Supreme Court of India
Prasad & Ors vs V. Govindaswami Mudaliar & Ors on 8 December, 1981
Equivalent citations: 1982 AIR 84, 1982 SCR (2) 109
Author: D Desai
Bench: Desai, D.A.

PETITIONER:
PRASAD & ORS.

Vs.

RESPONDENT:
V. GOVINDASWAMI MUDALIAR & ORS.

DATE OF JUDGMENT08/12/1981

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
MISRA, R.B. (J)

CITATION:
1982 AIR 84 1982 SCR (2) 109
1982 SCC (1) 185 1981 SCALE (3)1867
CITATOR INFO :
F 1989 SC1247 (5)

ACT:
Hindu Law-Joint Hindu family-Ancestral business carried on-Karta starting a new business-Incurring debts alienation of joint family property by karta and his brother for liquidation of debts-Alienation assailed by sons-Alienation-Whether valid.

Hindu Law-Antecedent debt-What is-Debt whether to the antecedent in fact as well as in time-Whether to be independent of and not part of the transaction impeached.

Hindu Law-Alienation of joint hindu family property-Validity of alienation assailed-Legal necessity and adequate consideration-Proof of-Whether required.

Constitution of India 1950, Art. 733-Findings of fact-Supreme Court-Interference by-When arises.

HEADNOTE:
The Karta of a Joint Hindu Family was in sole management of the entire family affairs and he brought up his younger brother. The ancestral family business (Kulachara) was that of tobacco and money lending. After sometime the Karta started a new business of lungi. In connection with this new venture he borrowed money from

others either on promissory notes or on the security of the family properties. He suffered loss in the new business. When his creditors began to press him for immediate discharge of the debts the Karta and his brother on their behalf and on behalf of the other minors in the family entered into a written agreement on 7th July, 1955 (Ext. B-4) with Govinda Swami Mudaliar and his two brothers whereby they agreed to sell their almost entire property for a sum of Rs. 14,000 to discharge their debts. Pursuant to this agreement a sale deed was executed on 22nd August, 1955 (Ext. B-5) for an enhanced consideration of Rs. 16,500. The sale deed referred to the various debts including the mortgage debts owed by the vendors which were to be discharged by the vendees and the balance if any to be paid to the vendors. The vendees were asked to pay off the mortgage debts mentioned in the sale deed in the first instance if they had no sufficient funds to clear off all the debts.

The sons of the Karta and those of his brother filed two suits, suit No. 107 of 1958 and suit No. 108 of 1958 respectively challenging the sale deed dated 22nd
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August, 1955 (Ext. B-5) and the mortgage deed of 2nd March, 1952 (Ext. B-49), and claiming partition.

In suit No. 107 of 1958 the Karta and his brother were Defendant Nos. 1 and 2, the three minor sons of the Karta's brother, Defendant Nos. 3 and 5 and the vendees Defendant Nos. 6 to 8, the mortgagee, Defendant No. 9 and the official Receiver, Defendant No. 10. In suit No. 108 of 1958 the three minor sons of the Karta's brother were the plaintiffs and the plaintiffs and other defendants of suit No. 107 of 1958 were impleaded as defendants.

It was alleged in the suits that the father of the plaintiffs (Karta) started a new business of lungi which was not the ancestral business of the family, and that in connection with the new venture he borrowed large sums of money. He sustained heavy losses, and when the mortgagees and unsecured creditors started pressing for immediate discharge of the debts he executed first an agreement to sell and then a registered sale deed for a nominal consideration of Rs. 16,500 which was grossly inadequate and extremely low considering the extent of the land and the ancestral house and its market value. It was further alleged that except the two mortgages mentioned in the sale deed the other debts shown as consideration for the sale were false and fictitious, that the said mortgages were paid by defendants 6 to 8 out of the standing crops, and that there was absolutely no necessity for borrowing the large sums considering the large income from the joint family properties.

A third suit (suit No. 4 of 1960) was filed by a creditor of the Karta and his brother against the vendees, alleging that the Karta had borrowed a sum of Rs. 1000 and

executed a bond for that amount and that barring some payments a substantial amount was due on account of principal and interest and that the Karta executed a sham, nominal and fraudulent sale deed in respect of the family property in favour of the defendant with an intent to defeat and delay his creditors, and that property worth Rs. 50,000 was alienated for a nominal price.

The claim of the plaintiffs in the suits was resisted and contested by the transferees, alleging that the alienation by the Karta was for payment of antecedent debts which were untainted by immorality. The father under Hindu Law possessed a special power to alienate joint family property including the shares of his sons for payment of his own debts not incurred for immoral or illegal purposes and that in exercise of that power the Karta had sold all his interest and the interest of the minor sons, that an agreement of sale was first entered into and later on a sale deed was executed pursuant to the agreement for sale.

The trial court held that at the time of execution of the sale deed Ext. B-5, the 4th defendant that is the Karta owed some creditors in whose favour he bad executed promissory notes and the bond debts involved in Ext. A-7 to A-11; but no provision at all had been made for these creditors either in the agreement of sale or in the sale deed. The letter by the Karta dated 27th July, 1954 (Ext. B-54) alongwith other oral evidence clearly established the intention of the Karta to defeat and delay the claim of some of the creditors in screening his property by a nominal sale in favour of defendants I to 3. The sale deed is true and supported by consideration but only partly, and that it is liable to be set aside wholly as

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an imprudent transaction. The mortgage deed is true and binding only so far as the shares of the Karta and his brother are concerned. The alienees under the sale transaction were not entitled to any equities.

On these findings, the trial Court passed a preliminary decree for partition and division after setting aside the sale transaction the alienees being directed to work out their own remedies. The alienation dated 2nd March, 1952 was declared binding only on the shares of the Karta and his brother to the extent of Rs. 2,000. The Court however declined to give any relief to the alienees even in respect of the amount actually paid by them to discharge some of the debts incurred by the Karta on the ground that the transaction had been vitiated by fraud.

The alienees defendants preferred appeals to the High Court but the mortgagee submitted to the judgment and decree and did not prefer any appeal presumably because he could realise the amount due to him by virtue of the decree granted to him,

The High Court reversed the findings of the trial court in suits Nos. 107 and 108 of 1958 and set aside the decrees

but confirmed the finding and decree in suit No. 4 of 1960, holding that the purchase of the suit land was for a reasonable price and the consideration of Rs. 16,500 was not a grossly low price. The lungi business started by the Karta was a new venture and not his family business. The debts mentioned in Ext. B-5 were antecedent debts from the point of view of the plaintiffs in suit No. 107 of 1958 and were binding on them. The debts evidenced by Exts. 13 and 14 were genuine debts and the alienation, Ext. 5 was binding on the plaintiffs in the two suits as the sale deed was executed by their father in discharge of antecedent debts.

