PETITIONER:
MANIBHAI

Vs.

RESPONDENT:
HEMRAJ

DATE OF JUDGMENT21/03/1990

BENCH:
KASLIWAL, N.M. (J)
BENCH:
KASLIWAL, N.M. (J)
SINGH, K.N. (J)

CITATION:
1990 SCR (2) 40 1990 SCC (3) 68
1990 SCALE (1)574

ACT:
Hindu Law--Joint Family Property--Alienation by father to satisfy debts contracted for his personal benefit and without any legal necessity--Alienation is binding on sons if it is not tainted with immorality and illegality and the debts were antecedent to the alienaton.
Hindu Law--Joint Family Property--Alienation by father-Validity of--Transactions of alienation--Eack transaction should be examined independently.
Hindu Law--Doctrine of Pious obligation--Liability of sons to discharge father's debt--Doctrine postulates father's debt must be Vyavaharik.
"Antecedent debt"--What is.

HEADNOTE:
'B', who received some agricultural lands and a house in the partition of his ancestral properties, and his minor sons 'H' and 'R' (Respondent) mortgaged their properties for a sum of Rs.5,500 by executing a conditional sale deed on 22nd April, 1948 in favour of 'N'. But by a reconveyance deed dated 11th February, 1953 they got their properties reconveyed in their favour by 'N'. On the same"day i.e. 11 th February, 1953 they sold some agricultural lands and the house for Rs.5,500 to 'M', (Appellant) who was brother of 'N'. Subsequently 'M' sold the house to 'W' and others. The remaining land was sold by them on the same date to 'V' and his brother.
'B's sons and wife (Plaintiffs) filed a suit against 'M' (Defendant No. 1), 'V' and his brother (Defendant No. 2 and 3), 'W' and others (Defendant No. 4 to 8) and 'B' (Defendant No. 9) for a decree of possession of the agricultural lands and house which came in their share as members of the Joint Hindu Family contending that alienation made by 'B' was not binding on them because it was neither for any legal necessity nor for the benefit of the minors or their Estate, but was for satisfying the personal needs of 'B' who had the vices of drinking and gambling and was spending everything he used to earn in his business of grain delali.
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The Trial Court dismissed the suit by holding that (i) 'B' was not indulging in any vices, (ii) the alienation made by 'B' was for the satisfaction of' the antecedent debt due

on mortgage'; and (iii) 'B' was a broker who needed cash capital for his business and (iv) the plaintiffs and 'B' were estopped from challenging the title of 'W' and others, since 'W' and others (Defendant No. 4 to 8) had spent Rs.25,000 on the reconstruction of the house purchased from 'M' within the knowledge of plaintiffs and without their objection.

Plaintiffs preferred an appeal before the High COurt contending that 'M' and 'N' ran a family firm of which they were owners and the execution of the conditional sale deed, reconveyance deed and the subsequent sale deed of the same day were nothing but a device and were really a part of one and the same transaction and that if the original transaction of 22nd April, 1948 of the conditional sale with 'N' was not valid and binding on the minor sons of 'B' then the subsequent transaction of 11th February, 1953, for payment of debt or liability due under that alienation cannot be supported.

Allowing the appeal, the High Court reversed the judgment of the Trial Court, had passed a decree for possession of the suit properties in favour of the plaintiffs by holding (i) that the transactions dated 22nd April, 1948 as well as all other transactions of 11th February, 1953 were part of the same transaction; (ii) that since transaction dated 22nd April, 1948 was invalid because it was not supported by any legal necessity, then the subsequent transactions of sale and reconveyance of 11th February, 1953 were also invalid. Hence this appeal by special leave by the defendants.

Allowing the appeal in part, this Court,

HELD: 1. The doctrine of pious obligation under which sons are held liable to discharge their father's debts is based only on religious considerations. This doctrine inevitably postulates that the father's debts must be vyavaharik. If the debts are not vyavaharik or are vyavaharik the doctrine of pious obligation cannot be invoked. [59E]

Luhar Amrit Lal Nagji v. Doshi Jayantilal Jethalal & Ors., A.I.R. 1960 SC 964, relied on.

2. Where the sons are joint with their father, and debts have been contracted by the father even for his own personal benefit, the sons are liable to pay the debts provided they were not incurred for an immoral

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or illegal purpose and such debts were antecedent to the alienations impugned. [61B]

2.1 Even if any loan is taken by the father for his personal benefit which is found as vyavaharik debt and not avyavaharik, the sons are liable to discharge their father's debts under the doctrine of pious obligation and if any alienation of the joint family property is subsequently made to discharge such antecedent debt or loan of the father, such alienation would be binding on the sons. [6 ID]

Mulla, "Principles of Hindu Law", 15th Edn. Paragraph 295; lrukulapati Venkateshwara Rao v. Vemuri Amayya & Ors., A.I.R. 1939 Mad. 561, referred to.

Vyankates Dhonddeo Deshpande v. Sou. Kusum Dattatraya Kulkarni & Ors., [1979] 1 955, relied on.

Atchutaramayya v. Ratanjee Bhootaji, [1926] A.I.R. Mad. 211; Suraj Bansi Koer v. Sheo Prasad Singh, 6 I.A. 88 (PC) cited.

Benares Bank Ltd. v. Hari Narain & Ors., LIX I.A. 300, distinguished.

3. "Antecedent debt" means antecedent in fact as well as in time i.e. to say, that the debt must be truly independent and not part of the transaction impeached. To constitute a

debt an "antecedent" debt it is not necessary that the prior and subsequent creditors should be different persons. All that is necessary is that the two transactions must be disassociated in time as well as in fact. [53E-F]

Mulla, "Principles of Hindu Law", 15th Edn. paragraph 295; Brij Narain v. Mangala Prasad, A.I.R. 1924 P.C. 50, referred to.

