ORIGINAL SIDE.

Before U Bo Gyi, J.

H.C. 1948

July 21.

A. P. ALAGU PILLAY (PLAINTIFF)

v.

A. PARAMKUNDRAM PILLAY AND EIGHT OTHERS (DEFENDANTS).*

Hindu Law—Mitakshara School—Adoption—Proof of—Principles applicable—Self-acquired properties—Will—Validity of—Alienation—Legal necessity—Immorality—Burden of proof.

Evidence in support of adoption must be sufficient to satisfy the very grave and serious onus that rests upon any person who seeks to displace the natural succession by alleging adoption.

The physical act of giving and receiving is absolutely necessary to the validity of adoption. It is the essence of adoption under the Hindu Law, and the Law does not accept any substitute. Mere expression of consent or the execution of a deed of adoption, though registered but not accompanied by an actual delivery of the boy does not operate as a valid adoption.

When there is a lapse of period of years between the adoption and its being questioned an allowance must be made for absence of evidence.

The fact that the alleged adopted son's brother never heard of it during the adoptive father's lifetime, that the adoptive father treated both his brother's son and the alleged adopted son exactly alike as they helped him in the management of his business and that during the adoptive father's lifetime the son never claimed that right and the adopted son's name was not mentioned as such in the deceased's Will is consistent only with the view that there was no adoption.

Mulla's Hindu Law, ss. 512 and 489, followed.

Property inherited by a Hindu from other relatives is his separate property.

Mulla's Hindu Law, s. 223, referred to.

As against a son an alienation by a father can be sustained if it is for antecedent debt, that is, antecedent in fact as well as in time. But that debt must be truly independent and not part of the transaction.

A transfer outright in satisfaction of a mortgage debt is a transfer for antecedent debt.

The burden of proof is upon the sons to prove the immorality of the debt. It is not discharged by showing that the father lived an extravagant and immoral life. There must be a direct connection between the debt and the immorality set up by the sons.

Brij Narain v *Mangla Prasad*, L.R. 51 I.A. 129, applied and followed.

* Civil Regular No. 224 of 1938.

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Nature and character of father's debt should be examined with reference to the time when it originated.

Hemraj alias *Babu Lal and others* v. *Kham Chand and others*, I.L.R. (1943) All. 727, followed.

Subramanyam for the plaintiff.

K. R. Venkatram for defendants 4 (*a*) and 4 (*b*).

Jaffer for defendant No. 1.

U. BO GYI, J.—This suit was originally brought *in forma pauperis* by A. P. Alagu Pillay against his parents A. Paramkundram Pillay and Papathi Ammal who are the first and second defendants respectively, his sister Veeramma Kali (*a*) Papa who is the third defendant, and certain transferees of properties from the first defendant, for a declaration that the transfers to these transferees did not bind his interest in the said properties and *inter alia* for partition and separate possession of his share. The suit was originally instituted in 1938 and, I am told, was dismissed for default and then restored to file before the evacuation. The original record was lost during the war and the case has been reconstructed. A. P. Alagu Pillay died after the re-occupation, and his son Andiappan (*a*) Ponnusawmy, a child three years old, has been brought on the record as his legal representative. The child has been shown to be a pauper and since the learned advocate Mr. Venkataram for the fourth defendants, who are the only contesting defendants in the suit, has not objected to the child's continuing with the suit, I have allowed the child to continue the suit *in forma pauperis*.

The decision in this suit turns upon the life and activities of the first defendant, and, therefore, a brief biography of this defendant would not be out of place. It is common ground that this defendant and his wife

