Luhar Amrit Lal Nagji

Vs

Doshi Jayantilal Jethalal and Others

Civil Appeal No. 121 of 1956

(P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

04.05.1960

JUDGMENT

GAJENDRAGADKAR, J. –

This appeal by special leave raises an interesting question of Hindu Law. If a Hindu son wants to challenge an alienation made by his father to pay his antecedent debt is it necessary for him to prove not only that the said antecedent debt was immoral but also that the alienee had notice of the immoral character of the said debt ? The High Court has held that the son must prove both the immoral character of the debt and notice of it to the alienee; the correctness of that view is challenged before us by the appellants in the present appeal.

The appellants are two brothers, Amrital and Mohanlal Nagji, and their mother, Bai Jakal Arjan. The three appellants and respondent 2, Nagji Govind, the father of appellants 1 and 2 and the husband of appellant 3, constitute an undivided Hindu family. Respondent 2 executed a mortgage deed in favour of respondent 1, Jayantilal Doshi, in respect of the joint family property for Rs. 2,000. This document was executed on February 5, 1946. In 1950, respondent 1 sued respondent 2 on his mortgage, obtained a decree for sale and filed an application for execution for sale of the mortgaged property. Sale was accordingly ordered to be held. At that stage the appellants filed the present suit on April 30, 1951, and claimed a declaration that the decree passed in the mortgage suit (Civil Suit No. 589 of 1949) in favour of respondent 1 and against respondent 2 was not binding in respect of the 3/4th share of the appellants in the mortgaged property; they also asked for a perpetual injunction restraining respondent 1 from executing the said decree in respect of their share. To this suit the mortgagor, respondent 2, was impleaded as a party.

In their plaint the appellants have stated that respondent 2 had speculated in gold and silver and had thereby lost a large amount of money which he sought to make up by borrowing amounts from several creditors. One of such creditors was Dharsi Shamji to whom Rs. 2,000 were payable by respondent 2. According to the appellants the impugned mortgage had been executed by respondent 2 for the payment of the said debt of Rs. 2,000, and since the said debt was immoral or avyavaharik the appellants were not bound by it.

The claim was resisted by both respondent 1 and respondent 2 who pleaded that the mortgage had been executed for the payment of debts which were binding on the family and that there was no substance in the plea of immoral debts raised by the appellants. It was also alleged by them that the mortgaged property was not the property of the undivided Hindu family.

On these pleadings the trial court framed appropriate issues. It found that the mortgaged property

was the coparcenary property of the family, that the mortgage-deed in question had been executed to pay off a debt which was immoral and that in consequence the mortgage was not binding against the appellants. According to the trial court the debt contracted by respondent 2 to pay the losses incurred by him in speculative transactions must be held to have been contracted for illegal and immoral purposes and as such the subsequent alienation for the payment of the said debt cannot bind the appellants. The trial court also observed that respondent 1 had not stepped into the witness box to give evidence to show that he had made any enquiries about the existence of any antecedent debts payable by respondent 2. In the result the suit filed by the appellants was decreed. Against the said decree respondent 1 preferred an appeal before the District Judge, but the District Judge agreed with all the findings made by the trial court and dismissed the said appeal. Respondent 1 then took the matter before the High Court of Saurashtra in second appeal. The High Court agreed that the mortgaged property was the property of the joint Hindu family and that respondent 1 had made no attempt to prove any enquiry on his part before he entered into the transaction. The High Court did not think it necessary to consider whether the antecedent debt due to Dharsi Shamji, for the repayment of which the impugned mortgage was created, was in law immoral or illegal, it proceeded to deal with the appeal on the assumption that the said debt was illegal or immoral. On that assumption the High Court considered the material principles of Hindu Law and held that it was for the appellants to prove not only that the antecedent debt was immoral or illegal, but also that respondent 1 had notice of the said character of the debt; and since the appellants had led no evidence to discharge this onus they were not entitled to claim any relief against respondent 1. On this finding the second appeal preferred by respondent 1 was allowed and the suit filed by the appellants was ordered to be dismissed. It is against this decree that the appellants have come to this Court by special leave.

