ject of the said sanad, could, as to his or her share, execute a lease binding beyond his or her lifetime, inasmuch as that sanad, the Judge assumes, would render any such alienation void against the family, that is to say, the heirs by blood, of the original donee under the sanad : whereas the fact, that the respondent, Isse Khán, has, according to his own showing (although he does not allege himself to be of the blood of the original donee), been declared entitled, in right of his late wife, Madiná Bibi, to a portion of her share in the said property, shows that the said property was not then held to be descendible only to, and enjoyable only by, the heirs by blood of the original donee ; and, therefore, so far controverts the view taken of the said alleged sanad by the Judge (as to the construction of which sanad, it not being now before this court, it does not express any opinion) : this Court reverses the decree of the Judge, and remands the cause for a fresh trial on the merits ; costs of this suit, up to and including this special appeal, to abide the final decision

Decree reversed and suit remanded.

Special Appeal No. 113 *of* 1864.

1864.
July 6.

GANGA'BA'I' kom NA'RA'YANBHAT DA'TA'R...*Appellant.*
VA'MANA'JI A. DA'TA'R .....*Respondent.*

Hindú Law—Family Property—Alienation—Consent of Heirs—Family Purpose—Consideration—Election—Ratification.

In a suit to recover possession of certain ancestral fields sold, during the absence of the defendant, who was united in interest, by his father, to the plaintiff, in consideration of money advanced by her, out of her stridhan, for the purpose of building the family house, of which the defendant possessed himself after his father's death ;—

Held that the defendant, by retaining possession of the house, ratified the act of his father, and elected to take the house in lieu of the ancestral fields, the sale of which was declared to be valid, and possession thereof given to the plaintiff.

THIS was a special appeal from the decision of C. Gonne, Acting Judge of the Konkan District, affirming the decree of Dáji Govind, Munsif of Alíbág.

1868.
GANGA'BA'I v. VA'MANA'JI A. DA'TA'R.

The original suit was instituted by Gangábái, on the 19th of January 1862, to recover from the defendant certain fields, which had been sold to her by his father, A'báji, for Rs. 250, by a deed of sale dated the 3rd of Bhádrapada Vadya, Shake 1781 (A. D. 1859); and were, she alleged, in her possession till the month of Chaitra, Shake 1784, when the defendant deprived her of them.

The defendant, in his written statement, alleged that the fields in question were in the possession of his father up to the time of his death, and since then in his own possession; that the plaintiff was his paternal aunt, and resided with his late father, with whom he (Vámanáji) was on bad terms; that his father had no right alone to sell the fields, which were ancestral property; that he did not know that his father had passed the bond; that his father was not in such circumstances as to be obliged to incur debt; and that the deed sued upon *might* (*sic*) be without any consideration.

The Munsif found that the deed of sale had been passed by the defendant's father to the plaintiff; but that there was no proof of consideration; nor was there proof of delivery of possession to the plaintiff. The Government receipt-book showed that the defendant's father had paid the rent during his lifetime; and that, for a few months after his death, the rent had been received from the plaintiff as tenant: soon after which the suit was filed.

He further found, that as the fields in question were, with one exception, ancestral property, and the defendant's father had heirs, who were neither minors nor absent, and whose consent to the sale had not been obtained, and as the sale was not for any emergent family necessity, it was invalid according to the Shástras. He, therefore, on the 3rd of June 1863, rejected the plaintiff's claim.

Gangábái then appealed to the District Judge: urging that she had advanced her *stridhan* to the defendant's father for the purpose of building a house, which was a proper purpose, and that the sale was valid, as the heirs were more than two hundred miles away from their father, and beyond reach, so

that their consent could not be obtained.

The following judgment was recorded in the District Court on the 30th of October 1863:—

"The point for decision is, whether the sale of the land by the defendant's father to the plaintiff was valid or not. And the Court finds that it was not.

"The deed of sale sets forth that the consideration was money received for the purpose of building a house; and, as the evidence shows that a house was built, there is reason to suppose that so far the deed of sale represented a valid transaction.