In the appeals to this Court it was contended on behalf of the appellants that the High Court had omitted to take into consideration various circumstances considered by the trial court and as such the findings of the High Court on material issues were vitiated, that the High Court omitted to consider whether the impugned sale was an imprudent transaction, if not fictitious. On behalf of the respondents it was contended that the findings recorded by the High Court were pure findings of fact based on appraisal of evidence and this Court cannot reverse the findings recorded by the last court on facts

Allowing the appeals

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HELD: 1. On the evidence both oral, documentary and circumstantial the trial court was right in holding that the sale deed is true and that it is supported by consideration but only in part and that even the recited consideration in the sale deed is thoroughly inadequate and that the sale deed was executed only nominally for a collateral purpose and with a view to stave off creditors. [134 D]

2. The contention of the counsel for the respondents that finding of fact cannot be interfered with by the Court has no force as the finding is being

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reversed on the ground that material circumstances had been ignored by the High Court. [134 F]

In the instant case, there is no question of giving any equities to the vendee even if some of the amount paid by the vendee to some of the creditors of the Karta were genuine. [134 G]

3 The finding that the consideration for the sale deed was thoroughly inadequate, is correct and the sale therefore cannot be upheld. [138 D]

4. ID order to uphold an alienation of a joint Hindu family property by the father or the manager it is not only necessary to prove that there was a legal necessity but also that the father or the manager acted like a prudent man and a did not sacrifice the property for an inadequate consideration. [137 H-138 A]

In the instant case, the Karta had contracted the debt in connection with his new personal business and to clear all those debts he has executed the sale deed. The debt in

question was an antecedent debt so far as his sons were concerned, and therefore, they were under a pious obligation to pay all those debts. It was open to the father to execute a sale deed in respect of the shares of his sons also unless it was shown that the debt was tainted with immorality or was for an illegal purpose. The case of the sons was not that the debt was contracted for an illegal or immoral purpose. The sale would therefore be binding on the sons of the Karta. With regard to the sons of the Karta's brother, the same is however not the position. In view of the factual position that the lungi business was the individual or private business of the Karta it could not be said that his brother had alienated the joint family property in the capacity as father of his sons for discharging any antecedent debt incurred by him merely because he had also joined the Karta in executing the sale. The share of the sons of the brother could not therefore have been alienated by the Karta for discharging antecedent debts. [135 E-H]

5. Ext. B-54, an inland letter dated 27th July, 1954 was written by the Karta in Telugu to Veeraswami Naidu, and is the most important document supporting the vendors. This letter has been relied upon by the trial Court but has been discarded by the High Court. If this letter is proved to be genuine it gives a death blow to the case of the vendees. This letter which bore postal stamps could not have been fabricated. The observation of the High Court that it might have been written subsequently is a conjecture. No such case was even set up by the vendees in the written statement or in the evidence. The High Court attached undue importance to the fact that if Ext. 54 reached the addressee on the 4th August, 1955 then Exts. B-20 and B-48 could not have been prepared on the 30th July, 1955. The difficulty is solved if a reference is made to the last paragraph of the letter. The addressee was informed that they were coming to meet D.W. 12 the next day. There was, therefore nothing improbable in the preparation of these two documents on 30th July, 1955. [123 B-C, 126 A, 125 H, 126 B-C]

6. The observation of the High Court that there was no necessity for the Karta and his brother to bring into existence fictitious promissory notes in favour of D.W. 3 and D.W. 12 as they could have easily mentioned the other undisputed

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debts owed by them to support the recital of the consideration in the sale deed, A also does not hold good because there is ample evidence on record to warrant the conclusion that the promissory notes in favour of W. 3 and D.W. 12, were fictitious. Most of the debts have neither been referred lo in the deed of agreement for sale nor in the sale deed and it was purposely done. If the aforesaid circumstances had been taken into consideration the High Court could have had no difficulty in accepting Ext. 54 as genuine. [126 G-127 A]

In the instant case, the new business of lungi started by the Karta ended in a loss. There was pressure from the creditors for the discharge of the debts. As a prudent man, he would have liked to save his property to the extent he possibly could and pay off the various debts incurred by him. Curiously enough the Karta and his brother sold away the entire landed property of about 47 acres, leaving behind only an acre, and a house, owned by the joint family for a petty sum of Rs. 16,500. Out of the total consideration of Rs. 16,500 the vendees were asked to discharge the various debts. All the debts incurred by the Karta were not shown in Ext. B-S and Ext. B-4 the deed of agreement. [127 C-D]

7. The stipulation in the sale deed that the vendee pay off only the secured debts and clear off the other ordinary debts at their leisure itself indicates that there was no anxiety on the part of the vendors to clear of all the debts. It is also not clear why the vendors should adopt such an attitude. These circumstances speak for themselves. They indicate that the vendees persuaded the Karta to execute a sale deed of almost his entire family property under the pretext of assistance to him with the stipulation that they would re-convey the property to the vendors after the pressure from the creditors was over. [128 C-E]

8(i) The legal position under the Hindu Law about the pious liability of the sons to discharge the antecedent debts of the father is quite clear. A natural guardian of a Hindu minor has power in the management of his estate to mortgage or sell part thereof in case of necessity or for the benefit of the estate. If the alienee does not prove any legal necessity or that he does not made reasonable enquiries, the sale is invalid. But the father in 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 any immoral purpose. (ii) "Antecedent" debt means antecedent in fact as well as in time. The debt must be independent of and not part of the transactions impeached. The debt may be a deb; incurred In connection with a trade started by the father. The father alone can alienate the sons' share in the case of joint family. The privilege of alienating the whole of joint family property for payment of an antecedent debt is a privilege only of the father, grandfather and great grandfather qua the son or grandson only. No other person has any such privilege. [134 H-135 B, D-E]

Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh and Ors. [1954] SCR 177; Brij Narain v. Mangla Prasad and ors, L.R. 51 I.A. 129. Shanmukam v. Nachu Ammal A.I.R. (1937) Mad. 140; Dudh Nath v. Sat Narain Ram A.I.R. (1966) All. 315, referred to.

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The validity of an alienation made to discharge an antecedent debt rests upon the pious duty of the son to discharge his father's debt not tainted with immorality. [135 C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1102- 1103 of 1970.

Appeals by certificate from the judgment and Decree dated 6th November, 1968 of the Madras High Court in A. S. Nos. 534 of 1961 and 165 of 1962.

T.S. Krishnamurthy Iyer, Gopal Subramaniam and Mrs. Gopala krishnan for the Appellants.

Vepa P. Sarathy, Naresh Sharma and Vineet Kumar for the Respondents.

The Judgment of the Court was delivered by MISRA J. The present appeals by certificate are directed against the judgment dated 6th November, 1968 of the Madras High Court.

The dispute between the parties centres around 48.70 acres of land, partly wet and partly dry in village Pichanur, Gudiyattam Taluk, North Arcot District and one house in Gudiyattam town. Admittedly the said properties belonged to one Varadayya Chetty. He had two sons, K. V. Purushotham and K. V. Sriramalu. K.V. Purushotham in his turn had four sons while K.V. Sriramulu had three sons. They constituted a joint Hindu family. The family owned and possessed 48.70 acres of land and three houses. Vara dayya Chetty died about 30 years prior to the institution of the suits giving rise to these appeals. At the time of his death his eldest son K. V. Purushotham was the only adult male member, the other son, K.V. Sriramulu being only 4-5 years old. Purushotham thus came into the sole management of the entire family affairs and he brought up his younger brother Sriramalu. Their ancestral family business (Kulachera) was that of tobacco and money lending.

It appears that immediately after the second world war Purushotham started a new business of lungi. In connection with his new venture he borrowed money from others either on promissory notes or on the security of the family properties. He, however, suffered loss in that business. When his creditors began to press for imme-

diate discharge of the debts, K. V. Purushotham and his brother K.V. Sriramalu on their behalf and on behalf of other minors in the family entered into an agreement on 7th July, 1955 with V. Govindaswami Mudaliar and V. Nataraja Mudaliar, sons of Vadinankuppam Venugopala Mudaliar. This agreement was evidenced by a writing, Ext. 4. Under the agreement K. V. Purushotham and K.V. Sriramulu were to sell their entire property, except one acre of land, and a house, to Mudaliar brothers for a sum of Rs. 14,000 to discharge their debts. They received a sum of Rs. 500 by way of advance and the balance of Rs. 13,500 was to be paid within two months. It was further stipulated that in case the vendees defaulted they would lose the advance money, on the other hand if the vendors defaulted they would have to pay to the vendees a liquidated damage of Rs. 2000.