On behalf of the appellants Dr. Barlingay has urged that the principles of Hindu Law do not justify the view taken by the High Court that the appellants had to prove the alienee's knowledge about the immoral character of the antecedent debt. He concedes that the judicial decisions on this point are against his contention; but he argues that there is paucity of case-law on the subject, and that, having regard to the importance of the point raised by him, we should examine the true legal position by reference to the texts rather than by reference to judicial decisions. Let us then set out the appellant's argument based on the textual provisions of Hindu Law.

The doctrine of pious obligation under which sons are held liable to discharge their father's debts is based solely on religious considerations; it is thought that if a person's debts are not paid and he dies in a state of indebtedness his soul may have to face evil consequences, and it is the duty of his sons to save him from such evil consequences. The basis of the doctrine is thus spiritual and its sole object is to confer spiritual benefit on the father. It is not intended in any sense for the benefit of the creditor. As has been observed by the Privy Council in Sat Narain v. Das ((1936) L.R. 63 I.A. 384, 395) this doctrine "was not based on any necessity for the protection of third parties but was based on the pious obligation of the sons to see their father's debts paid."

This doctrine inevitably postulates that the father's debts which it is the pious obligation of the sons to repay must be vyavaharik. If the debts are not vyavaharik or are avyavaharik the doctrine of pious obligation cannot be invoked. The expression 'avyavaharik' which is generally used in judicial decisions has been based on the text of Usanas which has been quoted by Mitakshara in commenting on the relevant text of Yajnavalkya (Yajnavalkya, ii, 47). According to Usanas, whatever is not vyavaharik has not to be paid by the son. 'Na vyavaharikam' are the words used by Usanas, and put in a positive form they mean 'avyavaharik'. Colebrooke has translated these words as meaning "debt for a cause repugnant to good morals". These words have received different interpretations in

several decisions. Sometimes they are rendered as meaning "a debt which as a decent and respectable man the father ought not to have incurred" : Darbar Khachar v. Khachar Hansar ((1908) I.L.R. 32 Bom. 348, 351); or, "not lawful, usual or customary" : Chhakauri Mahton v. Ganga Prasad ((1911) I.L.R. 39 Cal. 862, 868, 869); or, "not supportable as valid by legal arguments and on which no right could be established in a court of justice in the creditor's favour" : Venugopala Naidu v. Ramanathan Chetty ((1912) I.L.R. 37 Mad. 458, 460). But it appears that in Hemraj v. Khemchand (I.L.R. (1943) All. 727) the Privy Council has, on the whole, preferred to treat Colebrooke's translation as making the nearest approach to the real interpretation of the word used by Usanas; whatever may be the exact denotation of the word, it is clear that the debt answering the said description is not such a debt as the son is bound to pay, and so as soon as it is shown that the debt is immoral the doctrine of pious obligation cannot be invoked in support of such a debt.

In this connection, it has also been urged by Dr. Barlingay that the onus placed on the sons to prove the immoral character of the debt is already very heavy. In discharging the said onus the sons are required to prove not merely that their father who contracted the impugned debt lived an extravagant or immoral life but they are required to establish a direct connection between the immorality of the father and the impugned debt. If this onus is made still more onerous by requiring the sons to prove that the alienee had knowledge of the immoral character of the antecedent debt, it would virtually make the sons' task impossible, and notwithstanding the spirit underlying the doctrine of pious obligation the sons in fact would be compelled to pay the immoral or impious antecedent debt of their father. That is why the rule which requires that the sons should prove the knowledge of the alienee is inconsistent with the basis of the doctrine of pious obligation. Thus presented the argument is no doubt simple and prima facie attractive. The question which we have to consider is whether we should attempt the task of examining the texts and determining the true effect of the original provisions of Hindu Law in spite of the fact that the point raised is covered by judicial decisions which have been treated for many years as laying down the correct law on the subject.