and family as well as his alleged adoptive father A. Andiappa Pillay (*a*) Mudalia Pillay have at all material times been subject to the Mitakshara school of Hindu Law. A. Andiappa Pillay, it appears, came over to Burma over four decades ago and apparently from small beginnings rose to be maistry and labour contractor at the Arracan Rice Mill at Dawbong across the Pazundaung Creek and amassed a fortune. He had two wives, Ramayi and Ankalamma, and had by them Muthu-ammal and Muthu Irulayee respectively, both daughters. It is said that when the first defendant was three years old Andiappa Pillay adopted him as his son and brought him up in his home, and when he came of age married him to the second defendant. It is in evidence that Andiappa Pillay and the first defendant's father were cousins about twice removed. Andiappa Pillay brought over from India his brother's son Muthu Irulappa Pillay, and while the first defendant helped Andiappa Pillay in the labour contract business at the mill, Irulappa Pillay spent most of his time in the districts looking after Andiappa Pillay's paddy lands. In 1913 Andiappa Pillay died leaving a Will, *vide* Exhibit A, by which he bequeathed the bulk of his estate to the first defendant, Muthu Irulappa Pillay, Muthu-ammal, and Muthu Irulayee. The first defendant and Muthu Irulappa Pillay jointly applied for and received Letters of Administration to Andiappa Pillay's estate with the Will annexed, and while they were administering the estate, Muthu Irulappa Pillay died and his brother Mahalingam Pillay came over from India. Muthu Irulayee also was dead, and the estate was divided among the first defendant, Muthu Irulappa's widow, and Muthu-ammal by a partition deed, *vide* Exhibit J, on the 1st October 1916. Certain lands forming part of the estate were at that time under litigation and some outstandings remained to be collected, and these were

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divided under an award, *vide* Exhibit G, dated the 30th April 1918, of a *panchayat*. After the partition these three persons enjoyed their respective shares separately.

The first defendant was superseded in the contract business by another contractor and he lived on the rentals of the paddy lands that had fallen to his share. In 1918 he secured a contract for supply of labour to the Joseph Heap & Sons' Rice Mill at Dawbon and raised a loan of Rs. 20,000 on his properties, out of which he deposited Rs. 3,000 with the mill and advanced the balance Rs. 17,000 to coolies. Business was slack for some months and when the Chettyars from whom he had borrowed the money pressed for repayment he mortgaged the properties to S.K.R.S.L. Firm and paid off the first mortgage. That was in 1919. In the following year the mill was bought by the Japan Cotton Trading Company and the first defendant's business at the mill flourished so that he could clear the mortgage debt towards the end of 1920. The contract business continued to flourish and with the proceeds of the business and the proceeds of his rental paddy he made purchases of lands and buildings up to 1929. This year is important. About that time depression had set in as a result, it is said, of the first World War and many land owners, big and small, were ruined. In 1931 the first defendant started keeping a mistress, Papathi, whose husband had died, and he kept her in a room of his house at No. 21, G Street, Singapore Quarter, Pazundaung. He had in 1926 purchased a valuable house in 51st Street and was living there with his wife and family.

Previous to the year 1932, so far as the evidence shows, the first defendant was not in debt. Then on the 21st October 1932 he borrowed Rs. 3,000 on a pro-note and also Rs. 2,000 on another pro-note (Exhibits V

and W) from R.M.A.R.A.R.R.M. Chettyar Firm and the next day he borrowed Rs. 20,000 from the same firm mortgaging his house in 51st Street and paddy lands measuring 610 odd acres by a registered deed (Exhibit 1). The fourth defendants are the receivers of the estate of the proprietor of the said firm. The first defendant with the proceeds of the mortgage discharged the pro-note for Rs. 2,000. Thereafter he apparently took further loans from the same Chettyar firm and also from others On the 2nd July 1933 he borrowed Rs. 5,000 on a pro-note from the Chettyar firm. He was paying interest regularly on the mortgage as well as on the other loans till the year 1934. In that year the Japan Cotton Trading Company's mill closed down and there was no more business for the first defendant. It appears that he became unable to meet his debts as they fell due, and in 1936 the Chettyar firm filed a suit on the pro-note dated the 2nd July 1933 and besides having the first defendant's house in 51st Street attached in execution of the decree launched insolvency proceedings against him. A compromise was effected, as a result of which on the 12th February 1937 the first defendant made an outright transfer of the equity of redemption in the mortgaged properties to the Chettyar firm for Rs. 26,500 made up of Rs. 23,447 being principal and interest then due on the mortgage and a further sum of Rs. 3,053 in part satisfaction of the decretal debt aforesaid, undertaking to pay the balance sum of Rs. 2,807 under the decree. The first defendant had also transferred his other properties and these properties are now in the possession of the fifth to ninth defendants. The result was that of the properties received from Andiappa and further accretions the first defendant has with him now only some property in India.