Pursuant to the aforesaid agreement, a sale deed was executed on 22nd of August, 1955 marked Ext. B-5 for an enhanced consideration of Rs. 16,500. The sale deed referred to various debts owed by the vendors which were to be discharged by the vendees and the balance, if any, was to be paid to the vendors. The recital in the sale deed indicates that Rs. 250 was paid in cash to the vendors at the time of the execution of the sale deed. The sale deed further recites that the vendors have not shown the exact amount of debts which the vendees have agreed to pay. The amounts specified therein are only approximate. The sale deed further authorised the vendees to discharge the mortgage debts mentioned in the sale deed in the first instance, if they had no sufficient funds to clear off all the debts at one time and clear off the ordinary debts later.

The validity of the aforesaid sale deed, Ext. B-5 dated 22nd August, 1955 and a mortgage deed Ext. B-49 in favour of A. M. Vasudeva Mudaliar had been challenged by the sons of K.V. Purushotham and K.V. Sriramalu respectively by two suits: Suit No. 107 of 1958 and Suit No. 108 of 1958. There was yet another suit by one of the creditors, M.V. Chinnappa Mudaliar for annulment of the said sale. As mentioned earlier, the original sui: No.107 of 1958 was filed by the four sons of Purushotham impleading Purushotham and Sriramulu as defendants Nos. 1 and 2 and three minor sons of Sriramulu as defendants Nos. 3 to 5 under the guardianship of their mother; V. Govindaswami Mudaliar, V. Shanmugha Mudaliar, and V. Nataraja Mudaliar, the three vendees as defendants Nos. 6 to 8 in suit No. 107 of 1958 and defendants Nos. 8 to 10 in suit No. 108 of 1958; A.M.

and the official Receiver of the North Arcot District as defendant No. 10.

Suit No. 108 of 1958 was filed by the three minor sons of Sriramulu. The plaintiffs and other defendants of original suit No. 107 of 1958 were impleaded as defendants in this suit. The relief claimed in these suits was for partition after setting aside the sale deed dated 22nd of August, 1955, Ext. B-5 and the mortgage deed Ext. B-40 in favour of A.M. Vasudevan Mudaliar. The allegations in the plaint of the two suits are on the same pattern. It will, therefore, suffice to refer to the allegations made in suit No. 107 of 1958.

It is alleged in the plaint that the ancestral property of the family consisted of 48 acres and 70 cents of land and three houses detailed in Schedules and to the plaint. The said land fell in two blocks, one consisting of 43 acres, 21 cents and the other of 5 acres 49 cents. There were two wells in the first block and one well in the second block. There were two pump-sets with electric motors installed in the two wells in the first block at a cost of Rs. 3000 each. The net cultivation yield from the land in any case would not be less than Rs. 6000 per year which was more than sufficient for the maintenance of the family leaving even some surplus. The father of the plaintiffs started a new business of lungi which was not the business 'Kulachara' of the family. In connection with the new venture he had to borrow large sums of money either on promissory notes or on the security of the aforesaid property. In course of the said business Purushotham sustained a heavy loss. When the mortgagees and unsecured creditors started pressing for immediate discharge of the debts, defendants 6 to 8, who happened to be friends of Purushotham, induced him to create a nominal sale of the house and the entire land, except an acre, in order to stave off the immediate pressure. Purushotham seemed to have fallen in with the idea and consequently executed first an agreement

to sell and then a registered sale deed dated 22nd of August, 1955 for a nominal consideration of Rs. 16,500 in respect of the entire land in Schedule with electric pump sets, with the exception of one acre, and a house which is item No. 1 of Schedule C. Defendants 6 to 8 represented that they would execute a formal deed of reconveyance of the properties after the pressure from creditors was staved off. The sale deed was not supported by consideration and even recited consideration Rs. 16,500 was grossly inadequate and extremely low consi-

dering the extent of land and the house and their market A value. The entire joint family property was not worth less than Rs. 35,000 and its annual yield was worth more than Rs. 6,000. The house mentioned at item No. l of Schedule was also worth Rs. 5,000 though the consideration for the same in the sale deed was only Rs. 2,000. Defendants l and 2 continued in possession of the properties sold, for about a year when suddenly defendants Nos 6 to 8 conceived the idea of defrauding the defendants I and 2 and by force and violence trespassed upon the lands and took forcible and unlawful possession thereof along with the standing crops worth Rs. 6,000 Defendants 1 and 2 were, however, still in possession and enjoyment of the house mentioned in item No. 1 of Schedule C. Defendants 6 to 8 were bound to deliver the possession of the land to the plaintiffs and defendants l to S together with the mesne profits from June 1 956, the date of trespass.

It was further alleged that except the two mortgages mentioned in the sale deed the other debts shown as consideration were false and fictitious. Even the said mortgages were paid by defendants 6 to 8 out of the standing crops. There was absolutely no necessity for borrowing the large sums considering the large income from the joint family properties. Even if the alleged debt due on the promissory note executed by defendant No. I in favour of the 9th defendant was true, it was not binding on the plaintiffs to the extent of the cash consideration as it was not for necessity. Defendant No. 2 joined the execution of sale deed and the mortgage deed at the behest of the 1st defendant and on misrepresentations made by defendants Nos. 6 to 8 and in fact he had not derived any benefit from the borrowings. As M.V. Chinnappa Mudaliar had filed a petition against Purushotham, being insolvency petition No. 20 of 1955, and Purushotham was adjudged insolvent so the official Receiver was impleaded as a defendant in this case.

The third suit being suit No. 4 of 1960 was filed by M.V. Chinnappa Mudaliar, a creditor of defendants K.V. Purushotham and K.V. Sriramulu against the vendees V. Govindaswami Mudaliar and his two brothers arrayed as defendants I to 3. He first filed an insolvency petition in which Purushotham was adjudged as insolvent. The said creditor had approached the official Receiver for filing a suit for the annulment of the said sale but as official Receive} demanded a lot of expenses he, therefore, sought the permission of the Insolvency Court to file suit No. 4 of 1960 himself fora declaration that the sale deed dated 22nd of August, 1955 executed by Purushotham in favour of vendees was void or voidable at the instance of the creditors of Purushotham and for annulment of the same. According to him Purushotham had borrowed a sum of Rs. 1000 from him and had executed a bond for that amount on 17th September, 1947 carrying interest at 13 annas per cent per mensem. Barring some payments a substantial amount was still due from him as principal and on account of interest in the middle of 1955. Purushotham, however, executed a sham, nominal and fraudulent sale deed dated 22nd August, 1955 in respect of almost all the family properties in favour of the defendants Nos. 1 to 3 with an intent to defeat and delay his creditors, including the plaintiff.

It was also pleaded that property worth Rs. 50,000 was alienated for a nominal price obviously for discharge of fictitious debts. So, the plaintiff claimed a relief under section 53 of the Transfer of Property Act.

The claim of the plaintiffs in all the three suits was resisted by the transferees. In substance their defence was that the alienation by Purushotham was for payment of antecedent debts which were untainted by illegality or immorality; that the father under the Hindu law possessed a special power to alienate joint family property including the shares of his sons for payment of his own debts not incurred for immoral or illegal purposes; that in exercise of that power he had sold all his interest and the interest of his minor sons, that d registered agreement of sale was entered into on 7th of July 1955 and the period of two months was provided for the performance of the contract and the vendees had investigated before entering into the transaction; that the transaction was normal, regular and bona fide one; that the vendees had in fact paid off the full consideration applying it for discharge of antecedent debts obtaining from several creditors vouchers for such due payment and cancellation. A.M. Vasudevan Mudaliar who had been arrayed as defendant No. 9 in suit No. 107 and as defendant No. 7 in suit No. 108 of 1958 resisted the claim of the plaintiffs in those suits on the ground that the mortgage in his favour was incurred for the discharge of antecedent debts and for the need of the Hindu family, which was binding upon the members of the family. The plaintiffs in both the suits Nos. 107 and 108 of 1958, the sons of the vendors, were bound by the said alienation.

