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decidendi in *Murgeppa v. Kalawa*.⁽¹⁾ In the present case we have to decide the question in first appeal; and on the proved facts, I feel no difficulty in holding that the adoption by Nilava cannot be upheld.

Appeals allowed.

R. R.

⁽¹⁾ (1919) 44 Bom. 327.

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Fawcett.

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July 20.

NAGINDAS MANEKLAL AND OTHERS (ORIGINAL DEFENDANTS NOS. 1 TO 4),
APPELLANTS v. MAHOMED YUSUF MITCHELLA (ORIGINAL PLAINTIFF),
RESPONDENT^o.

Hindu law—Alienation—Necessity—Sale of ancestral house by adult co-parceners—Benefit of joint family—Minor co-parceners—Validity of Sale.

A Hindu joint family owned several houses, one of which was in such a dilapidated condition that the Municipality required it to be pulled down. The adult co-parceners contracted to sell it to the plaintiff. The joint family was in fairly good circumstances; and it was not necessary to sell the house. But the house could not be used by the family for residence and would not have fetched any rent. The plaintiff having sued for specific performance of the agreement to sell, the minor co-parceners contended that the contract did not affect their interest in absence of "necessity" for the sale:

Held, that the agreement of sale was binding on the minor co-parceners, because the adult co-parceners had properly and wisely decided to get rid of the property which was in such a state as to be a burden to the family.

PER SHAH, J.:—"The term 'necessity' must not be strictly construed. The benefit to the family may under certain circumstances mean a necessity for the transaction."

SECOND appeal from the decision of M. M. Bhatt, Assistant Judge of Surat, confirming the decree passed by J. N. Bhatt, Subordinate Judge at Surat.

Suit for specific performance.

^oSecond Appeal No. 486 of 1919.

Defendants Nos. 1 and 2 were adult co-parceners in a joint family. Each of them had two sons who were minor members of the family.

The family had several houses at Rander, Surat and Bombay. The house at Rander was not used by the family for purposes of residence. It was in a dilapidated condition. The Municipality of Rander had given notice to defendants Nos. 1 and 2 to pull down the house owing to its unsafe condition. The house was not in a condition to be let. It was situated in a Mahomedan locality.

Defendants Nos. 1 and 2 agreed to sell the house to the plaintiff.

The plaintiff having sued for specific performance of the agreement to sell, the minor sons of defendants Nos. 1 and 2 contended that as there was no necessity to sell the house, the sale was not binding on them.

The lower Courts disallowed the contention and decreed the suit.

The defendants appealed to the High Court.

B. J. Desai with *K. N. Koyajee*, for the appellants:—
The lower Courts were wrong in passing a decree for specific performance when the minors had a share in the ancestral property agreed to be sold. The adult contracting parties did not even purport to enter into a contract on behalf of the minors: see section 15 of the Specific Relief Act. Besides, no alienation can be made so as to affect a minor unless legal necessity is shown. But all that the lower Courts have found is that there was a benefit to the minors under the transaction. This was not enough: *Nathaji v. Sitaram*⁽¹⁾, *Gurusami v. Ganapathia*⁽²⁾; *Srinivasa Reddi v.*

⁽¹⁾(1902) 4 Bom. L. R. 587.

⁽²⁾(1882) 5 Mad. 337, F. B.

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Sivarama Reddi⁽¹⁾, *Poraka Subbarami Reddy v. Vadlamudi Seshachalam Chetty*⁽²⁾ and, *Mir Sarwarjan v. Fakhruddin Mahomed Chowdhuri*⁽³⁾.

Bahadurji with G.N. Thakor and M. B. Dave, for the respondent :—Specific performance is a discretionary matter with the Courts, and there is no error of law to be dealt with in second appeal. The benefit to the minors amounted in this case to necessity. It was not necessary to prove strict necessity: see *Jamsetji N. Tata v. Kashinath*⁽⁴⁾; *Jugul Kishori Chowdhurani v. Ananda Lal Chowdhuri*⁽⁵⁾ and *Ganap v. Subbi*⁽⁶⁾.

SHAH, J. :—This appeal arises out of a suit for specific performance by the plaintiff of a contract which was entered into with him by defendants Nos. 1 and 2 who were the adult members of a joint Hindu family. The immovable property which they contracted to sell was ancestral, and the ground upon which the suit for specific performance was resisted was that defendants Nos. 1 and 2 at the date of the contract had minor sons who had vested interests in the property and that as the family was in a good condition it was not necessary to sell it. Both the lower Courts have allowed the plaintiff's claim.

It is contended that defendants Nos. 1 and 2 have no power according to Hindu law to alienate the ancestral estate so as to bind the interests of the minor members of the family without legal necessity; and it is further contended that no legal necessity is proved and that benefit to the minors is not sufficient to justify the sale. Several cases have been cited in the course of the argument on the question whether the Court could grant specific performance of the contract against

⁽¹⁾(1908) 32 Mad. 320.