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The plaintiff's case is that after Andiappa Pillay's death A. P. Alagu Pillay, his sister Veeramma Kali and their parents formed a coparcenary governed by the Mitakshara Law and that with the nucleus of the property inherited by the first defendant from his adoptive father Andiappa Pillay the first defendant as *karta* of the joint family acquired other properties. It is averred that the first defendant transferred the nucleus and accretions in the circumstances mentioned above in his individual capacity and not for legal necessity or the benefit of the family and that he utilized the money borrowed by him for illegal or immoral purposes.

The first defendant had not at the time made common cause with the plaintiff. He denied having been adopted by Andiappa Pillay according to Hindu Law and said that he and Muthu Irulappa Pillay were not adopted but merely brought up by Andiappa Pillay. He denied that he had inherited any of the properties mentioned in the plaint and also denied that there was any coparcenary property. He claimed to be the absolute owner of the said properties. He said that the mortgage in favour of the R.M.A.R.A.R.R.M. Firm was executed for securing a debt incurred in the course of his business as labour contractor and that he made the outright transfer to the firm in satisfaction of the money due on the mortgage and of his other debts. He averred that no part of the consideration for the transfers made by him was utilized for illegal or immoral purposes. The defence of the Chettyar firm was on much the same lines as that of the first defendant, and the firm raised an additional defence that if the plaintiff was entitled to any relief the properties in their possession should be allotted to the first defendant.

On the pleadings the following issues were framed :

(1) Is the first defendant an adopted son of A. Andiappa Pillay *alias* Mudalia Pillay ?

(2) Were the properties mentioned in paragraph 2 of the plaint inherited by the first defendant from A. Andiappa Pillay ?

(3) If so, are they the joint family properties of the plaintiff and the first defendant ?

(4) Whether the other properties mentioned in paragraph 4 of the plaint were acquired with the income of the joint family properties and added to the joint family properties ?

(5) Are the transfers mentioned in paragraphs 5 to 9 of the plaint not binding on the plaintiff on the ground that the transfers were not for legal necessity and for the benefit of the joint family or because the consideration for any of them was utilized for illegal or immoral purposes ?

(6) To what relief, if any, is the plaintiff entitled, and if so, subject to what equities ?

The first issue as to whether Andiappa Pillay adopted the first defendant is in my opinion one of the crucial issues in this suit ; for if the adoption is not proved, the bottom will be knocked out of the plaintiff's case. Mulla in section 512 of his Principles of Hindu Law says that the evidence in support of an adoption must be sufficient to satisfy the very grave and serious onus that rests upon any person who seeks to displace the natural succession by alleging an adoption, but that when there is a lapse of a period of years between the adoption and its being questioned, every allowance for the absence of evidence to prove such fact must be favourably entertained. In considering the evidence in this case, therefore, these principles will be borne in mind. Now, the first defendant gives

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his age as over fifty-nine and it is alleged that he was adopted when he was three years old. His uterine brother V. K. Subramanyam Thevar is fifty-three years of age and was born after the date of the alleged adoption. The only direct evidence on the issue is that of V. E. Muthu Swamy Thevar. He gives his age as eighty-five and his occupation as Fish Contractor. My impression of him might be wrong, but he has struck me as being rather too active for a man of eighty-five years. He speaks to having witnessed the ceremony of adoption at Andiappa Pillay's house in Singapore Quarter, Pazundaung, when the first defendant's father Arunarcham Pillay gave the boy in adoption by pouring turmeric water into Andiappa Pillay's hands. He says that he does not now see the priest who officiated at the ceremony and that all the elders who were present at the ceremony are dead. A very unsatisfactory feature regarding this witness is the mystery surrounding the circumstances in which he was discovered by the plaintiff. As mentioned before, he is the only person in the case who has given direct evidence regarding the adoption ; and he states that he has not told anyone—not even plaintiff Alagu Pillay or Alagu Pillay's agent V. K. Subramanyam Thevar—about the adoption. I gave him a chance to explain why he was cited as a witness and asked him whether anyone had approached him with a request to give evidence about the adoption. He replied that no one had done so. Finally, he said that it was only when he received the summons that he knew he would have to give evidence in the case. In these circumstances I am unable to accept this witness's evidence unless it is in consonance with probabilities. The circumstances of the case, however, militate against the probability of his story being true. In the first place, it is admitted both by the first defendant and his uterine brother

