal has been preferred is also interfered with.

Where, therefore, there are two distinct decrees against two different persons on two separate causes of action, although in form there is only one decree, the appellate court should not interfere with that part of the decree against which there has been no appeal.

*Maharaja Bahadur Kesho Prasad* v. *Narayan Dayal*(5) and *Musummat Chanda Bibi* v. *Mohanram Sahu*(6), referred to.

(1) (1932) A. I. R. (All.) 555.
(2) (1929) I. L. R. 57 Cal. 904.
(3) (1913) I. L. R. 35 All. 227; L. R. 40 Ind. App. 74.
(4) (1856) 6 Moo. I. A. 393.
(5) (1924) I. L. R. 4 Pat. 37.
(6) (1933) I. L. R. 13 Pat. 200.

Appeal no. 1110 by defendant no. 6.

Appeal no. 1136 by defendant no. 4.

The facts of the case material to this report are set out in the judgment of Khaja Mohamad Noor, J.

*M. N. Pal* and *Navadip Chandra Ghose*, for the appellants.

*Dhyan Chandra* and *R. J. Bahadur*, for the respondents.

KHAJA MOHAMAD NOOR, J.—These two appeals arise out of the same suit instituted by the plaintiffs for a declaration that two deeds, one a sudhbharna, dated the 3rd December, 1928, for Rs. 1,000 in favour of Halaku Rai (appellant in S. A. 1136 of 1933) and the other as sale for Rs. 1,100, dated the 6th December, 1926, in favour of Darogi Rai (appellant in S. A. 1110 of 1933) executed by Musummat Murni and her sister Musummat Sahodri, daughters of one Rampat, were without legal necessity and therefore not binding upon the plaintiffs who are the reversioners of Rampat. Rampat died leaving three daughters Musummat Murni, Musummat Sahodri and Musummat Jhapsi. The plaintiffs are the sons of his fourth daughter who predeceased him. Rampat was succeeded by his widow Jaimangal who died a few months later and then the three daughters succeeded him as limited owners. Two of them, namely, Murni and Sahodri executed the two deeds mentioned above. The learned Subordinate Judge who tried the suit held the documents to be valid in part, that is to say, the sudhbharna to the extent of Rs. 850 and the sale to the extent of Rs. 700 and invalid for the rest of the consideration. One of the defendants of the suit Darogi Rai who held the sale deed preferred an appeal. Halaku, the other defendant, the holder of the sudhbharna accepted the decree and preferred no appeal. The

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plaintiffs also remained satisfied with the decree and did not prefer any appeal, but in Darogi's appeal he filed a cross-objection not only against that portion of the decree which was in favour of Darogi, but also against that portion of it which was in favour of Halaku. The learned District Judge has held that the deeds were not valid to any extent whatsoever and while dismissing the appeal of Darogi, decreed the suit in its entirety not only against Darogi but against Halaku also. Darogi and Halaku have, therefore, preferred these two second appeals.

The two deeds which are exhibits *A* (sudhbharna) and *B* (the sale deed) were executed for consideration, a very large part of which as mentioned therein was utilized for payment of debts which are said to have been incurred for meeting the sradh expenses of Rampat and his widow. The learned trial court held that the payment of these debts constituted legal necessities under the Hindu Law for which the properties could be alienated. The learned District Judge on appeal though he has not found that in fact no money was borrowed for the sradh expenses or that the defendants were not paid out of consdieration money of the deeds in question has held the alienations to be illegal on two grounds, first, that it was no business of the daughters when their mother was alive to incur debt for the sradh of their father Rampat and, secondly, that when the two deeds were executed, the debts incurred for the sradh had become barred and, therefore, it was illegal to alienate properties to pay off those debts. Both these grounds of the learned District Judge have been assailed before us in these second appeals.

Regarding the first proposition the learned District Judge's objection is about the daughters borrowing for the sradh of their father Rampat when his widow was alive. The amount borrowed for his sradh was Rs. 800 out of which Rs. 400 with interest

thereon was paid by the sale and Rs. 400 with interest thereon by the sudhbharna. It seems that the widow of Rampat must have been very much advanced in age and naturally the daughters who were prospective heirs of their father must have been looking after the property. It is not disputed that it was the duty of the widow to perform the sradh of her husband. It is also not denied that the sradh was performed out of the money borrowed. This being the case, it is in my opinion of no importance that the loan was actually taken by the daughters who must have been acting on behalf of their mother. The debt was there and for all practical purposes it was a debt incurred by the widow for the sradh of her husband. It was, therefore, incumbent upon the daughters when they succeeded to the estate to pay off that debt. It is not denied, as it cannot be denied, that had the widow herself borrowed the money for the sradh of her husband, the daughters could have legitimately alienated the property for the payment of that debt and the fact that they incurred the debt for the sradh performed by the widow makes no difference whatsoever.

The next ground of the learned District Judge for dismissing the suit, namely, that the daughters could not alienate property for payment of debts incurred for legal necessities which had become barred, requires serious consideration. It is settled law that a widow can alienate her husband's property to pay up his barred debts. The recent decision in this connection is of the Calcutta High Court in *Ashutosh Sikdar* v. *Chidam Mandal*(1). Now the question is whether a limited female owner can legitimately alienate any portion of the estate to pay a debt legally incurred by her when the debt has become barred. The learned District Judge has relied upon a decision of the Allahabad High Court in *Makkhanlal* v. *Musummat Sardar Kunwar*(2). It was held in this

(1) (1929) I. L. R. 57 Cal. 904.
(2) (1932) A. I. R. (All.) 555.

