ORIGINAL CIVIL.

Before Mr. Justice Kania.

IN RE DATTATRAYA GOVIND HALDANKAR AND OTHERS.* 1932 January 12.

Hindu Law—Alienation—Manager of joint Hindu family—Necessity—Duty of alienee to satisfy himself as to necessity for alienation—Sanction of Court—Inherent jurisdiction —Practice.

It is the duty of a purchaser or a mortgagee of property belonging to a Hindu joint family to inquire and satisfy himself that the necessity for such alienation has arisen or that such circumstances exist as would entitle the manager or *karta* of such a family to enter into the proposed transaction for and on behalf of the joint family so as to make it binding on the minor members of the family.

Hunoomanpersaud Panday v. *Mussumat Babooee Munraj Koonweree*(1) and *Ram Krishna Murarji* v. *Ratan Chand*,(2) followed.

It is not proper for a purchaser or a mortgagee to cast the obligation of making such inquiries on the Court and to insist that unless the Court sanctions the transaction he will not enter into the same. In an application made to the High Court under its inherent jurisdiction, the Court ordinarily has no adequate machinery to inquire into the truth or otherwise of the *ex parte* statements made before it. If, however, the intended vendee or the mortgagee is *bona fide* satisfied, on making reasonable and proper inquiries, that circumstances exist which would entitle the manager of a joint Hindu family to enter into the transaction, he is fully entitled to advance the money and is justified in entering into the transaction of sale or mortgage.

Principles on which the High Court would make an order under its inherent jurisdiction in sanctioning a sale or mortgage of joint Hindu family property discussed.

In re Manilal Hurgovan,(3) explained.

APPLICATION for the appointment of a guardian of a Hindu minor and for authority to execute a mortgage of joint family property.

One Annaji Krishnaji with his two sons, Kashinath and Govind, and a grandson, Waman, by a predeceased son, were members of a joint and undivided Hindu family. This family owned *inter alia* an immoveable property at Mahim. That property was mortgaged by the said family in June 1913 to secure a loan of Rs. 20,000; and in September 1916 Annaji died.

* Miscellaneous No. 6 of 1932.

(1) (1856) 6 Moo. I. A. 393. (2) (1931) L. R. 58 I. A. 173; 53 All. 190.
(3) (1900) 25 Bom. 353.

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In 1928 Waman and his sons filed a suit in the Bombay High Court against his uncles Kashinath and Govind and their sons for a partition of the assets of the said joint family. In July 1928 a consent decree was taken in that suit under the terms of which the plaintiffs in that suit released all their interest in all the properties of the joint family on payment to them of a sum of Rs. 6,500. It was provided in the consent decree that that amount was to be a charge on the property at Mahim until paid.

On December 22, 1928, there was a partition between Kashinath and his sons on the one part and Govind and his sons on the other part under the terms of which Kashinath and his branch released their interest in the joint family property at Mahim in favour of Govind and his two sons Dattaram and Chandrakant, and Govind's branch undertook to pay all the debts of the said joint family.

In 1930 one of the creditors of the family filed a suit (No. 2576 of 1930) against Kashinath and Govind and obtained a decree for Rs. 7,684-12-0, with interest and costs. In execution of that decree the judgment-creditors attached the immoveable properties which fell to Govind's share. His attorneys' bill in respect of that suit amounted to Rs. 530.

Govind entered into an agreement to borrow a sum of Rs. 10,000 on the mortgage of the property at Mahim in order to pay off the said decretal amount and the costs of his attorneys. The mortgagee's attorneys made a requisition upon Govind to obtain an order from the High Court sanctioning the said mortgage so far as concerned the interests of his minor sons in the said property.

Under these circumstances Govind applied to the High Court under its inherent jurisdiction to be appointed guardian of the property of his minor sons and for authorising him to raise a loan on the mortgage of the immoveable property belonging to the joint family in which the minors have a share.

Sir Jamshed Kanga, Advocate General, for the petitioner.