V. K. Subramanyam Thevar that there was no document executed before Andiappa Pillay's death in which the first defendant was mentioned as Andiappa Pillay's adopted son. On the contrary, in 1908 and again in 1910 before leaving for India on business, Andiappa Pillay granted a power-of-attorney to the first defendant and M. Thiroomalay Moothoo Pillay, *vide* Exhibits F and F-1, in which the names of their fathers were not mentioned. This circumstance by itself may not be conclusive. But then in the Will solemnly executed by Andiappa Pillay, *vide* Exhibit A, neither Muthu Irulappa Pillay nor the first defendant was acknowledged by Andiappa Pillay as his adopted son. It cannot be said that the testator had failed to mention this as the result of an oversight, because he mentioned the name of his own father in the Will. It is contended that the first defendant and Muthu Irulappa Pillay were described in the Will as Andiappa Pillay's male heirs. But in view of the circumstance that his two daughters also were described in the document as his heirs, the inference that reasonably flows from the contents of the Will is that the first defendant is not Andiappa Pillay's adopted son. In Hindu Law the son inherits his father's estate to the exclusion of every other member of the family, and I believe this legal position is well-known among Hindus. It follows therefore that since Andiappa Pillay mentioned as his heirs his daughters who would have had merely a right to maintenance and marriage expenses if he had a son, neither the first defendant nor Muthu Irulappa Pillay who were jointly mentioned with the daughters had been recognized by Andiappa Pillay as his adopted son. There is another circumstance that seems to go a long way to disprove the story of the adoption. V. K. Subramanyam Thevar is the first defendant's uterine brother and six years junior to him in age.

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He was managing the first defendant's business at the mill for some years and he was living in the same part of the city, Pazundaung, with Andiappa Pillay and the first defendant. He must therefore have known the first defendant more intimately than most other people; and if the first defendant had been adopted by Andiappa Pillay, this witness must have been one of the first persons to hear about the adoption. Yet, when he was questioned about his knowledge of the adoption, he made the following very damaging admission :

> *Q.* When did you come to know first of the adoption of 1st defendant by Andiappa Pillay ?
>
> *A.* Only when Andiappa Pillay died I came to know about this adoption.

It seems clear from the above that before Andiappa Pillay's death no one, not even the 1st defendant's own half-brother and manager of his business, had heard that the 1st defendant had been adopted by Andiappa Pillay. This in my view clinches the case against the story of the adoption and is an eye-opener to witness V. E. Muthu Swamy Thevar's inability to explain how he had been " discovered " and at the same time shows this witness's evidence to be unreliable. This witness had told no one about the adoption ; and no one had approached him to give testimony evidently because no one had heard about the adoption. Nevertheless, for reasons best known to those running the plaintiff's case, this person has figured as the most important witness in the suit.

Capital is sought to be made out of a statement said to have been made by Ramayi, Andiappa Pillay's widow, in her affidavit, *vide* Exhibit D-2, filed in the Letters of Administration proceedings, that the 1st defendant and Muthu Irulappa Pillay had been adopted

by her and Andiappa Pillay. In this connection, the 1st defendant's evidence is interesting. Both he and Muthu Irulappa Pillay described themselves in the application for Letters of Administration and their supporting affidavits (Exhibits B—D-1) as Andiappa Pillay's adopted sons. The 1st defendant does not know that Andiappa Pillay had adopted Muthu Irulappa Pillay. In point of fact, no one knows about it. When the 1st defendant was asked why in these circumstances he swore in his affidavit that he and Muthu Irulappa Pillay were Andiappa Pillay's adopted sons, he replied his lawyer drafted the affidavit and he did not know about this matter. If the 1st defendant did not known about the material contents of his affidavit, *a fortiori* Ramayi, apparently an ignorant woman, would not have known about the material contents of her affidavit.

The 1st defendant has made a noteworthy admission that Andiappa Pillay had treated him and Muthu Irulappa Pillay exactly alike and as members of his family. He was related to both of them, and they each in their respective spheres helped him in the management of his business and estate. Andiappa Pillay shortly before his death bequeathed the bulk of his estate to these two young men and his small daughters in equal shares. It is not shown that Irulappa Pillay had been adopted by Andiappa Pillay; and in all the above circumstances it is highly improbable that the 1st defendant was adopted by the gentleman.

