

the intention to make and allow such reservation can properly be inferred. The most that can be said is that the closing, in 1888, of these two doors makes the back rooms very inconvenient; but it is impossible in the circumstances of the case to say what was the intention of the vendor and vendee in reference to them. Such being the case, I think the plaintiff has failed to establish his claim, and I, therefore, concur with my learned colleague in reversing the decree of the District Judge and restoring that of the Subordinate Judge, with costs on the plaintiff throughout.

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Decree reversed.

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[631] ORIGINAL CIVIL.

Before Mr. Justice Bayley (Acting Chief Justice) and Mr. Justice Farran.

SUCCARAM MORARJI SHETAY AND OTHERS (*Appellants*) v.
KALIDAS KALIANJI AND OTHERS, (*Respondents*).^{*} [29th June and
6th July, 1894.]

Hindu law—Joint family—Manager—Widow—Minor sons—Sale by widow of immoveable property left by husband—Family necessity—Minor sons bound by sale—Deed of sale—Effect of conveyance how ascertained.

Ramji Shiva, a Hindu, died in debt leaving two minor sons. His widow, who after his death was the manager of the family, borrowed money for family purposes, and as security mortgaged some of the immoveable property left by her husband. She subsequently sold it and the Court held that the evidence showed that it was sold to pay off the family debts.

Held, that the minor sons were bound by the sale.

Held, also, that the effect of a conveyance of property sold by the manager of a family depends on the intention of the parties as gathered from the terms of the instrument and from the surrounding circumstances.

[R., 17 Ind. Cas. 609=23 M.L.J. 638=12 M.L.T. 547.]

APPEAL from an order made by Starling, J., on the 19th March, 1893, apportioning among the claimants thereto the sum of Rs. 25,408-8-6, which was the amount assessed as compensation for certain land (7,685 square yards), situate at Byculla in Bombay, taken up under the Land Acquisition Act (X of 1870). The matter had been referred to the Court by the Collector under s. 15 of the Act, in order that the sum to be paid to each claimant should be determined.

One of the points raised in the case, and the only one dealt with in this report, was whether a sale of land by the widow of a deceased owner (a Hindu) bound the interests of his minor son.

Two of the claimants in the case were Tatia Ramji Dhoble and Govind Ramji Dhoble, who were the sons of one Ramji Shivji Dhoble, deceased. They alleged that part of the land in question belonged to them as heirs of their father, and as owners of the land they claimed a share in the compensation awarded by the Collector.

Their claim was, however, contested by one Kalidas Kalianji, who alleged that on 12th December, 1884, by a duly registered deed of that date, Chinnabai (the widow of Ramji Shivji [632] Dhoble and the mother of Tatia and Govind), had sold this particular portion of the land

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in question to him (Kalidas) and his brother, who was now dead. He stated that Ramji Shivji had died about 1879, and that shortly afterwards he himself had lent money to the widow Chimnabai on mortgage of this land, which was finally sold by her to him and his brother in December, 1884. In his evidence he said :—

“ Ramji Dhoble died in Bombay. I first advanced money to his widow in 1881—Rs. 300 in one sum—two years after Ramji's death. When I advanced the money on mortgage to Chimnabai, she wanted it to pay off the claims of a grain-dealer who had brought a suit against her. She told me that the grain-dealer, while her husband was ill, had made advances to her for necessaries, and afterwards for funeral expenses, and Rs. 900 was due to the grain-dealer. At that time she was maintaining the two sons of her husband, and the balance of the purchase-money was to pay a further amount to the grain-dealer, who had issued a writ against her. I afterwards advanced Rs. 250 more at the time of the writing, about three years after the first payment. I made the two advances. I did not trust to the widow alone, as there were decrees against her as representing her husband which she wanted to pay off. She told me there was a decree against her and if she did not pay she would have to go to jail. I was told by her Rs. 950 were due to Puna Assu in respect of the decree. I asked her to join her son in the conveyance, but she said that he was only a child. The Rs. 250 were paid before the Registrar.”

