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ground and by mortgaging the whole of it, defendants Nos. 1 and 2 have put an end to the agreement; nor is this a case in which we can give them any relief, or award them compensation in consequence of the resumption of the land by the heir of the grantor.

The plaintiff only claimed to recover possession of the ground, which has been awarded to him by the courts below; but, to prevent any misconception, we may observe that, according to the custom of the country, the grantee has a right in such a case to remove the materials of the building constructed by him on the land.

Decree affirmed.

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Spécial Appeal No. 48 of 1866.

GANGUBA'I KÖM SIDHA'PPA' and another... *Appellants.*
RA'MANNA' bin BHIMANNA' *Respondent.*

Undivided Hindú family—Alienation.

Held that, on this side of India, a member of an undivided Hindú family cannot, without the consent of his coparceners, make a gift of his share in the undivided property, or dispose of it by will.

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THIS was a special appeal from the decision of W. Sandwith, Joint Judge of the Puná District, in Appeal Suits Nos. 178 and 186 of 1864, amending the decree of the Šadr Amín of Solápur in Original Suit No. 29 of 1864.

Rámanná, in the original suit, claimed to recover possession of a house in Solápur: alleging that it formerly belonged to his father, after whose death it passed to his elder brother, Sidháppá, and that after the death of the latter it was retained by the defendant, Gangubái, his widow.

The defendant, Gangubái, answered, alleging separation—twenty years before—between her deceased husband, his brother the plaintiff, and their father, Bhimanná, and that her husband, to whose share the house had fallen, had given it to her elder daughter, Sáubái.

The defendant Sábái pleaded gift from her father, the late Sidhápá, in 1862. The original deed of gift was lost, but she produced a copy from the district register.

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The Şadr Amín awarded to the plaintiff half the house, with costs in proportion.

Against this decree both the plaintiff and the defendants appealed: the former urging that, as no separation had taken place, the award of only half the house was unjust; and the latter that the separation was proved, and consequently the plaintiff's claim was altogether untenable.

The Joint Judge, in appeal held it proved that no separation had taken place; that Sidhápá had no power to give away the property; and that the plaintiff was entitled to the whole house. He accordingly amended the Şadr Amín's decree, by awarding the whole house to the plaintiff with costs.

Howard (with him *Fakiráppá* bin *Lingáppá*) for the special appellant.—Sidhápá had power to dispose of the house. He was separated from his brother, the plaintiff, who, before the Magistrate, disclaimed any right to the house. [COUCH, C. J.:—That was a question of fact, and it has been found by the Judge that there was no separation.] At all events, he was entitled to half of the house, and could alienate it. The late Şadr Adálat always held that, at the suit of a creditor of a sharer, partition could be enforced. It follows, then, that the purchaser, or even the donee, of such share may similarly enforce partition. The equities are the same whether the creditor sells the undivided share or the coparcener sells or gives it away. There is an equity in favour of the lady now in possession of the house, and it would be unconscientious in the other sharer to oppose division. *D. V. Khare v. D. H. Somana*, S. A. No. 609 of 1863 (a); *Goondo Mahadeo v. Rambhut*, S. A. No. 92 of 1863 (b); 1 Stra. H. L., 24, 176, 200-1.

(a) 1 Bom. H. C. Rep. 183. (b) *Ibid.* 39.

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Bhairavanáth Mangesh, contra, contended that the Hindú law was clearly opposed to the alienation by a coparcener of his undivided interest in the joint family property; that one of the cases cited was a mere *dictum*, and that the general current of authorities was certainly the other way: *Vyavahára Mayúkha*, Chap. IX., § 2; 1 Stra. H. L. 261; 2 Stra. H. L. 433, 451; T. L. Strange's Manual H. L., Tit. *Alienation*, § § 155, 158.

PER CURIAM (COUCH, C. J., NEWTON and WARDEN, JJ.)—Upon the authorities we hold that, on this side of India, a member of an undivided Hindú family cannot, without the consent of his coparceners, make a gift of his share in the undivided property, or dispose of it by will.

We, therefore, affirm the decree of the lower court with costs.

Decree affirmed.

NOTE.—An undivided member of a Hindú family cannot sell a portion of the ancestral estate, even if falling within the limits of his individual share, unless under emergent circumstances, and with reservation of the share of his sons, and a sufficiency for the maintenance of his wife and daughters. *Ramakuttu Aiyar v. Kulatturaiyan*, Mad. S. D. A. Dec. for 1859, p. 270; *Rama Pillai and others v. Sreerangam Pillai and others*, Mad. S. D. A. Dec. for 1860, p. 49; *Kanakasbhaiya Pillai v. Sesbachalu Sastri*, *Ibid.* p. 17; *Sundra Pillai v. Tegoraju Pillai*, *Ibid.* p. 67.—See *Mayne's Digest of Cases*, appended to *Strange's Hindu Law*, 4th ed.—ED.