The pleadings of the parties gave rise to a number of issues. Some of the issues were common in all the three suits. On the request of the parties all the three suits were jointly tried.

Before the trial commenced a joint memo was filed in original suit No. 4 of 1960 whereby the parties agreed that the evidence in original suit No. 4 of 1960 regarding lack of consideration for the sale deed dated 22nd of August, l 955 and the value of the properties, be treated as evidence in original suit Nos. 107 and 108 of 1958. They also agreed that the evidence regarding the mortgage deed dated 2nd of March 1952 be treated as common evidence for original suit Nos. 107 and 108 of 1958 After this statement by the counsel for the parties, the original issues framed in the three suits were recast and additional issues were also framed.

The Subordinate Judge came to the following conclusions in suit No. 4 of 1960:

> (1) At the time of execution of the sale deed. Ext. B- S, the fourth defendant, that is Purushotham, owed some creditors in whose favour he had executed Exts. A-3, A-4, A-12, A-13 and the bond debts involved in Exts. A-7 to A-11, but no provision had at all been made for those creditors either in the agreement of 3 sale Exts. B. 4 dated 7th of July, 1955 or in Ext. B-5, the sale deed dated 22nd of August, 1955.
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> (2) Ext. B-54, the letter written by Purushotham in favour of Veerasami Naidu dated 27th of July, 1')55 along with other oral evidence clearly establishes the intention of Purushotham to defeat and delay the claim of some of the creditors in screening his property by a nominal sale in favour of defendants I to 3.

(3) The ingredients of section 53 (1) of the Transfer of Property Act have been satisfied by the plaintiff in as (much as impugned transfers have been made with intent to defeat or delay the creditors of the transferor. The Court, however, came to the conclusion that the suit was wrongly framed inasmuch as the plaintiff did not seek any relief on behalf of or for the benefit of all the creditors and, therefore, the Court decreed the suit No. 4 of 1960 as against defendants 1 to 3, that is, alienees annulling the sale transaction dated 22nd August, 1955 as fraudulent preference under section 54 of the Provincial Insolvency Act, insofar as the insolvent's share was concerned His conclusions in suit Nos. 107 and 108 of 1958 were as follows:

> (1) The value of the land and house including the pump sets, wells etc. comprised in Ext. B-S could have been in August 1955 worth anywhere between Rs. 35,000 to Rs. 35,000 but the same had been sold at a grossly low and inadequate price of Rs. 16,500. (2) Purushotham and Sriramulu with the help of Shri Rangaswami, who was their friend, approached the vendees for help and on their suggestion they agreed to execute a nominal sale of all their properties with an understanding for reconveyance after ten years on payment of the sums advanced by them and that in that connection they had thought of executing the two bogus bonds, one in favour of Veeraswami Naidu, DW 12, and another in favour of Deivasigamani Mudaliar, DW 3 and certain other documents to make the sale probable.
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> (3) The sale dated 22nd August, 1955 is true and it is supported by consideration but only partly. It is, however, liable to be set aside wholly as an imprudent transaction.
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> (4) The mortgage deed dated 2nd of March 1952 is true and binding only so far as shares of K.V. Purushotham and Sriramulu are concerned and to the extent of Rs. 2000 so far as the plaintiffs in original suit No. 107 of 1958 are concerned. (5) The alienness under the sale transaction dated 22nd of August 1955 are not entitled to any equities in this suit. But the alinee under Ext. B. 49 would be entitled to have his two items of house allotted to the share of K.V. Purushotham and K.V. Sriramulu to work out his equities but this will be easily done in the final decree proceedings in original suit No. 107 of 1958 A and 108 of 1958.

(6) The plaintiffs would be entitled to past profits from the alienees of the sale transaction dated 22nd of August, 1955 from the year 1956-57 as it is in evidence that they entered possession in that year. B on these findings the Subordinate Judge passed a preliminary decree for partition and division of their respective shares in suit Nos. 107 of 1958 and 108 of 1958 which was 215th and 318th respectively in both the suits after setting aside the sale transaction dated 22nd of August, 1955 and directing the alienees to work out their remedies outside the scope of these suits and declaring that the alienation dated 2nd March, 1952 was binding only on the shares of K.V. Purushotham and K.V. Sriramulu and to the extent of Rs. 2000. The plaintiffs were held entitled to a decree for past profits from 1556-57 as against the alienees of the sale transaction dated 22nd August 1955, the quantum to be determined in a separate enquiry in the final decree proceedings as was agreed to by the parties under order 20, rule 12 C.P.C. The court declined to give any relief to the alienees even in respect of the amount actually paid by them to discharge some of the debts

incurred by Purushotham on the ground that the transaction has been vitiated by fraud.

The alienees-defendants feeling aggrieved by the judgment and decree of the Subordinate Judge preferred appeals in all the three suits. The mortgagee Vasudevan Mudaliar, however, submitted to the judgment and decree and did not prefer any appeal presumably because he could realise the amount due to him by virtue of the decree granted to him. The High Court was, therefore, concerned only with the validity of the sale deed Ext. B-S in favour of the appellants.

The High Court reversed the findings of the trial court in suits Nos. 107 and 108 of 1958 and set aside the decree passed by the Subordinate Judge but confirmed the finding and decree in suit No. 4 of 1960. The High Court came to the conclusion that the purchase of the suit land under Ext. B-5 was for a reasonable price and the consideration of Rs. 16,500 mentioned in Ext. B-S was not a grossly low price. The lungi business started by Purushotham was new a venture of Purushotham and not his family business. His father had only a tobacco and money-lending business. The genuine debts mentioned in Ext. B-5 were antecedent debts from the point of view of the plaintiffs in original suit No. 107 of 1958. Therefore, they are binding on them. As the debts evidenced by Ext. B-13 and B-14 were genuine debts the alienation, Ext. B-5, is clearly binding on the plaintiffs in original suit No. 107 of 1958 as the sale deed was executed by their father in discharge of antecedent debts. The alienation under Ext. B-S can be supported not only against the plaintiffs in original suit No. 107 of 1958 but also against the plaintiffs in original suit No. 108 of 1958 as it was made in discharge of antecedent debts of their respective fathers.

On these findings the High Court allowed the appeals filed by the alienees in suit Nos. 107 and 108 of 1955 but dismissed the appeal filed in suit No. 4 of 1960. The plaintiffs have now come in appeal to challenge the judgement of the High Court.

The contention raised on behalf of the appellants is that the High Court has omitted to take into consideration various circumstances which had been taken into consideration by the trial court and as such the findings of the High Court on material issues are vitiated. The High Court further omitted to consider whether the impugned sale was an imprudent transaction, if not fictitious. The counsel for the respondents, on the other hand has contended that the findings recorded by the High Court are pure findings of fact based on appraisal of evidence and this Court cannot reverse the findings recorded by the last court of facts. We have to consider the findings of the High Court in the light of the contentions raised by the parties.