4. It is necessary to examine each transaction independently and then to arrive at a conclusion whether such a transaction or alienation can be held to be valid or not. [52G-H]

4.1 The approach of the High Court in considering transaction dated 22nd April, 1948 as well as all the other transactions of 11th February, 1953 being part of the same transaction, is not correct. [57B]

5. The conditional sale deed dated 22nd April, 1948 was not void even if the amount was taken by 'B' for his personal benefit of starting a
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new business of grain. It was an independent transaction both in fact as well as in time to the subsequent transactions of 11th February, 1953. The transaction of reconveyance deed dated 11th February, 1953 was for the benefit of not only 'B' but for the entire family including the plaintiffs. There was no consideration for this reconveyance of the property except the transaction of sale made in favour of 'M' on 11th February, 1953. This sale deed was perfectly valid and was made in order to pay the antecedent debt. [57F-G]

6. So far as the house property is concerned, the Trial Court's finding that defendants Nos. 4 to 8 had spent Rs.25,000 on the reconstruction of the house within the knowledge and without the objection of the plaintiffs Nos. 1 and 2 and as such plaintiffs No. 1 and 2 and defendant No. 9 were estopped from challenging the title of those defendants had not been set aside by the High Court. This finding of the High Court has to be upheld. [61F-G]

7. So far as the transactions of sale of the remaining properties in favour of 'V' and his brother are concerned, they stand on a different footing altogether. The High Court in this regard has recorded a clear finding that the aforesaid alienations were made neither for any legal necessity nor for the benefit of the State nor for payment of any antecedent debt. [61H; 62B]

The evidence in this regard is also fully convincing that the aforesaid transaction had no connection with payment of any antecedent debt. The finding of the High Court has to be upheld in this regard. [62C]

8. Accordingly the Judgment and decree passed by the High Court is set aside to the extent of granting a decree for possession of the house property and agricultural lands sold in favour of 'M' on 11th February, 1953, and the suit with regard to these properties is dismissed. The rest of the Judgment and decree of the High Court in respect of agricultural lands which were alienated in favour of 'V' and his brother is maintained and'the suit of the plaintiffs for possession with regard to these properties stands decreed. [62D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 380 of 1980.

From the Judgment and Order dated the 20.11.1979 of the

Bombay High Court in F.A. No. 117 of 1968.
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U.R. Lalit, Dr. N.M. Ghatate and S.V. Deshpande for the Appellants.
R.K. Garg, Tripurari Ray, M.N. Shroff and A.K. Sanghi for the Respondents.
The Judgment of the Court was delivered by
KASLJWAL, J. This Civil Appeal by Special Leave has been filed by the defendants Manibhai, Dhyaneshwar, and Waman Rao Narayan Rao aggrieved against the Judgment and decree of Bombay High Court dated 20th November, 1979.
Briefly stated the facts are that one Vithoba had two sons Beni Ram and Maroti. A partition took place on 14th July, 1947 by a registered document between Vithoba, his son Beni Ram and two grandsons of pre-deceased son Maroti. In accordance with the above partition Beni Ram got agricultural lands survey Nos. 1, 3, 18 & 19 measuring 11.69 acres, 00.06 acres, 4.48 acres and 8.40 acres respectively, situate in Village Kharbi Tehsil and district Nagpur. Apart from the above agricultural lands Beni Ram also got a house No. 82 situate in Telipura, Itwari, Nagpur. After receiving the above properties in partition Beni Ram along with his two minor sons Hemraj and Ramdass executed a deed of conditional sale on 22nd April, 1948 (Ex. 48) of their properties in favour of Narayan Dass for a sum of Rs.5,500. Thereafter, by a reconveyance deed (Ex. 48) dated 11th February, 1953, Beni Ram, Hemraj and Ramdass got the properties reconveyed in their favour by Narayan Dass. On the same day i.e 11th February, 1953 Beni Ram and his four minor sons executed a sale deed (Ex. 40) of house property and agricultural land survey Nos. 3 and 18 in favour of Manibhai, the brother of Narayan Dass for a consideration of Rs.5,500. By another sale deed (Ex. 41) of the same date Beni Ram and his four minor sons sold 10.69 acres of land out of survey No. 1 in favour of Vithal and his brother Vishwanath for a sum of Rs.5,345. Beni Ram and his minor sons then by sale deed (Ex. 61) sold the remaining one acre of land of survey No. 1 and 8.40 acres of survey No. 19 for a sum of Rs.3,000 on 19th July, 1954 in favour of the above-mentioned Vithal and Vishwanath. Manibhai subsequently sold the house property in favour of Waman Rao Narayan Rao, Bhujang Rao, Yadav Rao, Namdeo and Nago Rao.
Six sons of Beni Ram alongwith their mother Sona Bai filed a suit on 10th February, 1965 against Manibhar (defendant No. 1), Vithal
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and Vishwanath (defendants Nos. 2 and 3), Waman Rao, Narayan Rao, Bhujang Rao, Yadav Rao, Namdeo and Nago Rao (defendant Nos. 4 to 8) and Beni Ram (defendant No. 9) for a decree for possession of the agricultural lands and house which came in their share as members of Joint Hindu Family. The case of the plaintiffs as set out in the plaint was that Beni Ram, father of the plaintiffs Nos. 1 to 6 and husband of the plaintiff No. 7 was a person given to heavy drinking and gambling and a satoria. Due to all these vices he used to spend away everything whatever he used to earn in his business of grain dalali. The business of grain dalali did not require any capital. In the partition of ancestral properties made on 14th July. 1947 Beni Ram was allotted the properties as given in para 3 of the plaint, and details of which have also been mentioned above. It was further alleged in the plaint that the entire properties allotted to the share of Beni Ram in the aforesaid family partition were ancestral and the plaintiffs had acquired an interest in such properties by birth.

According to the plaintiffs all these alienations in favour of the defendants were illegal and invalid and were not binding on them. Plaintiffs further alleged that none of these sales were for any legal necessity or for the benefit of the estate or for the benefit of the minors. The sales were not for preserving or recovering any part of the estate of the plaintiffs. None of the defendants Nos. 1, 2 and 3 made any reasonable, proper or bona fide enquiries as to the existence of any necessity before entering into the afore-said transactions with defendant No. 9. The plaintiffs further stated that the sale proceeds were not applied for the benefit of the minors or their estate by the defendant No. 9 and were squandered by him on his vices.

