1872.
May 23.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 63 of 1870.

JAMIYATRÁM RÁMCHANDRA.....*Appellant.*
PARBHUDÁS HATHI.....*Respondent.*

Hindu Law—Creditor's right to follow assets of a deceased Hindu into the hands of a purchaser for value.

Under the Hindu Law, the property of a deceased Hindu is not so hypothecated, for his debts, as to prevent his heir from disposing of it to a third party, or to allow a creditor to follow it into the hands of a person who has purchased it from the heir of the deceased in good faith and for valuable consideration.

Sunbussapa v. *Moodkapa (a)* and *Naroo Huree* v. *Konbeir Munohur (b)* followed.

THIS was a special appeal from the decision of C. G. Kemball, District Judge of Surat, in Regular Appeal No. 103 of 1868, reversing the decree of the Munsif of Broach.

The appeal was argued before WESTROPP, C.J., GIBBS and LLOYD, JJ.

McCulloch (with him *Shantaram Narayan*) for the appellant.

Dhirajlal Mathuradas for the respondent.

Cur. adv. vult.

WESTROPP, C.J.:—Ranchhod Harji being indebted to Jamyatrám Rámchandra, the plaintiff in this suit, died in A.D. 1853-54, leaving certain land. The land devolved upon his brother and heir, Náran Harji, who sold it in 1859 to the defendant for Rs. 325, as appears by the deed, exhibit No. 9. That deed bears date upon the 28th September 1859, and was registered upon the 30th September 1862.

In 1860 the plaintiff brought a suit against Náran Harji, and obtained a decree in that suit on the 30th October 1860, for the amount due. The lands already mentioned were sold, under that decree, to the plaintiff for Rs. 51 on the 31st March 1864, and a certificate of sale was granted to him under date the 23rd July 1864.

(a) 8 Harr. Bom. Rep. 232. (b) Ibid. 289.

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On the 29th March 1865, the plaintiff brought the present suit against the defendant to recover the land. The Munsif made a decree in favour of the plaintiff.

The defendant appealed on several grounds to the District Judge, who reversed the decree of the Munsif with costs.

The District Judge and, indeed, the Munsif also, came to the conclusion that the sale in 1859 to the defendant was *bona fide*. The Munsif, however, relying on certain decision of the Sadr Adalat, was of opinion that Náran Harji could not sell the land discharged from the debts of Ranchhod Harji. The District Judge thought that those decisions were unsustainable, and on the authority of *Unnopoorna Dassea* v. *Gunga Narain Paul* (c) held that the sale by Náran Harji was valid against the creditor of Ranchhod Harji.

The plaintiff has made a special appeal to this Court against the decree of the District Judge. The only point argued before us was the point already noticed as to the validity of a *bona fide* sale made by the heir of a deceased Hindu debtor.

For the plaintiff the following passage in Mr. Grove Grady's Hindu Law has been relied upon:—The assets of the debtor may be pursued by a creditor into whosoever hands they may come: Yájnavalkya 1 Dig 270; 1 Stra. H. L. 166; 2 *Ibid* 280, 282; as property descends on the death, whether natural, presumed, or civil, so the liability then arises; Vishnu, 1 Dig. 265; 1 Stra. H. L. 166." p. 79.

The proposition that the assets of the debtor may be pursued into whosoever hands they may come is too broadly stated in 1 Stra. H. L. 166, and in the remark of Mr. Colebrooke in 2 Stra. H. L. 282, whence Mr. Grove Grady appears to have taken it, and is not warranted by the passage quoted by Colebrooke from Nárada, 1 Dig. 272, * which is as follows:— "Of the successor to the estate, the guardian of the widow, and the son *not competent to the management of affairs*, he who takes the assets

(c) 2 Calc. W. Rep. Civ. R. 296.

* Bk. I, ch. V. pl. 172.

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becomes liable for the debts; the son, *though incompetent must pay the debt*, if there be no guardian of the widow nor a successor to the estate; and the person who took the widow if there be no successor to the estate nor *competent* son." On that passage the commentator Jagannátha says: "This text may be thus interpreted: whoever takes the assets, whether he be the *regular* successor to the estate, guardian of the wife, or son of the deceased, but incompetent to the management of affairs, is successor to the estate, and must pay the debts." It is manifest that neither Nárada nor his commentator had in mind the case of an alienee for valuable consideration. Both were evidently speaking of persons who *succeed* to the estate or to its management, and not of transferees or vendees for valuable consideration. The same remark is applicable to the passage from Yájnavalkya 1 Dig. 270, referred to in 1 Stra. H. L 166 and by Mr. Gove Grady, which is as follows: —"He who has received the estate of a proprietor leaving no son *capable of business* must pay the debts *of the estate*, or on failure of him, the person who takes the wife of the deceased, but not the son whose *father's* assets are held by another." Upon which, Jagannátha comments thus: "The order in which persons are liable for debts, is, therefore, as follows: in the first place, the debtor himself; on failure of him, his son competent *to inherit and manage the estate*; on failure of such, the son's son; if there be no *such grandson*, the great-grandson, wife, uncle, or other heir, who has succeeded to the estate, or the brother or other guardian of it; should there be no such person, he who has taken the widow; if there be none such, a son incompetent *to inherit or to manage* the estate." The nearest approach that we find to the inclusion of a stranger in blood to the deceased in the remarks of Yájnavalkya, Nárada, or their commentator Jagannátha, is in their mention of the second husband of the widow of the deceased (as to whom see now Bombay Act VII. of 1866), and nothing whatever to indicate any intention to refer to a *bonafide* alienee for valuable consideration. Neither of the cases upon which Mr. Colebrook and Mr. Ellis remark in 2 Stra. H. L 280, 282, touch such a case. They relate to the

