*Before Mr. Justice Phear and Mr. Justice Ainslie.*

SURUB NARAIN CHOWDHRY AND OTHERS (PLAINTIFFS) *v.* SHEW GOBIND PANDEY AND ANOTEER (DEFENDANTS).* 1873 *May* 12.

*Hindu Law—Mitakshara—Sale by Father—Suit by Son to set aside Alienation by Father—Refund of Purchase-money.*

Baboo *Mohesh Chunder Chowdhry* for the appellants.

Baboos *Romesh Chunder Mitter* and *Nil Madhab Bose* for the respondents.

THE facts are sufficiently stated in the judgment of the Court, which was delivered by

PHEAR, J.—In this case the plaintiffs sue to set aside a sale effected, as I understand, by their father, of the joint family property, on the ground that he did it without the consent of all the members of the joint family, and had no authority founded on necessity or otherwise to pass the title.

It appears that, since this sale by the father took place, ten years have elapsed; and in the meanwhile (as much as six years before the bringing of the suit), the purchaser from the father sold again to the principal defendants for valuable consideration. There is no suggestion that these defendants did not purchase this property *bonâ fide*.

The lower Appellate Court has dismissed the plaintiffs' suit, and the case now comes up before us on special appeal.

It seems to me that we are not, under the circumstances which I have detailed, strictly speaking, called upon to say whether or not the defendants have obtained a good title to the property which they have purchased. It is possible, however, that they have done so upon the ground which is pointed out by the lower Appellate Court, namely, the ground of necessity. For I need hardly say that, when a sale, effected by the representative of the joint family the *karta* or guardian, is impeached on the ground that it was not justified by necessity, it is only incumbent upon the defendants who purchased in the belief that there was such necessity to show that they had made all reasonable enquiries under the circumstances which attended the case, and had reasonably been led to the belief that there was such necessity. In the case before us the defendants purchased, as I may say, second-hand, five or six years after the property had been originally sold by the father, and during the whole of this time the present plaintiffs stood by quiescent, and did not in any way interrupt

* Special Appeal, No. 947 of 1872, from a decree of the Judge of Sarun, dated the 14th March 1872, reversing a decree of the Subordinate Judge of that district, dated the 26th April 1871.

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or interfere with the enjoyment of the property by the father's vendee. That fact alone, it seems to me, ought to go a long way to satisfy a *bonâ fide* purchaser from that vendee that the original transaction had been a good and valid one. He cannot by the nature of the case have it in his power to make narrow enquires into the circumstances which led to the sale of the family property five years before the time at which he purchased, and a comparatively little enquiry, supported by the evidence of *bona fides* in his case, ought I think to be sufficient to afford a good defence to the man who stands in that position. But whether this be so or not, it is very clear to my mind that even if the plaintiffs are in strict law entitled to say to the defendants 'you have obtained no legal title to this property, it is family property which our father had no power to alienate, and we call upon you to deliver it back to the family,' yet they certainly cannot do that without offering at the same time to refund to the defendants the money with interest which they paid as consideration for their purchase. The Court could only grant a decree for the recovery of the property by the joint family upon those terms, because it would be intolerable that it should be in the power of the adult members of a joint family to stand by, to see the property sold to persons who *bonâ fide* gave money for it, to remain quiet in view of these facts for a period of ten years without in any way disputing the enjoyment of the property obtained under that alienation, and then that they should come into Court and be allowed to say 'although we have stood by for these ten years, we have not stood by for twelve years, and therefore we can claim to have the property given back to the family without reimbursing you a single pice.' It seems to me that it is a very plain matter of equity and justice that, if the plaintiffs under circumstances like these seek to recover back the family property which they have allowed for these years to remain out of the family, they can only do so under the condition of refunding to the purchasers the money which they paid for the purchase. But the plaintiffs have not offered to do so in this case, indeed they have no intention of doing it, as is apparent from what has already fallen from the plaintiffs' pleader in the course of his argument. We think we ought not to interfere with the decision of the lower Appellate Court, because it seems to us that, in view of the facts as they are found by both the Courts, it is a perfectly righteous and correct decision.

We dismiss the appeal with costs.