It was further alleged in the plaint that the defendant No. 1 sold a portion of the house to defendants Nos. 4 to 7 vide sale deed dated 9th August, 1956 and the remaining portion of the same house was sold to defendant No. 8. Plaintiffs thus submitting that the defendants Nos. 4 to 8 very well knew about the defendant No. 9's way of life. They also knew that the defendant No. 9 is a gambler and drunkard and satoria and that he spent everything on these vices. The plaintiffs thus submitted that the sales in favour of de-fendants Nos. 4 to 8 were also illegal, invalid and inopera-tive in law since their vendor had no valid title in them. The plaintiffs in the above circumstances alleged that they were entitled to share in the joint family properties. The plaintiffs called upon the defendants to deliver possession alongwith mesne profits by their notice dated 28th October, 1964. The defendants received the notice but did not deliver possession nor paid the mesne profits and
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hence suit was filed for possession and mesne profits amounting to Rs. 11,470.

Defendant No. 1, Manibhai denied the allegations made in the plaint. He denied that the defendant No. 9 was a person given to heavy drinking and gambling and satoria. He also denied that defendant No. 9 used to spend away everything whatever he used to earn in the business of grain dalali. It was denied that the business of grain dalali does not re-quire any capital. It was alleged that defendant No. 9 was the sole owner and in possession of the properties described in Para 3 of the plaint but it was denied that defendent No. 9 acquired the same under the partition deed. The plaintiffs were thus required to be put to strict proof of the same.

The defendant No. 1 also alleged that he had purchased the properties by registered sale deed dated 11th February, 1953 from defendant No. 9 and plaintiffs Nos. 1 and 4 for a valuable consideration of Rs.5,500 and plaintiffs Nos. 5 and 6 were not born till then. The sale of the property was for the legal necessity and for the benefit of the plaintiffs. It was further submitted that even if the property was found to be ancestral one the defendant No. 9 had power to sell the said properties being a manager of the joint family, on behalf of the plaintiffs also. The defendant No. 9 had executed a mortgage by conditional sale on 22nd April, 1948 2in favour of one Narayan Dass S/o Kalidas Patel for a total consideration of Rs.5,500 mortgaging thereby all the proper-ties mentioned in Para 3(A) and (B) of the plaint. It had been further alleged that the answering defendant No. 1 purchased properties described in Para 3-A(ii) & (iv) and Para 3-B out of the said properties for a consideration of Rs.5,500 which was the market value of the said properties. On 11th February, 1953 the defendant paid Rs.500 towards the earnest money and the balance of Rs.5,500 was paid on the same day before the Sub-Registrar. The defendant No. 9 paid

this very amount to Shri Narayan Dass to obtain deed of reconveyance. Thus the consideration paid by this defendant for the purchase of the property mentioned above has in fact been applied to make payment to Shri Narayan Dass to get all those properties released and to obtain the deed of reconveyance from him. The sale deed in favour of the defendant No. 1 was, therefore, in fact for legal necessity i.e. to save a larger and valuable property from being lost to the family and/or also for payment of the antecedent debts of defendant No. 9 and further the defendant No. 9 saved for himself and the plaintiffs. The fields mentioned in Para 3A(i) and (iii) of the plaint which subsequently the defendant No. 9 and the plaintiffs sold to

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defendants Nos. 2 and 3 by two registered sale deeds dated 11th of February, 1953 and 19th July, 1954 for Rs.5,345 and Rs.3,000 respectively. Thus the plaintiffs got an advantage of Rs.8,345 by getting the properties from the original mortgagee Narayan Dass. It was thus submitted that though the sale deed dated 11th February, 1953 executed by defendant No. 9 did not recite all these facts, yet the sale deed in favour of defendant No. 1 was in fact for legal necessity and for discharging the antecedent debts of defendant No. 9. In the alternative it was submitted that if the business of grain dalali was found to be an ancestral one then in that event also the property sold to defendant. No. 1 was for legal necessity and for the benefit of the plaintiffs. The suit brought by the plaintiffs was bogus and untenable in law to the knowledge of the plaintiffs and was liable to be dismissed with compensatory costs.

It was also submitted that the suit for possession and mesne profits as framed was not maintainable. In the sale deeds dated 11th February, 1953 the defendant No. 9 is alleged to be the Karta of the plaintiffs' family and the plaintiffs Nos. 1 to 4 were also parties to both the sale deeds in favour of the defendant No. 1 as well as in favour of the defendants Nos. 2 and 3. Plaintiffs Nos. 5 and 6 were not born till then and plaintiff No. 7 had no title or his interest in the property. Thus unless those sale deeds or transfers were not cancelled or set aside, the plaintiffs could not seek possession of the properties. It was further submitted that the plaintiffs Nos. 1 to 6, who were sons of defendant No. 9 were under pious obligation to discharge their father's debt. The present transfers were for discharging the father's debt due to Narayan Dass and hence the plaintiffs were bound by the transfers. The plaintiffs had no cause of action for seeking cancellation of the sale deed dated 11th February, 1953. The present suit was barred by time as the claim for relief of cancellation of the sale deed dated 11th February, 1953 was also barred on expiry of three years from the date of sale deed.

Defendants Nos. 2 and 3 filed a joint written statement and apart from denial of defendant No. 9 being a gambler, drunkard or satoria it was alleged that they had purchased agricultural field from defendant No. 9 who sold the same for legal necessity and for valuable consideration and for the benefit of the minors. It was also made to preserve the estate and to make the repayment of the loans by the defendant No. 9. Hence the sales made in their favour were binding on the plaintiffs. The plaintiffs have filed the present suit in collusion with defendant No. 9 with ulterior and mala fide intention.

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Defendants Nos. 4 to 8 filed a joint written statement and took almost a similar stand as taken by defendant No. 1.