"But it is proved, and admitted by the plaintiffs, that the land sold, with the exception of one field, was ancestral property; and, although the defendant admits that he was on bad terms with his father, it is not even alleged that he had separated from his father, and severed his share of the property from his father's share. Consequently, there can be no doubt that his father was not able, under Hindú law, to sell the ancestral property without his son's concurrence.

"It has been argued for the appellant that it was competent for the father to do so, because his son was more than two hundred miles away. But it is not sufficient to show that the concurrence of the son was obtainable only with inconvenience and delay; it ought to be shown that it was not obtainable at all.

"If the plaintiff can prove that she has advanced to the father of the defendant a sum of money for which she will have received no consideration, it is possible that she may be able to make good her claim against the defendant for the repayment of that money. * * *

"But the point before the Court is, to whom should be given possession of the fields; and there is no doubt, for the reason above assigned, that the possession must be given to the defendant.

"It has been found by the Munsif that one of the fields in question, sold by the defendant's father, was not ancestral

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property; but, as the Court understands the Hindú law prevailing in this part of India, that fact makes no difference as to the interest of the defendant in the property. As long as he was joined in interest with his father, he had a share in the property, whether ancestral or self-acquired. The Munsif's decree is, accordingly confirmed."

Against this decision Gangábái preferred a special appeal.

Vishvanáth Náráyan Mandlik, for the appellant:—The District Judge has held the consideration proved. The appellant had paid her own money; and with this the respondent's father built the family dwelling-house, in which the respondent is now residing. It is, therefore, inequitable not to give the fields to the appellant, who had paid for them. The Judge was clearly wrong in holding that the respondent's father could not sell one of the fields, which was his self-acquired property. As the building of the family dwelling-house was for the common benefit and use of the whole family, the sale of all the fields to the defendant, in consideration of money paid for building the house, was, according to Hindú law, valid.

Dhirajlál Mathurádás, for the respondent, admitted that the respondent had possessed himself of the family house; but contended that the consent of the son was necessary for the validity of a sale of ancestral land.

WESTROPP, J., said that the Court was of opinion that the respondent's father, A'báji, had power to alien the field which had been found to be self-acquired property; and that as to the other fields, which had been found to be ancestral property, the respondent could not be allowed to hold them, and also the family house, which had been built with the appellant's money, the consideration given by her for all of the fields.

That money had been obtained from her by the respondent's father for a family purpose, viz., the building of the house, and by taking and retaining possession of the house, the respondent ratified the act of his father, and elected to take the house in lieu of the ancestral fields.

There could not be any doubt that the respondent was well aware that the means of building the house had been obtained by his father from the appellant: and, in fact, he never ventured to deny that she had paid the consideration for the fields. He merely, in his written statement, said that she might not have done so. The Court, although it could not concur in the rest of the decree of the District Judge, was quite satisfied with the correctness of his finding as to the payment and application of the consideration given by the appellant for the fields.

TUCKER, J., concurred.

The Court made the following decree :—

The Court is of opinion that the respondent's father, A'báji Bápuji Dátár, had full power to alien the field called Savreh, that field not having been ancestral property. The Court is further of opinion that the said field, called Savreh, and the two other fields found to be ancestral property were aliened by A'báji Bápuji Dátár for a family purpose, namely, to provide the funds necessary for building a family house; and that the respondent, by possessing himself of the family house, built with the funds so provided, has precluded himself from disputing the propriety of that alienation, even so far as regards the two fields which have been found by the District Judge and the Munsif to be ancestral estate.

This Court, accordingly, reverses the decrees of the District Judge and the Munsif; and declares the deed of sale (exhibit No. 3), dated the 3rd of Bhádrapada Vadya, Shake 1781, to be valid; and directs possession of all of the property sued for, to be given to the appellant, Gangábái, and orders the costs of the appeal and of this suit to be paid by the respondent.

Appeal allowed.