The question for consideration in these appeals is about the genuineness of the sale deed Ext. B-5 dated 22nd of August, 1955 executed by Purushotham and Sriramulu in favour of respondents I to 3. As stated earlier the sale deed was challenged by the plaintiffs on grounds: (a) that it was executed only nominally for a collateral purpose and with a view to stave off creditors with the express understanding that the properties sold would be re-conveyed to the vendors after the pressure of the creditors had subdued; (b) that even the recited consideration in the impugned sale deed was grossly inadequate; (c) that the debts under the promissory notes Ext.B-13 in favour of Veeraswami Naidu and Ext. B-14 in favour of Deivasigamani Mudaliar were fictitious.

The burden squarely lay on the vendees to prove that the impugned sale deed was valid and binding on the plaintiffs and their respective shares. To discharge this burden the vendees have A produced both oral and documentary evidence. The vendors have also produced both oral and documentary evidence in support of their case.

Before dealing with the oral evidence of the parties in detail, it is pertinent to refer to Ext. B-54 which is the most important document supporting the vendors. This is an inland letter dated "7th of July, 1955 written by K.V. Purushotham in Telugu to Veeraswami Naidu. If this letter is proved to be genuine it will give a death blow to the case of the vendees. This letter has been relied upon by the trial court but has been discarded by the High Court. As this letter is a revealing one it will be appropriate to quote the letter in extenso.

> "Gudiyattam, 27.7.55 Letter written by Gudiyattam K.V. Purushotham with salutations to elder brother Sri B. Veeraswami Naidu of Mathangal village. Here all are keeping good health with your blessings. Please write to me your and your children's welfare.
>
> In respect of the debts due to the creditors by me here, I and your son-in-law T.G. Rangaswami Naidu went to see Vaithana Kuppam Venugopala Mudali and his sons V. Govindaswami Mudali and brothers and had a talk with them in respect of the debts due by me. They said to us that I should execute a sale deed in respect of my properties in their favour and that after the creditors demands (troubles? subside the amount that they would be giving us shall be repaid within a period of 10 years and that on such repayment they would reconvey property conveyed in their favour. As all of us have desired I and my younger brother entered into an agreement on 7.7.1955 agreeing to execute a deed of sale in pursuance of the talk we had.

Sale deed remains to be executed. In this connection (regard) I and my younger brother both have to create some nominal bonds fixing up to some dates and then set up as though these bonds were cancelled on payments being made by those persons and that those items might be recited in the sale deed to be executed. For resorting to this, we all decided and fixed you up as one such (person) in whose favour bonds have to be drawn up to a fixed date. If such bonds are drawn up in favour of respectable persons like you and if all of us join together, then the other creditors cannot do anything. As you are a trusted person these could be done in your favour as stated. They have agreed to give us great help in this matter. Further he is a very good friend of us. If the amount to which they are entitled to, is paid back within 10 years, without , fail, then they will reconvey by way of deed of sale in " our favour. They will not fail in their words. All of us have decided that a bond should be executed in your favour nominally fixing up to a particular date for a sum of Rs. 2500. Thereafter on some other date you have to make an endorsement of payment on the bond and return the bond after cancelling the same. Further I and my younger brother have executed a nominal bond for Rs. 1000 on 15.12.1954 in favour of C.R. Deivasigamani too i.e. his junior paternal uncle viz., V. Govindaswami Mudali's mother's sister's husband. Your son-in-law T.G. Rangaswami Naidu has attested as a witness in that.

In respect of the bond in your favour, you have to send a notice to us. V. Govindaswami Mudali, son of Venugopal Mudali told me that such a notice is essential that should be on record to strengthen the sale deed. Further, we are also told that you should write a letter to your son-in-law T.G. Rangaswami Naidu asking him to make demands regarding the amount due to you. The main reason for doing all these is to stop the trouble given by the other creditors to whom I owe.

Therefore, with a view to meet you in person, discuss and arrange regarding the aforesaid matter, I and your son- in-law T.G. Rangaswami Naidu are going over to your village tomorrow. You will have no difficulty in this matter. Therefore, I request that you and your senior son-in-law Raghavalu Naidu to remain in the house. We will inform you the rest of the matters in person.

we request you to show faith or kindness towards this poor family.

Thus with salutations. (in Telugu) Sd/- K.V. Purushotham."

The reasons which impelled the High Court to discard this letter are as follows: (I) the author of this letter K.V. Purushotham did not appear in the witness box; (2) the document does not come from a proper custody; (3) there is no reason why the letter should have been sent from Gudiyattam to Manthangal village when one could reach the latter village from Gudiyattam within a short time by a bus or other conveyance; (4) the letter was posted on 28th July, 1955 at 5 p.m. and reached its destination on 4th August 1955 as it appears to have detained at Ranipet in the interval then how did they come to prepare Ext. B-20 and Ext. B-48 even on 30th July 1955; (5) in Ext. B-54 Purushotham had expressed that he would be meeting D.W. 12, Veeraswami Naidu, on the very next day and thus there was no real necessity to write the letter Ext. B-54; (6) if Purushotham conspired with the son-in-law of D.W. 12, Veeraswami Naidu to bring into existence fictitious promissory notes, it is unlikely that they would announce it in the letter Ext. B-54 when they were not sure of the attitude of D.W. 12, Veeraswami Naidu, unless they wanted to create evidence for the purpose of the case; (7) there was no necessity for Purushotham and Sriramulu to bring into existence fictitious promissory notes in favour of D.W. 3, Deivasigamani and D.W. 12, Veeraswami Naidu, as they could have easily mentioned the other undisputed debts owed by them to support the recitals of consideration in the sale deed. The counsel for the respondents has reiterated the same reasons for discarding Ext. B-54.

The first ground which weighed with the High Court for discarding the letter Ext. B-54 is that the author of this letter K.V. Purushotham did not appear in the witness box and the document does not come to court from a proper custody. No such objection was raised no behalf of the vendees in the trial court regarding the admissibility of the letter. The evidence of D.W. 13 and D.W. 18 have clearly proved the handwriting of K.V. Purushotham in Ext. B-54. The observation of the High Court that the letter might have been written subsequently is conjectural one. No such case was even set up by the vendees in the written statement or in the evidence, Exhibit B-54 is an inland letter bearing the postal stamps and it could not have been fabricated.

A capita] has been made out of the delayed delivery of the letter on 4th August, 1955. The letter was posted on 28th of July, 1955 at 5 p.m. and it reached its destination on 4th of August, 1955. It

appears to have been detained at Ranipet in the interval. The High Court has attached undue importance to the fact that if Ext. B. 54 reached the addressee on 4th of August, 1955 then how did they come to prepare Exts. B-20 and B-48 even on the 30th of July. 1955. The difficulty is solved if we keep in mind the fact that in the last paragraph of the letter the addressee was informed that they were all coming to meet him (D.W. 12) at his place the next day. If in accordance with the recital of the letter Purushotham had reached the next day, the 29th of July, 1955, there was nothing improbable in the preparation of the two documents on 30th July, 1955.

There is a slight inconsistency in the evidence of W. 12 when he says that only on the receipt of Ext. B-54 other documents were prepared. But the evidence of D.W. 12, which otherwise appears to be natural, cannot be discarded merely on this slight inconsistency.

The other reason which has appealed to the High Court for believing Ext. B-54 is that if Purushotham was to meet Veeraswami Naidu the very next day, then there was no real necessity to write the letter Ext. B-54. It could not be expected that the letter would be so unduly delayed and if Purushotham has taken precaution by writing a letter and also by going to his place it cannot detract from p the value of Ext. B-54.

The observation of the High Court that there was' no necessity for Purushotham and Sriramulu to bring into existence fictitious promissory notes in favour of D.W. 3, Devasigamani and D.W. 12, Veeraswami Naidu as they could have easily mentioned the; other undisputed debts owed by them to support the recital of the consideration in the sale deed, also does not hold good in as much as' there is ample evidence on the record to warrant the conclusion that the promissory notes in favour of D.W. 3, Devasigamani and D.W. 12, Veeraswami Naidu were fictitious. Most of the debts have neither been referred to in the deed of agreement for sale nor in the sale deed and it was purposely-done.