These defendants further pleaded that they had purchased the suit house some time in the year 1956, with the knowledge of the plaintiff Nos. 1 and 2 and defendant No. 9. After the purchase of the house the defendants demolished the old structure and constructed the whole house from foundation, at a cost of about Rs.25,000. The plaintiffs Nos. 1 and 2 as also defendant No. 9 were in the full know of the fact of demolition of old house and new construction. They did not at any time, raise any objection or claim to the house and allowed the defendants to carry out the work. They did not at any time show or commit any act as to raise any doubt in the minds of defendants regarding their title to the house in suit. Thus the defendants Nos. 4 to 8 in good faith and having full belief in their own title to the suit house, spent more than Rs.25,000 on the house and the plaintiffs and defendant No. 9 allowed the defendants to carry out the work even though they had full knowledge of the said construction work and were thus now estopped from denying the title of the defendants to the suit house. The plaintiffs and defendant No. 9 having acquiesced in the above acts of the defendants could not now file the suit and challenge the title of the defendants. It was also alleged that the defendant No. 9 was heavily indebted and had in fact executed a conditional sale deed in favour of Narayan Dass son of Kalidass for a consideration of Rs.5,500. It was in order to redeem these properties that the defendant No. 9 sold the property and utilised the money received as a consideration of the sale deed towards the satisfaction of those debts. Thus the impugned sale deeds were executed for good and valuable consideration for payment of antecedent debts and cannot be challenged by the plaintiffs.

Trial Court after considering the oral and documentary evidence led by the parties held that the defendant No. 9 Beni Ram after getting the ancestral share in the properties in 1947 remained joint with his sons i.e. the plaintiffs. It was also found that the properties in question were ancestral and as such the plaintiffs had acquired interest in it by birth. The Trial Court further held that Beni Ram, defendant No. 9 was not indulging in any vices at the time he first mortgaged the properties by conditional sale vide exhibit 48. The sale initially was for the satisfaction of the antecedent debt due on mortgage (Ex. 48). The Trial Court further held that it was a legal cause and the purchasers were armed with proper ground to purchase the property.This being so, the contention of the plaintiffs, that these sales finally were for no legal necessity or for the benefit of the minors or their estate etc., fell to the ground. Similarly, their contention that the defendant No. 9 was

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given up to drinking and all other such bad habits, and it was known to the defendant Nos. 1 and 3 also, did not stand proved. Trial Court also held that it was proved that the defendant No. 9 was a broker and he needed cash capital of Rs.4,000 to Rs.5,000 for his business even as a broker. The evidence also satisfactorily proved that defendant No. 9 had a grain shop. The Trial Court thus arrived at the conclusion that the plaintiffs had failed to prove their allegations that the defendant Nos. 1 to 3 wanted these properties somehow or the other and that they managed to get the sales executed in their favour from defendant No. 9 without enquiry about the legal necessity to sell. The Trial Court also found proved that the defendants Nos. 4 to 8 had spent Rs.25,000 on the reconstruction of the house within the knowledge of the plaintiffs Nos. 1 and 2, after his purchase

from the defendant No. 1 and still none had objected against it. The plaintiffs Nos. 1 and 2 and defendant No. 9 were estopped from' challenging the title of defendants Nos. 4 to 8. In view of the findings recorded as mentioned above the Trial Court dismissed the suit filed by the plaintiffs.

The plaintiffs aggrieved against the Judgment and decree of the Trial Court flied an appeal before the Bombay High Court. An argument was raised on behalf of the plaintiffs before the High Court that Manibhai and Narayan Dass ran a family firm of which they were owners and the execution of the conditional sale deed, reconveyance deed and the subsequent sale deed of the same day were nothing but a device and were really part of one and the same transaction. The transactions were not independent of each other in the true sense of the term. If the original transaction of 22nd April, 1948 of conditional sale deed with Narayan Dass was not a valid alienation and thus not binding upon the coparceners, minor sons of Beni Ram, then subsequent transactions for the payment of the debt or liability due under that alienation also cannot be supported. The relationship between Narayan Dass and Manibhai on the one hand and Beni Ram on the other hand appeared to be that of confidence from the nature of evidence given by Narayan Bhai and Manibhai. Beni Ram seemed to have faith in the two brothers which they apparently used to their advantage.

The High Court considered the above arguments and observed that in Exhibit 48 the reason for alienation of the property had been given by Beni 'Ram as for the purpose of carrying out business and for household purpose. The defendants further did not stick to this reason of alienation in the sale deed and gave evidence to show that it was with this amount that Beni Ram started new business. As to what was
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the household purpose, has nowhere been stated or clarified. There was no evidence of any kind whatsoever led to show of any enquiry having been made by the alienees in regard to the existence of legal necessity or any antecedent debt. There was no antecedent debt referred to at all in Exhibit 48 which was the commencement of the transaction. The High Court then considered Exhibit 49 which was a reconveyance deed by which Rs.5,500 were repaid by Beni Ram to Narayan Dass. The High Court then took into consideration Exhibits 40, 41 and 42(6 11 and arrived at the conclusion that there was no antecedent debt nor any legal necessity nor the money was needed for any joint family or ancestral business, in order to make these alienations valid. After analysing the oral evidence, the High Court recorded the finding that even assuming that Beni Ram started a grain shop, it was admitted by the defendants that his former business was of brokerage in grain. For a grain broker business no capital was necessary or required. For the purpose of a grain shop, which was an entirely different business, experience in salesmanship and dealing in grains as well as the purchase of grain wholesale or retail would be necessary. It would involve outlay of capital and would be under the circumstances a new business. The High Court then examined the question as to whether a father can by starting a new venture expose the family ancestral property to be taken and burden it therewith and alienate for that purpose.

The High Court placed reliance on the following dictum laid down by Privy Council in Benares Bank Limited v. Hari Narain & Ors., Vol. LIX Indian Appeals, 300.

" The manager of a Joint Hindu Family, whether governed by the Mitakshara or the Dayabhaga, has no authority to impose

upon a minor member the risk and liability of a new business started by him; that the manager is father of the minor makes no difference."