The conveyance by Chimnabai to Kalidas and his brother Vasta was as follows :—

“ There is my (piece of) land situated at Byculla on the Parel Road, being a part of land (known as that of) Sonabai, standing in the name of my husband, Ramji Shivji Dhoble, and wherein he had a sixteenth share. I had borrowed before Rupees three hundred on mortgaging the said (piece of) land. The same were borrowed on the 28th of February, 1881. I was not able to repay the same. I have, therefore, on receiving Rs. 550, sold this land, (*i.e.*) the sixteenth share therein, on which there are warehouses for storing hay. With regard to the receipt of this amount, Rs. 300 were received on a former mortgage and Rs. 250 have this day been received. Having received Rs. 550 in all I have sold the same land to you. The four boundaries thereof are as follows :—” (Boundaries stated.) “ I have received Rs. 550, on having sold to you this land enclosed within the four boundaries thus particularised. You are to enjoy the said land from generation to generation. Neither have I nor have my heirs any claim whatever thereon. If any one should prefer (a claim) I will answer for the same. This deed of purchase (? sale) I have duly given in writing of my free will and pleasure and in sound mind and consciousness. The handwriting of Apaji Gopal Medhekar, residing in Bombay.”

Vicaji (with *Anderson*), for the sons of Ramji :—The sale by the widow Chimnabai is only binding on her sons, who were then [633] minors, on two conditions: first, if there was a necessity for the sale of the land; secondly, if she purported to sell on their behalf and as representing her deceased husband's estate. As to necessity, it is not shown it existed: West and Buhler (3rd ed.), p. 611. As to the second condition, the deed states that the property belonged to her. She was, therefore, not acting as guardian of her sons or as representative of her husband's estate. She treated the land as her own, and acted adversely to her sons. She, therefore, cannot be held to have conveyed their interests: Mayne's Hindu Law (5th ed.), para. 196, and see cases cited

in note (c) ; *Bahur Ali v. Sookeea*(1). The purchaser knew the sons were interested and asked that they should join in the deed. She refused and dealt with the property as her own. The liabilities which she discharged with the money raised by the mortgage and sale of the land were her own personal liabilities.

Lang, Advocate General, (with *Scott*), for the purchasers :— Ramji Dhoble admittedly died indebted. The liability to pay off his debts was no doubt transferred to the widow's personal account. It still remained *his* debt to be paid off ; and as manager of his estate she had authority to pay it, though for that purpose she gave to her husband's creditors the additional security of her own personal liability. That additional security did not do away with the legal necessity on her part to sell his property. The friends, moreover, who agreed to pay part of the debt, namely, Rs. 150, might be regarded in the position of sureties for her ; and she had to pay them off also. The real question is, whether a guardian or manager is not empowered to indemnify herself out of her husband's property for debts originally contracted by him, and for which she became personally liable ? If she is, these purchasers who made inquiries at the time of the sale have acted in good faith, and the property of which they have been in possession since 1884 cannot be followed in their hands. As to the interpretation of the sale-deed, the intention with which it was executed is important. One of the purchasers has sworn that in selling she represented her husband's estate. The cases cited for Dhoble's sons do not apply.

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JUDGMENT.

The judgment of the Court was delivered by
[634] FARRAN, J. [which on the above point was as follows] :— Kalidas and his brother also claim the plot which originally belonged to Ramji Dhoble, basing their title upon a conveyance by Dhoble's widow Chimnabai bearing date the 12th of December, 1884. Dhoble died in April or May, 1879, leaving his widow Chimnabai and two minor sons [His Lordship referred to the evidence as to the circumstances under which the conveyance was made, and continued :—]

