

produced by the plaintiff Bháskar himself. But by this document, exhibit 53, Bháskar acknowledges and adopts the mortgage No. 33 made by the widow Sávitribái. There can be no further question of her fairness in the transaction towards Bháskar when he himself has adopted it.

For the subsequent bonds passed by Sávitribái to the defendant the same sanction as against Bháskar and his sons is wanting. They embrace advances made needlessly to Sávitribái, and they go to impose on the successors to Sávitribái a burden of compound interest, to which they might not have assented, and which they might have averted had they been consulted. So far the transaction may be regarded as void against them.

The plaintiffs must pay double the sum secured by the mortgage No. 33 and the costs of the suit and the appeals within six months as the condition of redeeming the property, or be for ever foreclosed.

Decree amended.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and
Mr. Justice Nánúbhái Haridás.*

BHA'U BA'BA'JI, (ORIGINAL DEFENDANT), APPELLANT, *v.* GOPA'LA
MAHIPATI, (ORIGINAL PLAINTIFF), RESPONDENT.*

1886.
November 10.

Hindu law—Widow—Obligation of widowed daughter-in-law in possession of father-in-law's estate to pay his debts—Sale of part of estate by her for that purpose—Suit by reversioner to have sale declared void beyond her life-time—Widow not bound to evade payment by availing herself of protection of the Dekkhan Agriculturists' Relief Act—Necessity justifying sale.

A childless Hindu widow, having succeeded to the estate of her father-in-law, sold a portion of it, in order to pay off his debts. The estate was situate in a district in the Presidency of Bombay subject to the Dekkhan Agriculturists' Relief Act (XVII of 1879). The plaintiff, as reversioner, sued for a declaration that the sale was void beyond the life-time of the widow. Both the lower Courts made the declaration prayed for by the plaintiff, on the ground that there was no necessity for the sale, as the widow might have availed herself of the provisions of the Dekkhan Agriculturists' Relief Act. On appeal by the defendant to the High Court

* Second Appeal, No. 671 of 1884.

1886.
CHIMNAJI
GOVIND
GODBOLE
v.
DINKAR
DHONDEV
GODBOLE.

1886.

BHĀU
BĀBĀJĪ
v.
GOPĀLA
MAHIPATĪ.

Held, reversing the lower Courts' decree, that the sale by the widow should be upheld. She was not bound to avail herself of the relief afforded by the Dekkhan Agriculturists' Relief Act any more than of the provisions of the Limitation Act. The moral obligation, which rested upon her, to pay the debts of her father-in-law justified the sale.

SECOND appeal from a decision of W. H. Crowe, District Judge of Sātāra.

This was a suit by a reversioner, during the life-time of a Hindu widow, for a declaration that her alienation of part of the estate in her possession, to which he was heir, was void beyond the term of her life.

Vithai, a childless Hindu widow, who had succeeded to the estate of her father-in-law, sold to the first defendant, by a deed of sale, dated the 1st October, 1881, and duly executed, a part of that estate to pay off certain debts of her father-in-law. The plaintiff was the separated brother of Vithai's father-in-law and the reversionary heir to the estate expectant upon the death of Vithai. He sued for a declaration that the sale was void beyond Vithai's life-time.

The Subordinate Judge of A'shta made the declaration prayed for by the plaintiff. The defendant appealed to the District Judge, who confirmed the lower Court's decree with the following remarks:—

"* * * The deed of sale set forth that there were debts contracted by the father-in-law of defendant No. 1 for which the sale was effected * * *. The question is, whether a Hindu widow, under these circumstances, had authority to make such an alienation * * * 'A sale made by her without authority may, according to several decisions, endure for her own life, but any one proposing to take a greater interest is bound to prove a necessity for the sale * * *'. Now, in the present case, no necessity whatever has been shown. Her action has not even the justification that it was done for the protection or preservation of the property. At the date of the sale (1st October, 1881), the Dekkhan Agriculturists' Relief Act was in force, the provisions of which, favourable as they are for mortgagors, could have been availed of * * *. No circumstances approaching in any way to what has been

defined to be a legal necessity have been shown to exist, and I, therefore, hold that the alienation is invalid, and void after the death of defendant No. 1."

The defendant preferred a second appeal to the High Court.

K. T. Telang (Mahádev Bháskar Charbal with him) for the appellant:—The alienation by the widow must be upheld. Her husband was dead, and she had succeeded to her father-in-law's estate, and to all the obligations of such an inheritance. It was her sacred duty, under the Hindu law, to pay his debts. If the debts had been barred by limitation she might have paid them, and a sale for that purpose would be upheld—see *Chimnáji Govind v. Dinkar Dhonde*⁽¹⁾. It should also be upheld, although she might have evaded payment by availing herself of the Dekkhan Agriculturists' Relief Act. She paid the debts in fulfilment of the moral obligation resting upon her, and a sale by her for that purpose was justified.

Pándurang Shridhar Páthak for the defendant:—The alienation may be good during her life-time, but beyond that it is invalid. A widow is not bound to pay barred debts. See *Melgirappa v. Shivappa*⁽²⁾ referred to in Mayne's Hindu Law, sec. 543, p. 540. The widow in this case ought to have taken the benefit of the Dekkhan Agriculturists' Relief Act. The lower Courts have found that there was not such a necessity as would justify the alienation. That is a finding of fact, and should not be questioned on second appeal.

SARGENT, C. J.:—Both the Courts below have discussed the question of necessity on the ground that the widow was bound to have availed herself of the Dekkhan Relief Act. In *Bhálá Náhdna v. Parbhu Hari*⁽³⁾ it was held that the payment, by the widow, of her husband's debt after it has been barred by limitation is such a necessity as will support an alienation by her. This view is also expressed by this Court in *Chimnáji Govind Godbole v. Dinkar Dhonde*⁽¹⁾, where they say "the widow's moral obligation could not be obliterated by the circumstance that the law of limitation barred or did not bar a suit against the widow for

(1) *Supra*, page 320.

(2) 6 Bom. H. C. Rep., 270.

(3) I. L. R., 2 Bom., 72.

1886.

BHÁU.
BÁBÁJI

v.
GOPÁLA
MAHIPATI.

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the recovery of the debts in question." In Mayne's Hindu Law, para. 543, a *dictum* in a contrary sense in *Melgirappa v. Shivappa*⁽¹⁾ is referred to in terms of disapproval from the strict Hindu point of view. If this be the true view of a widow's position as regards the statute of limitations, it would appear to be applicable with still greater force when it is sought to compel her to call in aid the provisions of the Dekkhan Relief Act, which was passed expressly for the relief of debtors who were agriculturists, and the provisions of which would thus enable her to evade the obligations contracted by her husband's father which it was her sacred duty to fulfil to the letter.

As the Courts below have found against the necessity of the widow's sale by calculating what was due on the mortgages on the basis of the Dekkhan Relief Act, we must reverse the decree of the Court below, and send the case back for a fresh decision with due regard to the above remarks. Costs of this appeal to abide the result.

(1) 6 Bom. H. C. Rep., 270.