The High Court thus observed that in the present case the father had started new business with the alienation of the property and he had no right to impose the risk and liability upon the minor members. If the business which Beni Ram, therefore, started were a new business and which he had no right to start so as to expose the interest of the minor coparceners in the family property, then Exhibit 48 cannot be supported on the ground either of legal necessity or benefit to the estate. The High Court further observed that if Exhibit 48, therefore, was a transaction which the father was not entitled to enter into and

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expose the family property to the risk then Exhibit 48 fell and could not be held to be a valid and binding transaction; then the transaction of 11th February, 1953, first of a reconveyance and then of a sale, evidenced by exhibits 49 and 40 also must fall and cannot be supported. The evidence went to show that Beni Ram had confidence in Manibhai and Narayan Dass. The reconveyance in favour of Narayan Dass and the immediate sale in favour of Manibhai on the same day was a mere device to support the transaction of sale Exhibit 40 in favour of Manibhai by a repayment of alleged antecedent debt. The High Court held that they had no hesitation in thinking that if the alleged antecedent debt itself was an invalid transaction, was not an independent transaction but was a part of the same transaction, merely because it was separated in point of time it would not support the alienation in favour of Manibhai. The High Court also referred the five propositions laid down in Brij Narain v. Mangala prasad, AIR 1924 Privy Council, 50 and held that so far they were concerned the fourth proposition was relevant which was to the following effect:

"Antecedent debt means antecedent in fact as well as in time; i.e. to say that the debt must be truly independent and not part of the transaction impeached."

It was then held that applying the proposition laid down it was to be found out whether the transaction which was impeached, was a truly independent transaction and the debt discharged thereby was a truly independent antecedent debt and whether it was or it was not a part of the same transaction. According to the High Court apart from the fact that the alienation dated 22nd April, 1948 was not supportable and was invalid, the transaction was nothing but a mere device to clothe the debt due under Exhibit 48 with the antecedent character, when Exhibit 40 on 11th February, 1953 was executed. The transaction Exhibit 40 must stand or fall alongwith the liability said to have been incurred under Exhibit 48. Thus in the view taken of Exhibit 48 and the liability incurred thereunder, Exhibit 40 must also fall therewith.

As regards Exhibits 41 and 42(61) the High Court observed that whatever little justification there was to sustain the transaction under Exhibit 40 even that did not hold good and was not available for the alienations under Exhibits 41 and 42. There was not even a semblance of antecedent debt existing or due from Beni Ram on 11th February, 1953 after the alleged liability under the conditional sale deed was discharged, so as to alienate survey No. 1 or subsequently in 1954 the remaining portion of survey Nos. 1 and 19. After recording the above

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findings the High Court observed that the present suit was

brought by the minors who had 6/7th share in the Joint family properties and had brought the suit for the purpose of possession alleging that the alienations effected by defendant No. 9 thereafter were not binding upon them. In such a case, the only consequence would be that the share of defendant No. 9 will go to the alienees. But in such a suit the coparceners whose shares were not affected were entitled to possession and the alienees were not entitled to joint possession with them. The alienees in such a case could bring, if so inclined and so advised a suit for working out their share in the family property. In such a suit, the entire family properties shall be brought in and the share of the alienor coparcener worked out. Thus the plaintiffs having succeeded, the alienees defendants Nos. 1 to 3 can be relegated to their right and work out their rights in a separate suit than making an order for joint possession. Consequently the High Court allowed the appeal, set aside and reversed the Judgment and decree passed by the Trial Court, and instead a decree was passed in favour of plaintiffs Nos. 1 to 6 for possession of the properties in suit.

As regards, the mesne profits it was held that the plaintiffs had not led any evidence and as such relief for mesne profits was denied. The plaintiffs were further held entitled to future mesne profits from the date of suit under Order 0.20 Rule 12 C.P.C.

Manibhai, defendant No. 1 Dhyaneshwar S/o Vithal as legal representative of defendant No. 2 and Waman Rao, Narayan Rao, defendant No. 3 have filed this appeal against the Judgment of the High Court.

We have heard Learned counsel for the parties at length and have thoroughly perused the record. The properties having come in the hands of Beni Ram after partition being ancestral and the plaintiffs having share as members of coparcenary were no longer in dispute before us. The finding that the plaintiffs had not been able to prove that their father Beni Ram was a drunkard, 'gambler and satoria and the alienation made by him were not invalid on that account was also not challenged before us. It may be mentioned at the outset that the very approach of the High Court in considering transaction Exhibit 48 dated 22nd April, 1948 as well as all the other transactions of 11th February, 1953 being part of the same transaction, is not correct. It is necessary to examine each transaction independently and then to arrive at a conclusion whether such a transaction or alienation can be held to be valid or not. The High Court also committed an error in

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examining the transaction as if the same were without consideration and on that account treating the transactions invalid, though no such plea was raised by the plaintiffs even in the plaint. The alienations were challenged by the plaintiffs only on the ground of being without legal necessity and not for the benefit of the estate and further tainted with immorality on the ground of their father Beni Ram being indulging in the vices of drinking, gambling and satoria.

Mulla in "Principles of Hindu Law" 15th Edition in paragraph 295 has dealt with the question of sale or mortgage of coparcenary property for payment of antecedent debt as under:

"The father of a Joint Hindu Family may sell or mortgage the joint family property including the sons' interest therein to discharge a debt contracted by him for his own personal benefit, and such alienation binds the sons, provided--(a) the debt was antecedent to the alienation, and

(b) it was not incurred for an immoral purpose.

The validity of an alienation made to discharge an antecedent debt rests upon the pious duty of the sons to discharge his father's debt not tainted with immorality. The mere circumstance, however, of a pious obligation does not validate the alienation. To validate an alienation so as to bind the son, there must also be an antecedent debt. Generally, there is no question of legal necessity in such a case. "Antecedent Debt" means antecedent in fact as well as in time, that is to say, that the debt must be truly independent of and not part of the transaction impeached. A borrowing made on the occasion of the grant of a mortgage is not an antecedent debt.

To constitute a debt an "antecedent" debt it is not necessary that the prior and subsequent creditors should be different persons. All that is necessary is that the two transactions must be dissociated in time as well as in fact".

It is thus clear that where the sons are joint with their father, and debts have been contracted by the father even for his own personal benefit, the sons are liable to pay the debts provided they were not incurred for an immoral or illegal purpose and such debts were antecedent to the alienations impugned.

The liability to pay the debts contracted by the father, for his own benefit, arises from an obligation of religion and piety which is placed upon the sons under the Mitakshara Law to discharge the

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father's debt, where the debts are not tainted with immorality. In any event an alienation by the Manager of the Joint Hindu Family even without legal necessity and not tainted with immorality but for his personal benefit would be voidable and not void.