KANIA J. This is an application under the inherent jurisdiction of this Court for the appointment of the petitioner, the father, as the guardian of the minors and for authorising him to raise a loan on the mortgage of the immoveable property belonging to the joint family in which the minors have either a share or a right to maintenance and marriage expenses. It is alleged in the petition that as a result of the partition effected between two branches of the family on December 22, 1928, the petitioner undertook to pay all the debts of the family therein mentioned. It is further alleged that one of the creditors of the family filed Suit No. 2576 of 1930, and has obtained a decree for Rs. 7,684-12-0 interest and costs against the petitioner and his brother in their personal capacity and also as managers of the joint family. The judgment-creditor has levied an attachment on the immoveable property in question in execution of the decree. It is alleged that some costs are payable by the petitioner to his own attorneys and he has to pay some other debts also. The application is that in order to satisfy the decree and to pay his own attorneys and debts, the applicant be allowed to raise a loan of Rs. 10,000 on the security of the joint family property including the shares and interests of the minors therein. The property is already subject to a mortgage for Rs. 6,500 under the consent decree passed in Suit No. 1071 of 1928. The only reason given for entering into this proposed arrangement is that if the decree-holder forces a sale the property will not fetch a good price. It may be mentioned that the intended mortgage as shown by Exhibit B to the petition provides for the payment of interest on the sum of Rs. 10,000 at the rate of one per cent. per Gujarati calendar month free from income-tax payable every month and in case of default there is a provision for payment of compound interest with monthly rests.

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Having regard to the decision in *In re Manilal Hurgovan*[1] there is no question that this Court has inherent jurisdiction to appoint the petitioner the guardian of the minors' property including their interest in the joint family estate and if the application had been merely for that purpose there would have been no difficulty at all. The learned Advocate General, however, contends that having regard to this decision and the practice of this Court, which is alleged to have developed since that decision, orders of the nature prayed in this application have been granted and the purchaser or mortgagee insists on such an order being obtained before completing the transaction. He, therefore, asks for an order being made in this case also.

I am unable to accept that contention. The powers of the manager of a joint Hindu family to alienate or mortgage joint family properties have been clearly defined so far back as 1856 and are authoritatively stated by their Lordships of the Privy Council in *Hunoomanpersaud Panday* v. *Mussumat Babooee Munraj Koonweree.*[2] In the judgment of the Board the following observations are found at p. 424 :—

"Their Lordships think that the lender is bound to inquire into the necessities for the loan, and to satisfy himself as well as he can, with reference to the parties with whom he is dealing, that the Manager is acting in the particular instance for the benefit of the estate. But they think that if he does so enquire, and acts honestly, the real existence of an alleged sufficient and reasonably-credited necessity is not a condition precedent to the validity of his charge, and they do not think that, under such circumstances, he is bound to see to the application of the money. It is obvious that money to be secured on any estate is likely to be obtained on easier terms than a loan which rests on mere personal security, and that, therefore, the mere creation of a charge securing a proper debt cannot be viewed as improvident management; the purposes for which a loan is wanted are often future, as respects the actual application, and a lender can rarely have, unless he enters on the management, the means of controlling and rightly directing the actual application. Their Lordships do not think that a *bona fide* creditor should suffer when he has acted honestly and with due caution, but is himself deceived."

(1) (1900) 25 Bom. 353.

(2) (1856) 6 Moo. I. A. 393.

That authoritative statement has been accepted and considered to be good law up to date. See *Ram Krishna* v. *Ratan Chand*.[1] Having regard to these decisions it is clear that it is the duty of a purchaser or a mortgagee to enquire and satisfy for himself that a necessity has arisen or such circumstances are there as would entitle in law the manager to enter into the proposed transaction on behalf of the joint family and which would be binding on the minor members of the family.

Speaking for myself I feel that it is not proper for a purchaser or a mortgagee to cast that obligation of making the enquiries on the Court and contend that unless the Court sanctions the transaction he will not enter into the same. The opportunities for testing the grounds on which the alleged necessity or benefit to the family have come into existence are, as compared with the purchaser, few to the Court. In the application which is generally made either by the father or the manager, who is interested in the transaction being effected, *ex parte* statements are made and the Court has ordinarily no adequate machinery to enquire into the truth or otherwise of the averments. The statements would, as I have pointed out above, be ordinarily made by a party who is interested and therefore require to be very carefully scrutinised, especially if on the footing of the order which the Court might pass the purchaser considers that he is absolved from any further liability to make enquiries on his own account. I do not see why the petitioner wants this order from the Court. As the manager of the family, if the circumstances and facts justify the transaction, he has a right to deal with the family property as he intends to do. So also if the other party is *bona fide* satisfied on making reasonable and proper enquiries that circumstances have arisen which, having regard to the statement of law quoted above, entitle the petitioner to enter into the transaction, he is fully entitled to advance

[1] (1931) 33 Bom. L. R. 988 at pp. 998-9 s. c. L. R. 58 I. A. 173; 53 All. 190.