If the High Court had taken into consideration the aforesaid tell- tale circumstances there would have been no difficulty in accepting Ext. B-54 as genuine.

The circumstances which should have been taken into consideration by the High Court before reversing the findings recorded by the trial court are as follows.

Tn connection with the lungi business started by K.V. Purushotham he had to borrow money from various creditors. When the new business of lungi ended in loss there was pressure from the creditors for the discharge of the debts. k. V. Purushotham was thus in a tight corner. As a prudent man, he would have liked to save his property to the extent he possibly could and pay off the various debts incurred by him. Curiously enough Purushotham and his brother. Stiramulu sold away the entire landed property of about 47 acres and odd, leaving behind only an acre, and a house, owned by the joint family for a paltry sum of Rs. 16,500. out of n the total consideration of Rs. 16,500 the vendees were asked to discharge the various debts mentioned in Ext. B-5, the sale deed. On an examination of the sale deed, Ext. B-S as well as the deed of agreement Ext. B-4, it is a clear that all the debts incurred by Purushotham were not shown in those deeds. Ext. B-4 detailed only two mortgage debts while Ext. B-S specified five items of debts. Admittedly there were other debts also

incurred by K.V. Purushotham. It passes one's comprehension why would K V. Purushotham and his brother Sriramulu sell away the entire landed property of 47 acres leaving behind only one acre, and a house, without making a provision for the discharge of all the outstanding debts. Not only that, there was a stipulation in the sale deed Ext. B-5 that the vendees may first pay debts under the mortgage if the vendees had no money to discharge all the debts at one and the same time and to clear off the ordinary debts at a later date.

What was the earthly reason for executing the sale deed of almost all the property owned by the family ? [f Purushotham wanted to save his reputation by paying off all the creditors then there should have been provision made for discharge of all the debts and at least they should have been specified either in the agreement to sell or in the sale deed, Ext. B-5. Admittedly there were other debts besides the debts specified in the sale deed, Ext. B-5. K.V. Purushotham owed to other creditors in whose favour he had executed promissory notes Ext. A-3, A-4, A-12 and A-13, and bond debts involved in Exts. A-7 to A-l l but these debts have not been shown either in Ext. B-4 or Ext. B-5 specially when the debts were to be discharged by the vendees under the terms of the sale deed as part of the consideration. If almost the entire property of the joint family was to be sold for the discharge of his debts, and yet a substantial part of the debt remains undischarged, there was no positive gain to the vendors in disposing of almost the entire property of the joint family.

The stipulations in the sale deed that the vendees might pay off only the secured debts and clear of the other ordinary debts at their leisure itself indicates that there was no anxiety on the part of the vendors to clear of all the debts. It does not stand to reason why should the vendors adopt such an attitude. These circumstances speak for themselves.

If we consider Ext. B-54 in the light of these circumstances, the letter appears to be a sequel to what has been agreed upon between K.V. Purushotham and the vendees or their father. Tho vendees persuaded Purushotham to execute a sale deed of almost his entire family property under the pretext of assistance to him with the stipulation that they would re-convey the property to the vendors after the pressure from the creditors was over. This can be the only reason why the vendors would agree to dispose of the entire joint family property for a paltry consideration of Rs. 16,500 out of which only Rs. 500 by way of advance and Rs. 250 at the time of execution of the sale went to the vendors according to the recital in the sale deed itself. The balance of the sale consideration is alleged to have been used by the vendees for paying off some of the creditors. The attempt on behalf of the vendees has been to show that they persuaded the creditors either to forgo the interest or to reduce the principal amount and thus they had cleared off the dues of the various creditors. In poof of this they tried to file the receipts and vouchers from the creditors most of which have been attested by the vendees' own kith and kin. Some of the documents which have been attested by these witnesses, have been belied by D.W. 12 at least in respect of Ext. B-13. He clearly admitted that Purushotham never borrowed any amount from him nor did he pay any amount towards any loan to him. He has given the full account of how Govindaswami Mudaliar and some other persons came to the mango thope of his son-in-law and met him there. They asked him to sign the endorsement of discharge in Ext. B-13. At first he protested and refused but on the assurance of other persons who were there he had to sign the document on their persuasion on the ground that they were setting up these documents in connection with a sale. The same position has been admitted by even

Rangaswami Naidu, D.W. 18.

It is true that purushotham, the author of the letter himself has not come to the witness box but the letter has been proved by the addressee himself, D.W. 12, Veeraswami Naidu. He also identified Exts. B-48 and B-48 A, the two cards containing his signatures, one addressed to K.V. Purushotham and the other to his brother, K.V. Sriramulu. But he admitted that he had signed those postcards without knowing their contents. This gives a clue how the vendees have been out to get attestations of the endorsements of discharge from creditors in respect of got up documents. The High Court has attached undue importance to the fact that Ext. B-54 has not come to the Court from proper custody, that is, it should have come to the court through Veeraswami Naidu but instead it was produced by his son-in-law, D.W.

18. Keeping in view the relationship between Veeraswami Naidu and his son-in-law, the production of the letter by his son-in-law cannot be said to be from an improper custody. His two sons-in-law have also appeared as witnesses as D. W. 13 and D.W. 18. D.W. 13, Rajavelu, deposed that on the day Ext. B-54 was received by D.W. 12 he was present. According to him on that day Govindaswami Mudaliar and Purushotham came to their place and Purushotham informed Veeraswami, his father-in-law that as a support for a sale deed they had got up a bond in his favour. He dittoes what has been said by Veeraswami Naidu. The other son-in-law, Rangaswami Naidu, D.W. 18, also appeared as witness. He owns land adjacent to the suit land. He also deposed that the bond debt mentioned in Ext. B-S in favour of D.W. 12 and the bond debt in favour of D.W. 3, Deivasigamani were got up ones. He also identified Ext. B-54 as a letter written by Purushotham to his father-in-law, Veeraswami Naidu.

The various other reasons given by the High Court for recording Ext. B-54 are only flimsy and the circumstances enumerated above make the letter Ext. B-54 a plausible and natural letter. An adverse inference could have been drawn for non-appearance of Purushotham but the other evidence in the circumstances in our opinion warrant the conclusions drawn by the trial court and we choose to accept the findings of the trial court, This leads us to the other oral and documentary evidence.

The vendees have produced seven witnesses besides one of them as D.W. 1. Govindaswami Mudaliar, D.W. 1, has substantiated the case set up by the vendees in their written statement He, however, for the first time deposed that the family business of the vendors has been weaving and lungi, although this was not their case even in the written statement. He deposed that after the sale the vendees took possessions of the land and the house and later on leased out the land to Deivasigamani vide Ext. B-37, on an annual rent of Rs. 1400 and the house on a monthly rent of Rs. 12 vide Ext. B-41 and that from the time of purchase the vendees have been paying the kists and taxes for the land and the house.

The other Witnesses produced by the vendees are Ratna Mudaliar, D.W. 2. Deivasigamani Mudaliar, D.W. 3, G. Rajan D.W. 4, Govindappa Mudaliar, D.W. 2. Vasudevan Mudaliar, D.W. 6, Punyakoti Chettiar, D.W. 7 and V C. Manivannan, D.W.