Now, we shall examine all the transactions which took place on 11th February, 1953. So far as Exhibit 49 dated 11 th February, 1953 is concerned, it is a reconveyance deed by which an amount of Rs.5,500 was alleged to have been returned to Narayan Dass and the possession of the properties mentioned in the conditional sale deed dated 22nd April, 1948 were handed back to Beni Ram. This transaction was admittedly for the benefit of not only Beni Ram but other members of his family including the plaintiffs. Another document executed on 11th February, 1953 is Exhibit 40 by which Beni Ram and his four sons sold the house property and agricultural land of survey Nos. 3 and 18 in favour of Manibhai. The consideration of this sale deed is Rs.5,500 and it was this amount which was repaid to Narayan Dass for getting the reconveyance deed Exhibit 49. Narayan Dass being the brother of Manibhai, it can be understood that no amount in fact may have reached the hands of Beni Ram by these two transactions of Exhibit 49 and Exhibit 40, but it becomes clear that the reconveyance deed Exhibit 49 could have been executed only when Rs.5,500 were returned to Narayan Dass and this amount could have only come by executing a sale deed Exhibit 40 in favour of Manibhai. If we took at the matter from another angle, it is abundantly clear that on 22nd April, 1948 when conditional sale deed was executed by Beni Ram on his own behalf and two minor sons, he was paid Rs.5,500 by Narayan Dass. This is not the case of the plaintiffs that Exhibit 48 was without consideration or that Beni Ram did not receive Rs.5,500 when this transaction took place. We accept the finding of the High Court that this amount of Rs.5,500 was taken by Beni Ram for his business i.e. for his own personal benefit and not for any legal

necessity or benefit of the joint family. Even then the sale transaction exhibit 40 dated 11th February, 1953 for a consideration of Rs.5,500 in respect of house No. 82 and agricultural lands Nos. 3 and 18 is valid as such transaction was made of payment of an antecedent debt of Rs.5,500 which was taken by Beni Ram on 22nd April, 1948. Neither plaintiffs nor Beni Ram have come forward with the case that for reconveyance deed Exhibit 49 the amount of Rs.5,500 was repaid to Narayan Dass in any other manner except the transaction Exhibit 40 dated 11th February, 1953. The transaction Exhibit 40 dated 11th February, 1953 is valid and binding on the plaintiffs as it was made in order to pay the antecedent debt of Beni Ram taken on 22nd April, 1948 and getting the recon-
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veyance of the property vide Exhibit 49.

In Raja Brij Narain v. Mangala Prasad, case (supra) it has been laid down that antecedent debt means "antecedent in fact as well as in time i.e. to say, that the debt must be truly independent and not part of the transaction impeached."

Applying the above dictum also to the facts of the ease in hand before us, it is clear that the amount of Rs.5,500 taken by Beni Ram by way of transaction dated 22nd April, 1948 was antecedent in fact as well as in time to the transactions of 11th February, 1953 which have been impeached by the plaintiffs. By no stretch of imagination the transaction of 22nd April, 1948 can be said to be a part of the transaction impeached. It makes no difference if Manibhai was the brother of Narayan Dass and the consideration paid by Manibhai of the transaction Exhibit 40 may have gone to Narayan Dass for getting the reconveyance deed Exhibit 49 or may have come back to Manibhai himself as Manibhai and Narayan Dass were running some business jointly in a shop from where this money may have come. Even if for argument's sake we may accept the contention of Mr. R.K. Garg, Learned counsel for the plaintiffs that no money actually came in the hands of Beni Ram while executing Exhibit 49 and Exhibit 40 on 11th February, 1953, it will not make any difference in as much as Beni Ram was required to return the amount of Rs.5,500 taken by him on 22nd April, 1948 and transactions Exhibit 49 and Exhibit 40 were truly independent transactions to pay the antecedent debt of 22nd April, 1948. The High Court has unnecessarily imputed the allegation of collusion on the defendants to hold their transactions invalid. There could not have been any collusion unless Beni Ram, father of the plaintiffs may have joined hands with the defendants from the very beginning i.e. 22nd April, 1948 when he took an amount of Rs.5,500 as consideration for executing a conditional sale deed. There is nothing on record to infer such conduct on the part of defendants; on the other hand conduct of Beni Ram shows that he is all out in supporting his sons and to save the joint family property and to get the alienations declared invalid. The trial court and the High Court both have recorded a finding against the plaintiffs that Beni Ram was not indulged in the vices of gambling, drinking and satta, and alienations were not invalid on that account.

Hemraj P.W. 1, one of the plaintiffs has appeared in the witness box but he nowhere stated that exhibit 48 was illegal in any manner. On the contrary he stated that his father had said to him that he had taken loans and had to pay the same. These loans were taken from
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Narayan Dass. Sale deed conditional dated 22nd April, 1948 was shown and he admitted that it contained his father's

signature on it. Narayan Dass has appeared as D.W. 1 and he clearly stated that he knew defendant No. 9 and he had loaned to him Rs.5,500 for his grain business vide Exhibit 48. It was conditional sale dated 22nd April, 1948. He further paid him back the money of Rs.5,500 as received from Manibhai and deposited Rs.3,745 on 11th February, 1953 out of the consideration received from Vithoba. In further cross-examination he stated that the account showed that on 10.2.1953 Rs.5,500 were credited in it as paid by Mahibhai on behalf of Beni Ram. This was the consideration of Manibhai's purchase of the property from Beni Ram. It is pertinent to mention that even the High Court in its Judgment observed as under:

"As we pointed out Exhibit 48 itself is the first alienation and there is no debt which is antecedent to 28th February, 1948 which can support Exhibit 48. Though Exhibit 40 dated the 11th February, 1953, can be said to be an alienation for the purpose of discharging a debt or liability due under Exhibit 48, as we shall presently show if the liability created or incurred under Exhibit 48 is not binding upon the minor coparcener and sons of Beni Ram then Exhibit 48 also will not be binding upon them"

The High Court further observed in this regard as under:

"In the present case, as we have pointed out it is with the alienation of the property that the father has started a new business, which he had no right to impose the risk and liability upon the minor members. If the business which Beni Ram, therefore, started were a new business and which he had no right to start so as to expose the interest of the minor coparceners in the family property, then we do not see how Exhibit 48 can be supported on the ground either of legal necessity or benefit to the estate. If Exhibit 48, therefore, is a transaction which the father was not entitled to enter into and expose the family property to the risk, then we think that Exhibit 48 cannot be supported and is not for legal necessity. If Exhibit 48 fails and cannot be held to be a valid and binding transaction upon the alienates then the transaction of 11th February, 1953, first of reconveyance and then of a sale, evidenced by Exhibits 49 and 40 also must fail and cannot be supported."