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the money and justified in taking the mortgage. By making the proposed order, therefore, I am called upon to deprive the minor of his right, if any, to challenge the transaction when he comes of age. I do not think that the Court should be ordinarily called upon to make such an order on the mere *ex parte* statements of an interested party which may have this possible effect.

This aspect of the case came to be considered in *In re Manilal Hurgovan.*[1] In that case the father of the minor desired to effect the sale of a certain house belonging to the joint family consisting of himself and his minor son. The property was purchased for Rs. 15,000 by the minor's grandfather and it devolved, on partition, to the petitioner's branch. The father having been involved in some litigation had incurred some debts and his application was that he should be allowed to sell the property for Rs. 40,000, which was a very good price for the house having regard to its condition at the time. The house was in need of repairs and the father stated that he had no means to defray the expenses necessary for effecting the repairs, and if the repairs were not made the property would suffer and its value would greatly diminish. He further offered to set apart the share of the minor which was half and which would be represented, if the sale was put through, by Rs. 20,000 and invest the same in authorised securities. The transaction was, on the allegations contained in the petition, obviously for the benefit of the minor and in any event it could not be stated to be prejudicial to his interest. The minor had a half share in the property and that half share was offered to be completely secured by the petitioner. Under those peculiar circumstances the Court sanctioned the transaction. However as I read the report it seems that the Court would have refused to make the order if the transaction on the face of it was not so obviously for the

[1] (1900) 25 Bom. 353.

benefit of the minor and in no event could be stated to be prejudicial to him.

I do not think that that case lays down that a purchaser is entitled to an order of the kind applied for in this case, or that in every case the Court, on the application of the father or manager, should pass an order of that nature. I find that in *Jairam Luxmon*,[1] when an application was made to the Court for the appointment of a guardian and for the sanction of a mortgage of the share of the minors in the joint family property, Farran J., although he appointed the petitioner the guardian, refused to grant the sanction and observed that he left it to the guardian on his own responsibility to do what he thought right and proper under the circumstances of the case. That decision shows how reluctant the Court is to make an order on *ex parte* statements made by interested parties as in the present case.

By the order which I propose to pass in this matter I do not wish to be understood in any way to convey that circumstances have not arisen which would justify the petitioner in entering into the transaction or that the mortgagee would not be safe in entering into the transaction. I leave them to enter into the transaction, if they choose to do so, on their own responsibility. I decline to pronounce, on the materials now before me, whether the transaction, if the same is challenged by the minor, would be held binding on him or not. The observations of their Lordships of the Privy Council in *Ram Krishna* v. *Ratan Chand*[2] suggest that in spite of the Court passing an order of the nature applied for in the present case, the purchaser is not absolved from his liability to make the necessary enquiries and in the event of the minor challenging the transaction, even after the order of the Court is obtained, the mortgagee will have to prove that he had made independent enquiries and was *bona fide* satisfied as to the power of the manager

[1] (1892) 16 Bom. 634.

[2] (1931) 33 Bom. L. R. 988 at pp. 998-9 s. c. L. R. 58 I. A. 173; 53 All. 190.

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to enter into the transaction. The fact that an application was made to the Court and the Court made an order, would of course be considered by the purchaser or mortgagee as materials on which he could rely to a certain extent but they are not by themselves sufficient or complete so as to absolve the purchaser or mortgagee from making enquiries in the matter.

In my opinion the present case does not come within the principles on which the Court gave its sanction in *In re Manilal Hurgovan*[1] and I am not inclined to extend the practice of giving the Court's sanction to any case which would not be clearly covered by those principles. The Advocate General informs me that if I am unwilling to give the Court's sanction to the proposed transaction the petitioner does not want an order for his appointment as guardian. I, therefore, make no order on the petition, which would stand dismissed.

Attorneys for petitioner: Messrs. *Thakordas & Madgavkar.*

Application dismissed.

B. K. D.

[1] (1900) 25 Bom. 353.

ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Broomfield.

1932
January 15.

KRISHNABAI (ORIGINAL PLAINTIFF), APPLICANT *v.* FRAMROZ EDULJI DINSHAW AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), sections 109 and 110—Appeal to Privy Council—Value of subject-matter of appeal to Privy Council—Final order.

The applicant, a Hindu widow, on January 26, 1931, obtained a decree against the executors of her husband's will, by which, *inter alia*, she became entitled to reside in a portion of a bungalow belonging to her husband's estate. The decree further declared that in case it became necessary for the executors to sell the said bungalow or in case the same was not available for the plaintiff's residence, the executors should

* Application for leave to appeal to P. C. from O. C. J. Appeal No. 55 of 1931, suit No. 392 of 1929.