Before answering this question it is necessary to consider the relevant judicial decisions. In 1874, the Privy Council had occasion to consider this branch of Hindu Law in Girdharee Lal v. Kantoo Lal and Muddun Thakoor v. Kantoo Lal ((1874) L.R. 1 I.A. 321). It appears that Kantoo Lal and his minor cousin had brought a suit to recover possession of certain properties belonging to their family which had been sold respectively by a private sale and at court auction. The private sale had taken place on July 28, 1856, and the deed had been executed by the fathers of the two plaintiffs. The case of the plaintiffs was that they were not bound by the impugned transaction. The Principal Sudder Ameen dismissed the suit but the High Court set aside that decision and awarded Kantoo Lal one-half of his father's share. The claim made by the other plaintiff was dismissed on the ground that he had not been born at the time of the impugned transaction. The decree passed in favour of Kantoo Lal was challenged by the alienee before the Privy Council. Evidence showed that at the time when the sale deed was executed a decree had been obtained against Bhikharee Lal, the father of Kantoo Lal, upon a bond executed by him in favour of his creditor and an execution had issued against him upon which the right and share in the property had been attached. It was therefore thought necessary to raise money to pay the debt of Bhikharee Lal and get rid of the execution. It was on these facts that the Privy Council had to consider whether Kantoo Lal was justified in challenging the binding character of the sale transaction. In dealing with this point the Privy Council referred with approval to the rule which had been enunciated by the Board earlier in the case of Hunooman Persaud Panday v. Mussummat Babooee Munraj Koonweree ((1856) 6 M.I.A. 393, 421). The rule of Hindu Law had been thus stated by Lord Justice Knight Bruce in that judgment : "The freedom of the son from the obligation to discharge the father's debt, has respect to the nature of the debt, and not to the nature

of the estate, whether ancestral or acquired by the creator of the debt". Then the Privy Council held that if the debt of the father had been contracted for immoral purpose the son might not be under any pious obligation to pay it; but that was not the case before the Board. It had not been shown that the bond upon which the decree was obtained was for immoral purpose; and on the other hand, it appeared that an action had been brought on the bond, a decree had been passed on it and there was nothing whatever to show that the debt was tainted with immorality. The Privy Council also noticed that Kantoo Lal had brought the action probably at the instigation of the father, and, we may add, that is many times the feature of such litigation. On these facts the Privy Council set aside the decree passed by the High Court and held that Kantoo Lal was not entitled to any relief. It would thus be seen that this decision merely shows that where any alienation has been effected by the father for the payment of his antecedent debt and the said antecedent debt is not shown to be immoral the son cannot challenge the validity of the alienation. Since the antecedent debt was not shown to be immoral no question arose as to what would be the nature of the onus which the son would have to discharge if the antecedent debt is in fact shown to be immoral.

In regard to the auction sale which the plaintiffs challenged in that suit the Privy Council held that a purchaser under an execution is surely not bound to go back beyond the decree to ascertain whether the court was right in giving the decree, or having given it, in putting up the property for sale under an execution upon it. Evidence showed that the auction purchaser acted bona fide, had made enquiries and was satisfied that the decree had been properly passed and purchased the property at auction sale on payment of valuable consideration. On these facts it was held that the plaintiffs were not entitled to any relief. This decision also was not concerned with the position that would arise if the antecedent debt had in fact been proved to be immoral.

That question arose before the Privy Council in Suraj Bunsi Koer v. Sheo Proshad Singh ((1879) L.R. 6 I.A. 88). In that case an ex parte decree for money had been obtained against a Hindu governed by Mitakshara on a mortgage bond, the property mortgaged being ancestral immovable estate. Under the said decree the mortgaged property was attached and the decree-holder sought to bring the said property to sale. Prior to the execution sale, however, the judgment-debtor died and his infant sons and co-heirs filed a petition of objections; but they were referred to a regular suit. In the suit which they filed they challenged the binding character of the debt and claimed appropriate relief against the execution creditor and the purchasers. The Privy Council held that as between the infant sons of the judgment-debtor and the execution creditor neither the sons nor the ancestral immovable properties in their hands was liable for the father's debt; and as regards the purchasers, it was held that, since they had purchased after objections had been filed by the plaintiffs, they must be taken to have had notice actual or constructive thereof and therefore to have purchased with the knowledge of the plaintiff's claim and subject to the result of the suit to which they had been referred. The subordinate judge decreed the claim, set aside the mortgage bond, the decree thereon and the execution sale thereof. By this decision the mortgage, the decree and the execution sale in regard to the alienor's share had also been set aside. The High Court, however, reversed that judgment and dismissed the suit. The Privy Council partly allowed the appeal preferred by the plaintiffs, and held that the shares of the plaintiffs were not bound either by the mortgage deed, the decree or the execution sale. Thus it is clear that in that case the Privy Council held that the antecedent debt was for immoral purposes and that the auction purchaser had notice of it. But in dealing with the question of law raised before it the Privy Council had occasion to examine the relevant provisions of Hindu Law and the decisions bearing on them. Amongst the decisions considered by the Privy Council was the case of Kantoo Lal ((1874) L.R. 1 I.A. 321). Sir James Colvile, who delivered the judgment of the Board, referred to the case of Kantoo Lal ((1874) L.R. 1 I.A. 321) and observed that "this case then, which is a decision of this tribunal, is undoubtedly an