⁽⁴⁾(1901) 26 Bom. 326.

⁽²⁾(1909) 33 Mad. 359.

⁽⁵⁾(1895) 22 Cal. 545.

⁽³⁾(1911) L. R. 39 I. A. 1.

⁽⁶⁾(1908) 32 Bom. 577.

defendants Nos. 1 and 2, who, it is said, were not competent according to Hindu law to convey the interests of their minor sons in the absence of legal necessity.

It is, however, essential first to look to the facts found in this case. The issue raised in the lower appellate Court was whether this contract was for the benefit of the family and binding on the minors. The finding of the lower appellate Court was against the defendants. It is found that "the defendants meant to sell the house in suit for the evident advantage or benefit of the whole family and therefore for the benefit or advantage of their minor sons also. If the house fell down completely and remained in that ruinous condition it would not fetch the price the plaintiff has agreed to pay. It would fetch no rent as well. The sale for Rs. 1,975 would bring annually at least Rs. 100 by way of interest to the family. The transaction was thus clearly and evidently one of decided advantage to the family and to the minor sons of the defendants and did not at all savour of the nature of speculation." It is also found that the house was in a dilapidated condition, and the defendants had received notice from the Municipality to pull it down. Under these circumstances two adult members of the joint family agreed to sell this house. I do not desire to attempt to lay down any general rule as to what would constitute necessity, and as to when a Hindu father or co-parcener may deal with the ancestral estate for the obvious benefit of the family so as to bind the minor members. Even taking it that such power to alienate can be exercised only when a clear case of necessity is made out, I think that the term "necessity" must not be strictly construed. The benefit to the family may under certain circumstances mean a necessity for the transaction. In construing the expressions used

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by Vijnanesvara in the Mitakshara to explain the verse which he has quoted with approval on this point, regard must be had to the word कुटुंबार्थे used in that verse (see Mitakshara, Chapter I, section 1, paragraphs 28 and 29; Stokes Hindu Law Books, p. 370). The expressions used must be interpreted with due regard to the conditions of modern life. I am not at all sure that Vijnanesvara intended to curtail the scope of the word कुटुंबार्थे while explaining it. I do not see any reason why a restricted interpretation should be placed upon the word 'necessity' so as to exclude a case like the present in which defendants Nos. 1 and 2 on all the facts proved properly and wisely decided to get rid of the property which was in such a state as to be a burden to the family. I think that the facts of the case fairly satisfy the test. It was assumed in the arguments on behalf of the appellants that the lower appellate Court decided the case on the ground that the transaction was binding simply because it was for the benefit of the minors. I think that the finding goes much further. It is not, therefore, necessary to consider whether the benefit to the minors would by itself be sufficient to justify such an alienation though it is clear that, where the benefit to the minors is not made out, specific performance could not be granted. On the facts found, I am not prepared to hold that the lower Courts exercised their discretion wrongly or committed any error of law in decreeing specific performance of the contract. I am of opinion, therefore, that the decree of the lower appellate Court should be confirmed and the appeal dismissed with costs.

FAWCETT, J.:—I quite agree. No doubt cases of legal necessity are ordinarily those where debts have to be paid or there is other financial pressure. But I do not think there is authority for holding that legal necessity is confined entirely to such cases. I may refer to

the remarks of their Lordships of the Privy Council in *Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonveree*.⁽¹⁾ There they said: "The power of the manager for an infant heir to charge an estate not his own, is, under the Hindulaw, a limited and qualified power. It can only be exercised rightly in case of need, or for the benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make, in order to benefit the estate, the *bona fide* lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded." That was a case of mortgage, but the Privy Council have held that the same principle applies to the case of a sale: *Girdharee Lall v. Kantoo Lall*⁽²⁾.

Decree confirmed.

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⁽¹⁾(1856) 6 Moo. I. A. 393 at p. 423. ⁽²⁾(1874) 14 Beng. L. R. 187.

CRIMINAL REVISION.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

EMPEROR v. RAMA NANA HAGA-VNE*.

Indian Penal Code (Act XLV of 1860), section 196—Use of false evidence by accused in his defence on a criminal charge—"Corruptly."

The accused was charged with the offence of assault. In his defence he produced a cattle-pound receipt and examined as his witness the Patil of another village to prove that he (accused) was at that village at the time of the alleged assault. The defence was disbelieved. The accused was next tried for the offence of corruptly using false evidence as true, punishable under section 196 of the Indian Penal Code:—

Held, by MACLEOD C. J., that the accused was guilty of the offence with which he was charged, since the Patil had a corrupt motive in giving false evidence on behalf of the accused.

* Criminal Application for Revision No. 34 of 1921.

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