There is also the 1st defendant's admission that it was only after Andiappa Pillay's death that he and Muthu Irulappa Pillay described themselves for the first time as Andiappa Pillay's adopted sons. In the last analysis, therefore, the 1st defendant never claimed before Andiappa Pillay's death to have been adopted by Andiappa Pillay; Andiappa Pillay on his part never

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acknowledged him as an adopted son ; and no one, not even his own half-brother, knew him to have been adopted by Andiappa Pillay. Now, it is well-known that in a Hindu family the son, whether natural or adopted, occupies a unique position. He is the heir-apparent of the family and after his father's death he has to perform ceremonies for the salvation of his father's soul. Yet, Andiappa Pillay in one of the most solemn moments of his life, *i.e.* at the time he was making his Will, and on the occasion when he would have acknowledged his relationship to the 1st defendant, did not acknowledge the 1st defendant as his adopted son. The Will, in my opinion, throws a revealing light on Andiappa Pillay's attitude towards the 1st defendant, who on his part when the document was read over to him by Andiappa Pillay raised no protest whatever. He did not even ask Andiappa Pillay why he had not been mentioned in the Will as an adopted son. He apparently accepted the position. Andiappa Pillay who was a self-made man had a mind of his own. He refused to be trammelled by conventions and leaving a pittance for his widow bequeathed the bulk of his estate to his two relatives who had rendered services to him and to his two daughters in equal shares. The evidence, read as a whole, is consistent with this view rather than with the view that the 1st defendant is the adopted son of Andiappa Pillay.

Now, Mulla in section 489 of his Principles of Hindu Law states : "*Giving and receiving.*—(1) The physical act of giving and receiving is absolutely necessary to the validity of an adoption. This is so not only in the case of the twice born classes, but also in the case of Sudras. It is of the essence of adoption, and the law does not accept any substitute for it. Mere expression of consent, or the execution of a deed

of adoption, though registered, but not accompained by an *actual delivery* of the boy, does not operative as a valid adoption. To constitute giving and taking in adoption all that is necessary is that there should be some overt act to signify the delivery of the boy from one family to another." Here, no doubt, the adoption is alleged to have taken place about half a century ago and consequently direct evidence as to the ceremony would be meagre. But at the same time it must be remembered that it is the plaintiff who has come forward with his story of adoption and this is not a case where his adoption is attacked by another claiming property in his hands.

For all the above reasons I find that the adoption has not been proved and answer the first issue accordingly. It follows from this that Andiappa Pillay's properties which were admittedly self-acquired properties were taken by the 1st defendant not as ancestral property but as his own separate property. Mulla in section 223 (3) of his treatise says :

"*Property inherited from collaterals—property inherited from females.*—Excluding the doubtful case of property inherited from a maternal grandfather, it may be said that the only property that can be called ancestral property is property inherited by a person from his father, father's father, or father's father's father. Property inherited by a person from any other relation is his separate property, and his male issue do not take any interest in it by birth. Thus property inherited by a person from collaterals, such as a brother, uncle, etc., or property inherited by him from a female, *e.g.* his mother, is his separate property."

It seems clear therefore that the plaintiff did not by birth acquire any interest in the property bequeathed by Andiappa Pillay to the 1st defendant. There is nothing to show that the plaintiff contributed anything towards the acquisition of property by the 1st defendant, who, moreover, in his written statement has claimed

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all the suit properties as his own absolute property. Furthermore, "A coparcenary is purely a creature of law; it cannot be created by act of parties, save in so far that by adoption a stranger may be introduced as a member thereof." [Mulla's treatise, section 214; *see* sections 222 and 223 (1) also.] I find that the plaintiff did not acquire any interest in the suit properties and that he and the 1st defendant had no coparcenary property, and I answer the second and third issues in this sense.

In view of the above findings, it is unnecessary to come to a decision on the remaining issues. Since, however, arguments have been addressed to me at great length on the legal issues, I shall proceed to discuss them.

Assuming that the suit properties were a coparcenary, the 1st defendant would be more than a mere manager of the coparcenary estate. It is not necessary therefore that when he borrowed money legal necessity must be proved in order that the interests of the other coparceners may be bound. It is common ground that the 1st defendant borrowed Rs. 20,000 on the mortage deed, Exhibit 1, and a further sum of Rs. 5,000 on a pro-note from R.M.A.R.A.R.R.M. Firm and that subsequently he transferred most of his properties to the firm in discharge of the mortgage debt and partial discharge of the decree obtained on the pro-note. It has been ruled by the Privy Council in *Brij Narain* v. *Mangla Prasad* (1) that "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". Here the debts due on the mortgage and the pro-note must be held to be antecedent to the outright transfer both in fact and in

(1) L.R. 51 I. A. 129.