8. Ratna Mudaliar D.W. 2, lives only three houses away from the house of Venugopal Mudaliar. He had attested Ext. B-4 and Ext B-5 and also the endorsement of discharge in Exts. B-9, B-14, B-15 and B-17. He had also attested the endorsement in Ext. B-37 and Ext. B-41. It was suggested to him that his signatures had been taken on the documents he had attested at a later date. He denied this suggestion He could not, however, describe the circumstances under which the endorsement to the discharge in Ext. B-9 come to be written. He was so intimate with the vendees that he was asked to attest so many documents but he evaded to reply the question whether Deivasiyamani was employed in the shop of Govindaswanmi Mudaliar whether Deivasigamani himself has admitted that he was in the service of D.W.1.

Deivasigamani Mudaliar, D.W. 3, has also attested Ext. B-5 and the endorsement of charge in Ext. 9 and Ext.B.13. He is also an attestator of the endorsement of discharge in Ext. B-13. He has admitted that he was related to D.W. 1, the vendee, and also that he was in the service of Govindaswami Mudaliar five years back as his Gumastha. He also admits that he had taken certain lands on lease from the vendees. He appears to have been present on each and every crucial occasion for attesting the documents. He being a close relation and also a servant of defendant No. 1, he is bound to echo the voice of his master.

G. Rajan, D.W. 4, attested the endorsement of discharge in A Ext. B-13, which was a promissory note executed in favour of Veeraswami Naidu. He admitted in cross-examination that he used to call on D.W. 1 off and on and he happens to be his friend. His evidence also gives the impression that he has come to oblige D.W. 1.

Govindappa Mudaliar, D.W. 5, has attested Exts. B-4 and B-5 and the endorsement of discharge of a bond Ext. B-9 to Sambayya Chetty. He admitted that he was a regular visitor to the house of D.W. 1. He used to go there to read newspapers. He is also at the house of D.W. I on crucial occasions reading newspapers.

Vasudevan Mudaliar, D.W. 6, has deposed that K.V. Purushotham and K.V. Sriramulu had borrowed money from him in 1952 and they had mortgaged a house and a vacant site under Ext. 49. Exhibit B-50 was a prior promissory note executed by K.V. Purushotham. In renewal of that bond and for a further advance of Rs. 2000 Ext. B-49 was executed for Rs. 4000. He in his cross-examination that there were other big money lenders viz., M.A. Govindaraju Chettiar, Managing Director of Rajeshwari Mills, Gudiyattam; Motiyappa Mudaliar was also equally well-to-do man and had got money lending business; Rajupatti Rajagopal Naidu and others. But K.V. Purushotham had not borrowed any money from any of those persons. He also admitted in the cross-examination that the value of the land within the radius of five miles of Gudiyattam had risen in the course of five or six years. He further deposed that his first cousin Vasudeva Mudaliar had purchased six acres for Rs. 24,000 within two years. He did not deny the suggestion that the transaction might be four years back. The statement was made on 8th of August, 1961 and about four years back would take ns to 1956-57.

Punyakoti Chettiar, D.W. 7 deposed that Purushotham and his brother Sriramulu had borrowed Rs. 2500 from him and executed a bond Ext. B-12. They had also executed Ext. B-16 for Rs. 200. He

further deposed that at the time of discharge of Exts. B-12 and B-16 three persons had come to his place. They were Raju Jaicker. E.A. Ponnusami Mudaliar and Venugopal Mudaliar. But in cross-examination he positively admitted that neither Raju Mudaliar nor Devasigamani were present at the time of discharge and attested the endorsement in Ext. B-12. In the endorsement of discharge, however, one Raju Naidu had attested. He, however, admitted in cross-examination that Rangasami Naidu and Ponnusami Mudaliar alone were present at the time of discharge of Ext. B-12 but neither Raju Mudaliar nor Deivasigamani Mudaliar, who have attested Ext. B-12 were present at the time of discharge.

V.C. Manivannan, D.W. 8, is the Secretary of the Land Mortgage Bank, Vellore. He speaks of the circumstances under which the mortgage in favour of his bank was discharged. According to him Venugopal Mudaliar, the father of Govindaswami Mudaliar, come to the bank at the time of the discharge. He enquired whether the penal interest could be given up. He represented that remission, if any, made would enure to the benefit of Purushotham when he gets resale. He also admitted that the valuation of the property was that of the pre-war period and after the war prices had risen three to four times.

A scrutiny of the evidence produced on behalf of the vendees reveals that the witnesses are interested in the vendees and they are out to oblige them. In some cases it is even doubtful whether the attesting witnesses were present at the time of attestation. The possibility of obtaining their signature at a later date cannot be ruled out.

As against the evidence of the alienees, the evidence supporting the vendors proves that the properties included in the sale deed Ex. B-S were worth somewhere between Rs. 40,000 to Rs. 50,000. The village Munsif and Karnam of Pichanur were examined as D.W. 10 and D.W. 17 respectively. According to D.W. 10 the land belonging to the vendors included in the sale deed has a total area of about 46 to 47 acres. They are situated in two blocks, one block consisting of 42 acres and the other block consisting of the balance. Two electric pumps were existing in the block of 42 acres. He himself owns land adjacent to the suit land owning about 40 acres. According to him, 20 acres out of 42 acres' block were fit for wet cultivation viz., rabi, paddy, plantain and other wet crops could be raised, while in the dry lands dry crops like red gram, groundnut, horse gram etc. could be grown. He further deposed that in 1955-56 the 20 acres in which wet crops could be raised was worth Rs. 1500 per acre while the land in which dry crops could be raised was worth Rs. 300 to Rs. 400 per acre. According to him it would cost Rs. 2500 or more to construct each well and Rs. 1000 or so to construct the pumping set shed. There were about 300 and odd palmyrah trees each of which would fetch Rs. 5 or so. Besides there were tamarind and banian trees. One tamarind tree would fetch about Rs. 250 and are banian tree would fetch about Rs. 100.

He further deposed that for about a year after the sale the vendors alone continued to be in possession and thereafter the vendees took forcible possession which resulted in a criminal complaint by K.V. Purushotham. This witness is a Village Munsif and there is no reason to doubt his veracity. He has got his own land near the land in suit.

The evidence of D.W. 17 is also to the same effect. He is a fairly aged person and Karnam of Pichanur for the past 40 years. The Trial Court has observed in its judgment that it was very much impressed by the demeanour of this witness which impressed the court as a person speaking the truth. He substantially supported the evidence of D.W. 10. Kupayya Naidu, D.W. 11 is the lessee of defendants I to 3. He also supports the evidence of D.W. 10 and D.W. 17 with regard to the valuation of the property.

D.W. 14 Channgayya Naidu, is the president of the village Panchayat board. He is also an adjacent owner. He had purchased land admeasuring two acres and odd in 1958 for Rs. 4000, Ext. 55 being the registration copy of the sale deed. He also speaks of some purchase of 3 acres and odd adjacent land in the name of his undivided brother vide Ext. B-56 in 1960 for Rs. 9000. He is very positive in saying that the land of the vendors could be valued at Rs. 50,000 in 1955.

T.L. Narayanasami Chowdri D.W. 15 is the Director of Gudiyattam Taluk Land Mortgage Bank. He stated that he had purchased 25 to 30 acres of dry land for a sum of Rs. 56,500 under Ext. B-57 in the year 196 in the name of his undivided brother. Under another sale deed Ext. B-58 dated 19th of March 1958, 13 acres and odd were purchased by them for Rs. 26,000. The land purchased under Ext. B-57 was situated only at a distance of one furlong from the suit land and was similar to the suit land.