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The above observations made by the High Court clearly go to show that the High Court was considering the validity of the transaction of Exhibit 48 itself on the touchstone of its binding nature on the basis of any legal necessity or for the benefit of the estate of the joint family. The High Court in this regard committed a clear error in assuming and treating the transaction of 22nd April, 1948 as a part and parcel of transactions of 11th February, 1953. As a matter of fact the transactions of Exhibit 49 and Exhibit 40 dated 11th February, 1953 were independent but rather to pay the antecedent debt of 22nd April, 1948.

Mr. Garg Learned counsel. for the plaintiff-respondent contended that the transaction of conditional sale deed dated 22nd April, 1948 was void for want of legal necessity in as much as starting of a new business by Beni Ram did not constitute legal necessity. It was also contended that in any case after the execution of reconveyance deed Exhibit 49 there was no antecedent debt that may have survived. The reconveyance deed Exhibit 49 does not mention receipt of money from the vendee for repayment of any antecedent debt. Exhibit 40 sale deed in favour of Manibhai was subsequent to reconveyance deed Exhibit 49 and the alleged payment by the vendee before the Registrar do not constitute payment for any independent antecedent debt which in fact and in reality

existed on 11th February, 1953. Strong reliance is placed on Benares Bank Limited v. Hari Narain & Ors., 59 Indian Appeals, P. 300).

We do not find any force in the above contention of Mr. Garg. We have already discussed in detail that the conditional sale deed Exhibit 48 dated 22nd April, 1948 was not void even if the amount was taken by Beni Ram for his personal benefit of starting a new business of grain. It was an independent transaction both in fact as well as in time to the subsequent transactions of 11th February, 1953. The transaction of reconveyance deed dated 11th February, 1953 vide Exhibit 49 was for the benefit of not only Beni Ram but for the entire family including the plaintiffs. There was no consideration for this reconveyance of the property except the transaction of sale made in favour of Manibhai on 11th February, 1953 vide Exhibit 40. Thus sale deed Exhibit 40 was perfectly valid and was made in order to pay the antecedent debt of Exhibit 48.

So far as Benares Bank Limited v. Hari Narain, case (supra) is concerned, it did not lay down any proposition against the conclusions arrived at by us. In the above case the appellant Bank had instituted a
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suit against the members of a joint Hindu family governed by the Mitakashara Law to recover the balance due on and mortgage of a joint family property to secure an advance of Rs.28,000. The mortgage deed was executed by Jagdish Narain and Raghubir Narain each on behalf of his minor sons; the adult sons of Jagdish Narain were also joined in the deed. The deed recited that the advance was required to pay off two earlier mortgages and to carry on the mortgagor's business. Only the respondents, who were minors at the date of the mortgage, appeared to defend the suit. The Trial Judge passed a preliminary decree for sale for the sum claimed. On appeal the High Court of Allahabad held that the mortgage was valid only as to Rs. 18,000 which sum had been used to discharge antecedent debts. As to the remaining sum of Rs. 10,000 they found it had not been proved that the alleged debt of Rs.6,342 existed, and that the business for the purposes of which the balance of Rs.3,658 had been applied was not an ancestral business, and that, therefore, there was no authority to bind the minor members in respect of it. On further appeal their Lordships of the Privy Council held that the mortgage as regards the item of Rs.6,342 must be deemed to have been made for the payment of an antecedent debt of Jagdish Narain and Raghubir, and it was, therefore, binding upon their sons. As regards the item of Rs.3,658 their Lordships found that this amount was borrowed for the Thika business. Their Lordships after examining the evidence in this regard held that the business was started by Jagdish Narain and Raghubir Narain as managers of the family. A business, therefore, cannot be said to be ancestral so as to render the minors' interest in the joint family property liable for the debt. Their Lordships did not agree with the argument that a business started by a father as manager, even if new, must be regarded as ancestral. Thus it was held that the mortgage as to Rs.3,658 being neither for a necessity recognised by the law nor for the payment of an antecedent debt was wholly invalid under the Mitakashara Law, as applied in United Provinces and it did not pass the shares even of the alienating coparceners. Thus in the above case their Lordships considered the mortgage as not binding only to the extent of Rs.3,658 which amount was given by the bank by the transaction in dispute itself. In the case in hand before us the facts are entirely different and as we

have already observed, an amount of Rs.5,500 was taken by Beni Ram in 1948 and if the same was paid back by transaction Exhibit 40 dated 11th February, 1953, then it would certainly be a valid transaction for making the payment of an antecedent debt.

In Irukulapati Venkateswara Rao v. Vemuri Ammayya and Others, AIR 1939, Madras 561 it was held as under:

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"On the above finding, Exhibit A would prima facie be binding on defendant 2's share as well. But it has been contended on his behalf that as the debts of defendant No. 1 were incurred by him in connection with a trade started by himself, when trade was not the normal occupation of the family, the debts must be held to be avyavaharik debts and as such not binding on the son. The Learned counsel for the appellant submitted that this contention was opposed to the decision in Atchutaramayya v. Ratanjee Bhootaji, [1926] AIR Madras 49 211; but he argued that it is supported by the decision of the Privy Council in Benares Bank Limited v. Hari Narain & Ors., 54 ALL 564. We find nothing in 54 All 564 that supports this argument. Their Lordships there decided only the question of the binding character of the mortgage as such on the footing that moneys had been borrowed contemporaneously with the mortgage for the purpose of carrying on a trade started by the father. They declined to deal with the question of the son's liability for the debt under the pious obligation doctrine, on the ground that the question had not been raised in the Court in India."