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case that a widow is not entitled to alienate property of her husband for the payment of her own barred debt though the debt itself was of such a nature that alienation of property would have been justified at the time the debt was incurred. With my profoundest respect to the learned Judges who decided this case I beg to differ from the view taken by them as in my opinion it introduces into the Hindu Law considerations which are foreign to it, namely, the principles of the statute law of limitation. In deciding what are the legal necessities under the Hindu Law we must include all those "necessities" which the Hindu Law-givers have recognised as legal, justifying the alienation of properties by a limited owner. Payment of an antecedent debt legally incurred is a legal necessity. Does this necessity cease to be "legal" under the Hindu Law when the debt has become barred under the statute law? If the Hindu Law authorizes a limited female owner to incur debt for certain purposes and also authorises her to alienate properties for the payment of that debt, the authority cannot be said to have come to an end simply because the enforcement of payment of that debt has become barred. Hindu Law does not recognize limitation. Mayne in his invaluable treatise on Hindu Law while dealing with this topic after referring to some earlier cases in which it was held that a Hindu widow was not entitled to alienate property to pay up her husband's barred debt says :—

"This seems sensible enough as a matter of mundane equity, though it may be doubted whether a plea of the statute would be accepted in the court of the Hindu Radhamanthus. In more recent cases it has been repeatedly held that a widow's obligation to pay her husband's debts, and her right to alienate property, descended from him for that purpose, is not affected by the statute of limitations, or any similar contrivance for getting rid of his obligations."

Then he refers to the decision of the Judicial Committee in *Lala Soni Ram* v. *Kanhaiya Lal*(1) where it was held that a widow by acknowledgment cannot keep alive the debt of her husband and save it from limitation against the husband and says:—

"It is respectfully submitted that the validity of the acknowledgment might have been adequately and properly tested by those principles by which her dealings with her husband's property are ordinarily judged. If the widow can contract a debt when a case of necessity arises, so as to bind the reversioners she must obviously have a discretion in determining the mode and time of payment. Cases can be easily imagined when it may be more prudent to defer payment and to hold that even in such a case the widow could not prolong the period of limitation by her acknowledgment seems to introduce a rule fraught with serious risk to the estate."

The decision of the Judicial Committee was based on the construction of section 19 of the Limitation Act. Since then on the recommendation of the Civil Justice Committee the law has been changed by the Limitation (Amending) Act of 1927. Now a widow can by acknowledgment save a debt from limitation and this acknowledgment is binding upon the reversioners—(*See* Explanation to section 21 of the Limitation Act). It was open to the daughters in this case to keep the debts alive by renewing them and they would have been binding upon the plaintiffs as they were incurred for legal necessity. I see no reason why they should not be allowed to pay up the debts which they could have kept alive. No other decision except the one of the Allahabad High Court referred to above has been placed before us. Their Lordships have relied upon the decision of the Privy Council in *Hunnomanpersaud Panday* v. *Musammat Babooee Munraj Koonwaree*(2) for the definition of "legal

(1) (1913) I. L. R. 35 All. 227; L. R. 40 I. A. 74.
(2) (1856) 6 Moo. I. A. 393.

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necessity". That was a case of alienation by the guardian of an infant and the question was whether it was for the benefit of the estate. Their Lordships of the Judicial Committee in dealing with the power of the manager of an infant heir observed :—

"The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded". Their Lordships were considering "benefit to the estate" and not "legal necessity". The two partly overlap but do not always coincide. As was pointed out in the Calcutta decision above referred to [*Ashutosh Sikdar* v. *Chidam Mandal*(1)], pressure upon the estate is not the only ground upon which a limited owner can alienate the property. For instance, pilgrimage to Gaya or sradh justifies alienation though it cannot be said that they benefit the estate in its material sense or that they are pressure upon the estate which is to be averted. Legal necessity does not mean enforceable necessity. Hindu Law is very strict about the payment of debts. It makes a man's three generations liable for his debt though the descendant may have received no property from his ancestors. Under it there is no such thing as a barred debt. Even under the statute law of India a barred debt is a good consideration. The debt does not become extinct, only the remedy is barred.

It is true that a karta of a joint family as such cannot revive a barred debt though he can save it from becoming barred. But there is a difference between the powers of a karta and a limited female owner. The former acts under an implied authority of the coparceners which authority does not extend to his paying a barred debt, but the latter, within certain limits, is an owner and there is no reason to debar her from paying up a debt which she has legally incurred.

In view of my findings it is not necessary to consider how far the learned District Judge was

(1) (1929) I. L. R. 57 Cal. 904.

justified in reversing the decree in favour of Halaku in an appeal by Darogi when the former had not appealed. The circumstances under which a court of appeal is justified in interfering with that portion of the decree against which there is no appeal have been laid down in this Court in *Maharaja Bahadur Kesho Prasad* v. *Narayan Dayal*(1) and in *Musummat Chanda Bibi* v. *Mohanram Sahu*(2). Those circumstances were not present in this case, in which though in form there was one decree, but in effect there were two distinct decrees against two different persons on two separate causes of action. There were two documents executed no doubt by the same parties but in favour of two different persons. Though the power of the appellate court is wide, the cases in which it should interfere with the decree which has not been appealed against are those in which the portion of the decree appealed against is so inseparably connected with the decree not appealed against that justice cannot be done unless the portion against which no appeal has been preferred is also interfered with. Here there were two independent transactions, though the questions of law and fact involved in both of them were to some extent same. As, however, the decision of the learned District Judge is wrong on the main ground, this question need not be pursued further.

I would, therefore, allow these two appeals, set aside the decree of the District Judge and restore that of the trial court. Parties will bear their own costs in this Court and in the court of appeal below. The order for costs by the trial court will stand.

MADAN, J.—I agree.

S. A. K.

*Appeals allowed.*

(1) (1924) I. L. R. 4 Pat. 37.
(2) (1933) I. L. R. 13 Pat. 200.