authority for these propositions : 1st. that where joint ancestral property has passed out of a joint family, either under a conveyance executed by a father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they show that the debts were contracted for immoral purposes, and that the purchasers had notice that they were so contracted; and 2ndly, that the purchasers at an execution sale, being strangers to the suit, if they have not notice that the debts were so contracted, are not bound to make inquiry beyond what appears on the face of the proceedings". The first proposition which has been laid down in this judgment as deduced from Kantoo Lal's case ((1874) L.R. 1 I.A. 321) is clear and unambiguous. Where ancestral property has been alienated either under a conveyance executed by the father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, the sons have to prove not only that the antecedent debts were immoral but also that the purchasers had notice that they were so contracted. With respect, it is open to argument whether the two propositions inevitably arise from the earlier decision of the Privy Council in Kantoo Lal's case ((1874) L.R. 1 I.A. 321); but since 1879 when this proposition was thus enunciated it has apparently been accepted by all the courts in India as the correct statement of Hindu Law on the point.

In Sat Narain v. Behari Lal ((1924) L.R. 52 I.A. 22) while dealing with the question as to whether the property of the joint family consisting of an insolvent Hindu father and his sons does not, by virtue of the father's adjudication as insolvent, became vested in the official assignee, Sir John Edge, has incidentally referred to these two propositions with approval. No decision has been cited before us where the correctness of these propositions has ever been doubted or questioned.

In this connection it may be relevant to recall that soon after the Privy Council pronounced its judgment in the case of Kantoo Lal ((1874) L.R. 1 I.A. 321) Bhattacharyya, in his Tagore Law Lectures on the "Law relating to Joint Hindu Family" (pp. 549, 550), examined the said decision and observed that "many in the profession think that the case dealt a death-blow to the institution of Hindu family, that it has done away with the essential feature of that institution, that it has rendered the father independent of the control of his sons in dealing with ancestral property which had all along been looked upon as a common fund belonging as much to the sons as to the father". Having thus expressed his surprise at the decision Mr. Bhattacharyya also added that "the shifting of the burden of proof to the son imposed upon him a difficulty which is almost practically insuperable". Nevertheless, he has not failed to take notice of the fact that the promulgation of the principle which was adopted by the Privy Council had become almost a necessity to put an end to serious abuse which had become rife in the Mitakshara districts; and he has added that "in those places the fathers of families knowing well that ancestral properties were secure against the claims of their own creditors had established almost a regular system of inveigling innocent persons of substance to lend money to them and when a decree was obtained and properties were attached they used to put forward their sons to contest the creditor's claims". According to the author the resuscitation by the Privy Council of the forgotten rule of Hindu Law "served as a timely intervention to deal a death-blow to a revolting practice of systematic fraud". These observations incidentally explain the genesis of the decision in Kantoo Lal's case ((1874) L.R. 1 I.A. 321) and give us a clear idea as to the mischief which the Privy Council intended to check by laying down the said principles.

Whilst we are dealing with this question we may refer to the decision of the Privy Council in the case of Brij Narain v. Mangla Prasad ((1923) L.R. 51 I.A. 129) where the vexed question about the powers of the manager and the father to bind the undivided estate was finally resolved by the Privy Council, and Lord Dunedin, who delivered the judgment of the Board laid down five propositions in

that behalf in these words:

> (1) The managing member of a joint undivided estate cannot alienate or burden the estate qua manager except for purposes of necessity; but
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> (2) If he is the father and the other members 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.
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> (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.
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> (4) Antecedent debt means antecedent in fact as well as in time, that is to say, that the debt must be truly independent and not part of the transaction impeached.
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> (5) There is no rule that this result is affected by the question whether the father, who contracted the debt or burdens the estate, is alive or dead.