liability of the widow. The passage from Vishnu, 1 Dig 266, cited by Mr. Grove Grady, relates to sons and grandsons; and the *dictum* in Vyavahára Mayukha Ch. IV. Section IV. Pl. 33:—"He who takes the estate must be made to pay the debts of it," is shown by the context to relate to those who take by succession or inheritance, and not to those who take by purchase. So too Ibid Chapter V., Section Iv., pl. 16, both of which are founded on the passage already cited from Yájnavalkya.

In the case of *Kishundass* v. *Kesoo* (*d*) relied upon by the Munsif, the Shástri is represented as having informed the Court "that according to Hindu law no transfer either of self-acquired property, or of property derived by inheritance, would be good so long as debts were unpaid," and the marginal note of the decision is to that effect. The Shástri seems to have overstated the law, and on looking into the facts of the case, we think that the marginal note of it should have been that "if land belonging to the father and son be partitioned between father and son, the portion of land allotted to the son, as well as that retained by the father, remains liable to the previously incurred debts of the father." Such a state of facts has no bearing upon the present case. *Luggah Fattajee* v. *Trimbuck Herjee* (*e*) was the case of an attachment upon the estate of Manuel de Monte, a deceased Portuguese in the hands of Hindu alienee for valuable consideration to whom it had been sold in the interval between decree and attachment. That decision was most certainly wrong. The Hindu law, whatsoever it may be, had no bearing upon the question of the liability of the estate of a deceased Portuguese to his debts, and the decree before attachment gave no lien to the judgment creditor upon the lands of the judgment debtor. A sale of property, if made for good consideration subsequently to the recovery of a judgment against the vendor, would not be vitiated, even if the sale were made for the purpose of defeating an expected attachment by the judgment creditor: *Wood* v. *Dixie* (*f*) *Darvill* v. *Terry* (*g*) *Eveleigh* v. *Purssord* (*h*)

(*d*) Morris's S. D. Rep. Part II. P. 103.
(*e*) Selected Decisions S. D. A. 1820 to 1840 P. 34.
(*f*) 7 Q. B. 892. (*g*) 6 H. & N. 807. (*h*) 2 Moo. & R. 539.

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In *Chenbussappa* v. *Santappa* (*i*) relied upon by the Munsif, where after a decree had been obtained against one Sedling Appa, a Hindu, who afterwards died, and whose son, before any attachment had been issued upon the decree, sold a house of the deceased for valuable consideration to Santappa, the munsif held the sale invalid as against a subsequent attachment sued out by the judgment creditor against Sedling Appa upon the decree, the Munsif so ruled inasmuch as the decree was of date anterior to the sale. The Assistant Judge Mr. Gilbert Elliott reversed his decree and the Sadr Adálat reversed that of Mr. Elliott on Special Appeal, not upon any ground called in aid from Hindu law, but upon the same reason as that given by the Munsif and upon the authority of the clearly erroneous decision just quoted from select cases S. D. A, p. 24. Both of those decisions were subsequently, as we think, rightly, overruled by the Sadr Adálat in *Sunbassapa* v. *Moodkapa* (*j*) *and Naroo Hurree* v. *Konheir Munohur* (*k*). And in *Unnopoorna Dassea* v. *Gunga Narain Paul* (*l*) Loch and Glover, JJ., held that "it had not been shown from any text of Hindu law that the property of a deceased Hindu is so hypothecated for his debts as to prevent his heir from disposing of it to a third party, or to allow a creditor to follow it and take it out of the hands of a third party, who has purchased in good faith and for valuable consideration. The creditor may hold the heir personally liable for the debt, if he have alienated the property" (to that we would add 'if the property alienated would have been sufficient to pay the debt, and if not his liability would extend only to the value of the property' see Bombay Act VII. of 1866) "but he cannot, we think, follow the property."

In that ruling, with the qualification which we have parenthetically introduced, we concur, and upon these grounds we affirm the decree of the District Judge with costs.

Decree affirmed with costs.

(*i*) 7 Harrington 20 Sp. App. 415I. (*j*) 8 Harrington 232.
(*k*) Ibid 289. (*l*) Calc. W. Rep. Civ. R. 296.