The substantial questions raised are whether the sale by Chimnabai was binding upon the minor sons of Dhoble ; and whether the deed of sale, having regard to its peculiar terms, operated to convey the minors' interest in the land to Kalidas. The law as to the mother's right to sell the property of her minor sons is laid down in West and Buhler's Work on Hindu Law (3rd ed.), p. 611, in these terms :— "A widow managing for her infant son like any other manager when minors are interested as co-parceners can deal with the property only to meet existing necessities, but the other party is protected by good faith and reasonable inquiry." We have referred to the cases cited in the notes to that passage and to those referred to at p. 367 of the same work. They draw no distinction between the case of a mother acting for her minor sons and that of any other manager of a Hindu united family in which there are minor members. In each case the manager has power to alienate the family estate in cases of strict necessity. We refer especially to *C. Colum Comara v. B. Rangasawmy* (2) and *Dalpatsing v. Nanabhai* (3).

In the present instance the pressing necessity for the sale is, we think, sufficiently shown. Dhoble died in debt, and the action of his widow Chimnabai after his death demonstrates with considerable certainty that

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he left no available assets to satisfy his liabilities. He owed Rs. 725 to the firm of Puna Assu. Chimnabai paid off Rs. 375 of this in small sums, and made herself personally liable for the remaining Rs. 350. In May, 1879, a decree was passed against her in the Small Cause Court for Rs. 351-4-9 in respect of that liability. In February, 1881, that decree being then outstanding, she borrowed Rs. 300 on the [635] security of the plot in question, informing Kalidas that she had this outstanding decree to satisfy and debts incurred by her for the funeral expenses of her husband and other debts left by her husband. This latter statement must have been, on the whole, substantially true, for she was unable to pay off the decree from this loan. Subsequently, in 1884, she was arrested and put in jail for non-payment of it. She was only released on getting two of her friends to satisfy the decree-holder. In December, 1884, she received a further sum of Rs. 250 from Kalidas, and sold the land to him for this sum plus her former debt to him of Rs. 300. We think that we may fairly infer that the Rs. 250 were received by her to pay the friends who satisfied the firm of Puna Assu. The whole sum of Rs. 550 was, therefore, received by Chimnabai to satisfy family liabilities. We do not think that the necessity for the sale is lessened by the fact that Chimnabai had made herself personally liable for the family debt. The liability of the managing member of a family to be sued and put in jail, for a family-debt for which she has made herself personally responsible, satisfies, we think, the requirement of the Hindu law that there must be necessity for the alienation.

It was lastly contended that the terms of the deed of sale to Kalidas show that Chimnabai was selling the plot as her own, and that it does not operate to transfer the minors' interest in the land to Kalidas. The evidence of Kalidas, which we see no reason to distrust, shows that she intended to sell the land as that of her husband, and did not get her sons to join because they were too young: and the terms of the deed, when read as a whole, do not, we think, show any other intention on the part of Chimnabai. What the effect of such a conveyance is, appears to depend upon the intention of the parties to be gathered from the terms of the instrument and from the surrounding circumstances.

In *Watson v. Shamlal* (1), their Lordships of the Privy Council took both into consideration. Here the lady signs as widow of Dhoble intending to convey his interest in the land. That is clear having regard to the circumstances under which she executed. [636] We think it would be taking too technical a view of the instrument to hold that the whole interest of Dhoble did not pass by it, because he left minor sons, whose interest the deed does not, in terms, purport to convey.

The case of *Bahur Ali v. Sookeea Bibee* (2) was wholly different. That was the case of a sale by a Mubammadan lady, Shamlā. The purchaser set up the case that she sold as owner of the land by reason of a *hibbah* executed to her by her husband in his lifetime. It was held that that case failing, the purchaser could not set up the contention that the sale was binding as a sale by her as guardian of her minor sons, inasmuch as she sold, and intended to sell, as sole proprietor and in her own right. In the matter of the purchase of Dhoble's share, we must confirm the decision of the Division Court.

Attorneys for the parties:—Messrs. *Chalk, Walker and Smetham*, and Messrs. *Thakurdas Dharamsi and Cama*.

(1) 14 I. A. 178.

(2) 13 W. R. 63.