A Bench of three Judges of the Supreme Court in Luhar Amrit Lal Nagji v. Doshi Jayantilal Jethalal & Ors., AIR 1960 SC 964 has already held that the doctrine of pious obligation under which sons are held liable to discharge their father's debts is based only on religious considerations. This doctrine inevitably postulates that the father's debts must be vyavaharik. If the debts are not vyavaharik or are avyavaharik the doctrine of pious obligation cannot be invoked.

Their Lordships quoted with approval the five propositions laid down by the Privy Council in the case of Brij Narain v. Mangala Prasad, (supra). Dealing with Suraj Bansi Koer, case 6 Indian Appeals 88 (PC) observed as under:

"We have carefully considered this matter and we are not dispossessed to answer this question in favour of the appellants. First and foremost in cases of this character the principle of stare decisis must inevitably come into operation. For a number of years transactions as to immovable property belonging to Hindu families have taken place and titles passed in favour of alienees on the understanding that the propositions of law laid down by the Privy Council in

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the case of Suraj Bansi Koer, 6 Indian Appeals 88 PC, correctly represent the true position under Hindu Law in that behalf. It would, we think, be inexpedient to reopen this question after such a long lapse of time,"

It was further observed in the above case.

"It is also well known that, in dealing with questions of Hindu Law, the Privy Council introduced considerations of justice, equity and good conscience and the interpretation of the relevant texts sometimes was influenced by these considerations. In fact, the principle about the binding character of the antecedent debts of the father and the provisions about the enquiry to be made by the creditor have all been introduced on considerations of equity and fair-play. When the Privy Council laid down the two propositions

in the case of Suraj Bansi Koer, 6 Indian Appeals 88 PC, what was really intended was to protect the bona fide alienees against frivolous or collusive claims made by the debtor's sons challenging the transactions- Since the said propositions have been laid down with the object of doing justice to the claims of bona fide alienees, we do not see any justification for disturbing this well-established position on academic considerations which may perhaps arise if we were to look for guidance to the ancient texts today. In our opinion, if there are any anomalies in the administration of this branch of Hindu Law their solution lies with the legislature and not with the courts. What the commentators attempted to do in the past can now be effectively achieved by the adoption of the legislative process. Therefore, we are not prepared to accede to the appellants' argument that we should attempt to decide the point raised by them purely in the light of ancient Sanskrit Texts."

In Vyankates Dhonddeo Deshpande v. Sou. Kusum Dattatraya Kulkarni & Ors., [1979] 1 SCR 955, this Court clearly laid down as under:

"Assuming we are not right in holding that the debt, was for the benefit of the estate of the joint family and, therefore, a joint family debt, and assuming that Mr. pal is right in contending that it was the personal debt of the father,

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yet the doctrine of pious obligation of the son to pay the father's debt would still permit the creditor to bring the whole joint family property to auction for recovery of such debts. Where the sons are joint with their father and debts have been contracted by the father for his personal benefit, the sons are liable to pay the debts provided they were not incurred for an illegal or immoral purpose. This liability to pay the debt has been described as pious obligation of the son to pay the father's debt not tainted with illegality or immorality. It was once believed that the liability of the son to pay the debts contracted by the father, though for his own benefit, arises from an obligation of religion and piety which is placed upon the sons under the Mitakshara Law to discharge the father's debts, where the debts are not tainted with immorality, yet in course of time this liability has passed into the realm of law."

Thus we also hold that even if any loan is taken by the father for his personal benefit which is found as vyavaharik debt and not avyavaharik, the sons are liable to discharge their father's debts under the doctrine of pious obligation and in this view of the matter if any alienation of the joint family property is subsequently made to discharge such antecedent debt or loan of the father, such alienation would be binding on the sons.

Now, so far as the house property is concerned, the same was subsequently sold by Manibhai to defendants Nos. 4 to 8. The defendants Nos. 4 to 8 demolished the house and by spending an amount of Rs.25,000 constructed a new house much before the filing of the present suit. The issue No. 10 was framed in this regard and the Trial Court gave a categorical finding that the defendants Nos. 4-8 had proved that they had spent Rs.25,000 on the reconstruction of the house within the knowledge of the plaintiffs Nos. 1 and 2 after his purchase from the defendant No. 1 and still none had objected or noticed them against it. In this view the plaintiffs Nos. 1 and 2 and the defendant No. 9 would be estopped from challenging the title of defendants Nos. 4 to 8 now. The High Court also did not set aside the above finding and as such we uphold the finding of the Trial Court in this

regard.

Now, so far as the transactions Exhibit 41 and Exhibit 42(61) are concerned, they stand on a different footing altogether. By Exhibit 41 part of agricultural field survey No. 1 measuring 10.69 acres has been

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sold by Beni Ram and his four sons to Vishwanath and Vithal Rao for a sum of Rs.5,345. By another transaction vide Exhibit 42(61) Beni Ram and his sons sold one acre of agricultural land of survey No. 1 and 8.40 acres.of survey No. 19 in favour of Vithal Rao and Vishwanath for a sum of Rs.3,000 on 19th July, 1954. The High Court in this regard has recorded a clear finding that the aforesaid alienations were made neither for any legal necessity nor for the benefit of the estate nor for payment of any antecedent debt. We have also gone through the evidence in this regard and we are fully convinced that the aforesaid transactions' had no connection with Exhibit 48 or to pay any other antecedent debt and we agree with the finding of the High Court in this regard.

The net result of the above discussion is that this appeal is allowed in part. The Judgment and decree passed by the High Court is set aside to the extent of granting a decree for possession of the house property and agricultural land survey Nos. 3 and 18 sold in favour of Manibhai vide Exhibit 40 dated 11th February, 1953 and the suit with regard to these properties is dismissed. The rest of the Judgment and decree of the High Court in respect of agricultural lands survey Nos. 1 and 19 which were alienated in favour of Vithal Rao and Vishwanath, defendants Nos. 2 and 3 vide Exhibits 41 and 42(61) is maintained and the suit of the plaintiffs for possession with regard to these properties stands decreed.

In the facts and circumstances of the case, the parties shall bear their own costs.

T.N.A. Appeal allowed.

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