Propositions 2, 3 and 4 with which we are concerned in the present appeal show that a mortgage created by the father for the payment of his antecedent debt would bind his sons; so that, if the sons want to challenge the validity of the mortgage they would have to show not only that the antecedent debt was immoral but that the alienee had notice of the immoral character of the said debt. That would be the result of the first proposition laid down in the case of Suraj Bunsi Koer ((1879) L.R. 6 I.A. 88).

Now the propositions laid down by the Privy Council in the case of Brij Narain ((1983) L.R. 51 I.A. 129) as well as in the case of Suraj Bunsi Koer ((1879) L.R. 6 I.A. 88) may be open to some objections based on ancient Hindu texts. As Dr. Kane has pointed out, for the words "antecedent debt" which were used for the first time by the Privy Council in the case of Suraj Bunsi Koer ((1879) L.R. 6 I.A. 88) there is nothing corresponding in the Sanskrit authorities, and that the distinction made by the Privy Council in the case of Brij Narain ((1983) L.R. 51 I.A. 129) between a simple personal money debt by the father and the debt secured by the mortgage is also not borne out by the ancient texts and the commentaries alike ("History of Dharmasastra" - By Dr. P. V. Kane, Vol. III, p. 450). So we go back to the question with which we began : Would it be expedient at this stage to consider the question purely in the light of ancient Sanskrit texts even though for more than three quarters of a century the decision in Suraj Bunsi Koer's case ((1879) L.R. 6 I.A. 88) has apparently been followed without a doubt or dissent.

We have carefully considered this matter and we are not disposed to answer this question in favour of the appellants. First and foremost in cases of this character the principle of stare decisis must inevitably come into operation. For a number of years transactions as to immovable property belonging to Hindu families have taken place and titles passed in favour of alienees on the understanding that the propositions of law laid down by the Privy Council in the case of Suraj Bunsi Koer ((1879) L.R. 6 I.A. 88) correctly represent the true position under Hindu Law in that behalf. It would, we think, be inexpedient to reopen this question after such a long lapse of time.

Besides it would not be easy to decide today what the relevant Sanskrit texts really provide in this matter. It is well-known that though the Smriti texts are given a place of pride among the sources of Hindu Law, in the development of Hindu Law sadachar or approved conduct, which is another source, has played an important part ("The Sruti, the Smriti, the approved usage, what is agreeable

to one's soul (or good conscience) and desire sprung from due deliberation, are ordained the foundation of Dharma (law)" - Yajnavalkya, I. 7. "Whatever customs, practices and family usages prevail in a country shall be preserved intact when it comes under subjection by conquest" - Yajnavalkya, I. 343). The existence of different schools of Hindu Law and sub-schools clearly brings out the fact that during the ages Hindu Law has made changes so as to absorb varying customs and usages in different places from time to time. It is a remarkable feature of the growth of Hindu Law that, by a skillful adoption of rules of construction, commentators successfully attempted to bridge the distance between the letter of the Smriti texts and the existing customs and usages in different areas and at different times. This process was arrested under the British Rule; but if we were to decide to-day what the true position under Hindu Law texts is on the point with which we are concerned, it would be very difficult to reconcile the different texts and come to a definite conclusion. In this branch of the law several considerations have been introduced by judicial decisions which have substantially now become a part and parcel of Hindu Law as it is administered; it would, therefore, not be easy to dis-engage the said considerations and seek to ascertain the true effect of the relevant provisions contained in ancient texts considered by themselves.

It is also well-known that, in dealing with questions of Hindu Law, the Privy Council introduced considerations of justice, equity and goods conscience and the interpretation of the relevant texts sometimes was influenced by these considerations. In fact, the principle about the binding character of the antecedent debts of the father and the provisions about the enquiry to be made by the creditor have all been introduced on considerations of equity and fair-play. When the Privy Council laid down the two propositions in the case of Suraj Bunsi Koer ((1879) L.R. 6 I.A. 88) what was really intended was to protect the bona fide alienees against frivolous or collusive claims made by the debtor's sons challenging the transactions. Since the said propositions have been laid down with the object of doing justice to the claims of bona fide alienees, we do not see any justification for disturbing this well-established position on academic considerations which may perhaps arise if we were to look for guidance to the ancient texts to-day. In our opinion, if there are any anomalies in the administration of this branch of Hindu Law their solution lies with the legislature and not with the courts. What the commentators attempted to do in the past can now be effectively achieved by the adoption of the legislative process. Therefore, we are not prepared to accede to the appellant's argument that we should attempt to decide the point raised by them purely in the light of ancient Sanskrit texts.