Anjaneyalu Naidu, D.W. 16, also owns land adjacent to the land owned by the vendors. He also gave evidence with reference to Exts. B-59, B-60 and B-61. Under Ext. B-59 dated 2nd June,]953 he had purchased 2.77 acres for Rs. 2500 under Ext. B-60 dated 14th February, 1957 he had purchased 2.27 acres for Rs. 3,500 and under Ext. B-61 dated 22nd June, 1960 he had purchased 3.27 acres for Rs. 7,000. All these lands according to him were punja (dry) lands similar to the lands owned by the vendors. He further deposed that in the year 1952-53 or so the fertile part of the disputed land could fetch Rs. 1,500 to Rs. 2,000 while the punja (dry) lands could fetch Rs. 750 to Rs. 1000 per acre.

From the aforesaid evidence it can easily be concluded that the land comprised in Ext. B-5 was fertile land capable of giving a net return of not less than Rs. 2000 to Rs. 2500 per year. In this state of the evidence, we agree with the conclusion drawn by the Trial Court that the property in dispute was worth Rs. 40,000 to Rs. 50,000 but it was sold only for Rs. 16,500 which is an inordinately inadequate consideration.

From the evidence discussed above, both oral and documentary and circumstantial, we in agreement with the trial court hold that the sale deed dated 22nd of August, 1955 is true and it is supported by consideration but only in part and that even the recited consideration in the sale deed is thoroughly inadequate; that the sale deed was executed only nominally for a collateral purpose and with a view to stave off creditors with the express understanding that the properties sold would be reconveyed to the vendors after the pres sure of the creditors had subdued; that the debts under the promissory notes Ext. B-13 in favour of Veeraswami Naidu and Ext. B-14 in favour of Deivasigamani Mudaliar were fictitious.

The contention of the counsel for the respondents that finding of fact cannot be interfered with by the Court has no force as the finding is being reversed on the ground that material circumstances have been ignored by the High Court.

In view of the finding arrived at there is m) question of giving any equities to the vendees even if some of the amounts paid by the vendees to some of the creditors of Purushotham were genuine. If the transaction of sale is itself vitiated for the reasons given above, no relief in equity could be granted to the vendees.

Now the question crops up about the pious liability of the sons to discharge the antecedent doubts of the father. The legal position under the Hindu law is quite clear. A natural guardian of a Hindu minor has power in the management of his estate to mortgage or sell any part thereof in case of necessity or for the benefit Of the estate. If the alienee does not prove any legal necessity A or that he does not make reasonable enquiries, the sale is invalid.

But the father in a joint Hindu family may sell or mortgage the joint family property including the sons' interest therein to discharge a debt contacted 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 son to discharge his father's debt not tainted with immorality.

"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 transactions impeached. The debt may be a debt incurred in connection with a trade started by the father. The father alone can alienate the sons' share in the case of a joint family. The privilege of alienating the whole of the joint family property for payment of an antecedent debt is the privilege only of the father, grandfather and great-grandfather qua the son or grandson only. No other person has any such privilege. K V. Purushotham had contracted the debt in connection with his new personal business and to clear all those debts he had executed the impugned sale deed. Obviously, therefore, the debt in question was antecedent debt so far as his sons were concerned and, therefore, they were under a pious obligation to pay off these debts. It was open to the father to execute a sale deed in respect of the shares of his sons also unless it was shown that the debt was tainted with immorality or was for an illegal purpose. It is not the case of the sons of Purushotham that the debt was contracted for an illegal or immoral purpose. Obviously the sale would be binding on the sons of Purushotham. But the same is not the position with regard to the sons of his brother, K.V. Sriramulu who were the plaintiffs in suit No. 108 of 1958. It has been found as a fact that lungi business was the individual or private business of Purushotham In view or the factual position it could not be said that Sriramulu had alienated the joint family property in the capacity as a father of his sons for discharging any antecedent debt incurred by him merely because he has also joined Purushotham in executing the impugned sale. The share of the sons of Sriramulu could not have been alienated by Purushotham for discharging his antecedent debt.

In Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh and ors.(l) this Court laid down the law in the following terms:

> "A person who has obtained a decree against a member of a joint Hindu family for a debt due to him is entitled to attach and sell the interest of his debtor in the joint family property, and if the debt was not immoral or illegal, the interest of the judgment debtor's sons also in the joint family property would pass to the purchaser by such sale even though the judgment-debtor was not the Karta of the family and the family did not consist of the father and sons only when the decree was obtained against the father and the properties were sold. It is not necessary that the sons should be made parties to the suit or the execution proceedings.
>
> The rule laid down by the Privy Council in Nanomi Babuasin's case(2) is not restricted in its application to cases where the father was the head of the family and in that capacity could represent his sons in the suit or execution proceedings, for subject to the right of the sons to assert and prove that the debt contracted by their father was not such as would be binding on them under the Hindu law, the father, even if he was not the Karta could represent his sons as effectively in the sale or execution proceedings as he could do if he was the Karta himself.

In Brij Narain v. Mangla Prasad and Ors.(3) the Judicial Committee, upon a consideration of the authorities, laid down the following propositions:

> "(I) The managing member of a joint undivided estate cannot alienate or burden the estate qua manager except for purchases of necessity; but (2) if he is the father, and other members are his sons, he may by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceedings upon a decree for payment of that debt. (3) If he purports to burden the estate by a mortgage, then unless that mortgage is to discharge an antecedent debt, it would not bind the estate. (4) Antecedent debt means antecedent in fact as well as in time, that is to say, that the debt must be truly independent and not part of the transaction impeached. (S) There is rule that this result is affected by the question whether the father, who contracted the debt or burdens the estate, is alive or dead."

In Shanmukam v. Nachu Ammal(1) a Division Bench of the Madras High Court laid down:

> "The doctrine of pious obligation of a son to pay his father's debts cannot be restricted to cases where father also happens to be the manager. If this limitation was well founded it would also follow that the father's power of disposing of the son's share for the satisfaction of his own debts must be likewise limited. There cannot be any justification for such limitation when it is remembered that the son's obligation to pay his father's debts was under the original Smritis independent of possession of assets of joint family property. It depends purely upon the relationship of father and son. It is only by case law developed during the early part of nineteenth century and

> by statute law in the Bombay Presidency that the ' liability of the son for father's debts was limited to assets and to joint family property. The true basis of the obligation therefore is the relationship of father and son and not the accident of the father being the manager of the joint Hindu family."

There is, however, another condition which must be satisfied before the son could be held liable, i.e., that the father or the manager acted like a prudent man and did not sacrifice the property for an inadequate consideration. In Dudh Nath v. Sat Narain Ram a Full Bench of the Allahabad High Court observed:

> "In order to uphold an alienation of a joint Hindu family property by the father or the manager it is not only necessary to prove that there was legal necessity but also that the father or the father or the manager acted like a prudent men and did not sacrifice the property for an inadequate consideration. A Hindu father or a manager of a joint Hindu family is expected to act prudently. However great the necessity may be, in the joint family property is sacrificed for an inadequate consideration it would be highly imprudent transaction and it would be a case where, though for necessity, the father or the guardian has not acted for the benefit of the estate or the members of the joint Hindu family. The father or the manager is not the sole owner of the property. In fact until the partition takes place even his share does not stand demarcated. The ownership vests in all the copartners taken together as a unit. The father and the manager, there fore, only represent the copartners. Consequently the copartners stand bound by the act of the father or the manager of the family only to the extent the act is prudent or for the benefit of the copartners or the estate."

In the instant case on the finding arrived at that the consideration for the sale deed Ext. B-S was thoroughly inadequate, the sale cannot be upheld.

For the reasons given above the appeals must succeed. They are accordingly allowed and the judgment of the High Court dated 6th November, 1968 is set aside, and that of the trial court is restored. In the circumstances of the case the parties should bear their own costs.

N.V.K. Appeals allowed,