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time. It is contended that since the mortgage debt which was for a present consideration was not an antecedent debt and the mortgage was therefore void under the Hindu Law, it follows that the outright transfer made in consideration of the discharge of the mortgage is also void. I do not think that the ruling of the Privy Council should be interpreted in this way. Their Lordships have not mentioned "debts" or "transactions" and each transaction, the mortgage as well as the sale in this case, must be considered separately and it must be ascertained whether the debt was antecedent to the particular transaction at the moment under consideration. (*See* also Mulla's comments at page 373 of his treatise in section 295.) I hold therefore that the sale as per Exhibit 2 was for antecedent debts.

It is not contended that the debts were contracted for illegal purposes, and the next question that falls for determination therefore is whether they were contracted for immoral purposes. It is said that the 1st defendant was addicted to drink, that he used to frequent the races, and that he kept a mistress. There is no evidence to show that the 1st defendant used to drink intoxicating liquor. He admits that he used to go to the races. But on his own showing he first went to the races after he had executed the mortgage deed. He says that he used to spend about Rs. 500 a month on his mistress and her people. According to him he had a banking account and used to draw money from the bank and pay it to his mistress and his banking account-book would show how much he had spent on her. Summonses and notices issued to him by the Court in the cases above mentioned as well as the discharged pro-notes have been tendered in evidence at the hearing. The 1st defendant says that these documents as well as his other documents were left at

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his house in Singapore Quarter when he evacuated Rangoon and that on his return he found his house burnt down. V. K. Subramanyam Thevar professes to have obtained those notices and summonses and discharged pro-notes from the 1st defendant's house. It is significant that the other documents belonging to the 1st defendant, such as the banking account-book, have not been produced. It appears from the 1st defendant's evidence itself that at the time he took the loans on pro-notes and the loan on the mortgage on two successive days he was in need of money to pay advances to his tenants. He had no cash with him at the time, and he and his wife admit that advances were usually made to the tenants during the harvest. Although he has stated that he made no fresh advances to the coolies, he admits in the course of his evidence that he used to make advances to the coolies about the beginning of each working season. The fact that he borrowed Rs. 5,000 on the 21st October 1932 although it had been arranged that he should borrow Rs. 20,000 on the following day, is significant. He must have been in urgent need of money to pay out advances. He had not started going to the races then and it is extremely unlikely that he would have paid out big sums of money to his mistress, and in any case he has not suggested that he paid out big sums of money to her. In these circumstances, the evidence of the then agent of the firm, Arunachalam Chettyar, that he saw the 1st defendant actually paying out advances out of the loans to some of his coolies is credible. For all the above reasons, I am of opinion that the debts were contracted in the course of the 1st defendant's business. Furthermore, there is the evidence of V. K. Subramanyam Thevar that in 1932 the 1st defendant's income from the labour contract business was about Rs. 12,000 per annum. The 1st defendant

could very well have supported his mistress out of that income. Now, a mere general charge of immorality is not enough, and it must be shown that there is some connection between the debts and the immorality. In Mulla's treatise the following passage occurs at page 371 :

"The burden which lies upon the sons to prove the immorality of the debt is not discharged by showing that the father lived an extravagant or immoral life ; there must be a direct connection between the debt and the immorality set up by the sons."

It has also been held in *Hemraj* alias *Babu Lal and others* v. *Khem Chand and others* (1) that " Examination of the nature and character of the father's debt should be made with reference to the time when it originated and if it appears that at its inception the debt was not tainted with immorality of any kind then it must be held to be binding on the son." For all these reasons, I hold that, assuming that the properties transferred by Exhibit 1 belonged to the joint Hindu family of the plaintiff and the 1st defendant, the plaintiff's interest therein was bound by the sale and I answer the 5th issue accordingly.

No arguments have been addressed regarding the validity of the transfers made in favour of the 5th to 9th defendants and in view of my finding that the plaintiff was not a coparcener with the 1st defendant I shall not go into the validity of the transfers to these defendants.

In the result, the suit is dismissed with costs. The plaintiff by his legal representative will pay the court-fee on the plaint which he would have had to pay if he had not been allowed to sue as a pauper.

(1) I.L.R. (1943) All. 727.