It now remains to consider some of the decisions to which our attention was invited. In Pulavarthi Lakshmanaswami & Ors. v. Srimat Tirumala Peddinti Tiruvengala Raghavacharyulu (A.I.R. 1943 Mad. 292) the Madras High Court was dealing with the debt contracted by the father on a promissory note executed by him for the payment to his concubine for meeting the expenses of her grand-daughter's marriage. The sons had no difficulty in proving that the debt was immoral; but it was urged on behalf of the creditor that the sons could not succeed unless the creditor's knowledge about the immoral character of the debt had been established, and reliance was apparently placed upon the two propositions laid down by the Privy Council in the case of Suraj Bunsi Koer ((1879) L.R. 6 I.A. 88). This plea was rejected by the High Court. Patanjali Sastri, J., as he then was, who delivered the judgment for the Court observed that "the remarks made by the Privy Council had reference to family property sold in execution of a decree obtained against the father as to which different considerations arise, the bona fide purchaser not being bound to go further back than the decree". In other words, this decision shows that the principles which apply to alienations made by a Hindu father to satisfy his antecedent debts cannot be extended and invoked to cases where the sons are challenging the binding character of the debts which are not antecedent and are in fact immoral.

The Allahabad High Court has had occasion to consider different aspects of this problem in several cases, and different, if not somewhat conflicting, views appear to have been taken in some of the decisions. We will, however, refer to only two decisions which are directly in point. In Kishan Lal v. Garuruddhwaja Prasad Singh & Ors. ((1890) I.L.R. 21 All. 238), Burkitt, J., has observed that had it been proved that the debt had been contracted for immoral purpose and that the person who advanced the money was aware of the purpose for which it was being borrowed the son would not have been liable. This, however, is a bare statement of the law, and the judgment does not contain any discussion on the merits of the proposition laid down by the judge nor does it cite the relevant judicial decisions bearing on the point. In Maharaj Singh v. Balwant Singh ((1906) I.L.R. 28 All. 508) the same High Court was dealing with a mortgage by Sheoraj Singh to pay the antecedent debts of the father. Maharaj Singh, the younger brother, also joined in the execution of the document. It was, however, found that at the material time Maharaj Singh was a minor and so the mortgage was, as regards his interest in the mortgaged property, absolutely void. This finding was enough to reject the mortgagee's claim against the share of Maharaj Singh in the mortgaged property; but the High Court proceeded to consider the alternative ground urged by Maharaj Singh and held that it was not necessary for Maharaj Singh to prove notice of the immoral character of the antecedent debt because the ancestral property in question had not passed out of the hands of the joint family. Maharaj Singh was defending his title; he was not a plaintiff seeking to recover property, but a defender of his interest in ancestral property of which he was in possession. These observations show that the High Court took the view that the propositions laid down in the case of Suraj Bunsi Koer ((1879) L.R. 6 I.A. 88) would not apply to cases of mortgage but were confined to cases of purchase. We do not think that the distinction between a purchase and a mortgage made in this decision is well founded. The propositions in question treated an alienation made for the payment of the father's antecedent debt on the same footing as an alienation made in execution of a decree passed against him and in both cases the principle enunciated is that in order to succeed in their challenge the sons must prove the immoral character of the antecedent debt and the knowledge of the alienee. Having regard to the broad language used in stating the two propositions, we do not think that a valid distinction could be made between a mortgage and a sale particularly after the decision of the Privy Council in the case of Brij Narain ((1923) L.R. 51 I.A. 129). That is the view taken by the Nagpur High Court in Udmiram Koroodimal and Anr. v. Balramdas Tularam & Ors. (I.L.R. (1955) Nag. 744).

In the result the appeal fails, but in the circumstances of this case there will be no order as to costs.

Appeal dismissed.

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