
(1910) 09 MAD CK 0004
In the Madras High Court

Devulapalli Kameswara Sastry and Others	APPELLANT
Vs	
Polavarapu Veeracharlu, by his Guardian, Kodamanchi Bhimanna	RESPONDENT

Date of Decision : 21-09-1910

Acts Referred:

Citation : (1910) 20 MLJ 855

Hon'ble Judges : Krishnaswami Aiyar, J;Abdur Rahim, J

Bench : Full Bench

Judgement

Abdur Rahim, J.—I entirely agree in the conclusion reached by my brother Krishnaswami Aiyar in the learned and instructive judgment

which he is about to read. I have nothing to add. The decree of the Subordinate Judge will be set aside as regards the 3rd defendant and that of

the District Munsif will be restored. There will be no costs.

Krishnaswami Aiyar, J.

2. This second appeal has been preferred against the decree of the Subordinate Judge disallowing the plaintiffs' claim against the 3rd defendant's

share in the mortgaged property. The mortgage was executed by the 1st defendant, the father, and the 2nd defendant, the adult son, while the 3rd

defendant, a minor, was represented by the father, who also signed the document as his guardian. The money was borrowed for the marriage

expenses of the 1st defendant. The defendants have been dealt with as Sudras in this case, and no question has been raised as regards the

correctness of that view. It is contended that the Subordinate Judge is wrong in holding that the marriage expenses of the 2nd defendant are not

under the Hindu Law a justifiable necessity for the borrowing of money and the

execution of the mortgage. The powers of a Hindu manager of family property have been expounded in the judgment of Lord Justice Knight Bruce in *Hunoomanpersaud Pandey v. Mussumat Babooee Munraj Koonweree* (1856) 6 M.I.A. p. 393., his Lordship says: "" The power of the manager for an infant heir to charge an estate not his own, is, under the Hindu Law, a limited and qualified power. It can only be exercised rightly in a case of need, or for the benefit of the estate."" The need above referred to is afterwards spoken of at page 424 as "" a sufficient and reasonably credited necessity."" Bona-fide and reasonable enquiry may be sufficient to validate the charge though the actual necessity is not made out. We may at once dismiss from consideration, so far as the present case is concerned, the justification of benefit to the estate. In the case of the father, the discharge of an antecedent debt is in addition a sufficient ground to justify alienation. As regards the widow who has succeeded to her husband's estate her power to charge it so as to bind her reversionary may extend to loans contracted for the performance of religious ceremonies or pilgrimages for the benefit of her husband's soul. As the present is not a case of an antecedent debt, the validity of the mortgage as regards the 3rd defendant's share must be tested with reference to the consideration whether it was a case of need. In *Suraj Bansi Koer v. Sheo Proshad Singh* (1879) ILR 5 C. 148 (P.C.) it was held that the alienation would be valid if it was made by the managing member of the family "" for legitimate family purposes."" See page 101. The need or "" the reasonably credited necessity"" spoken of in *Hunooman Persaud's* case (1856) 6 M.I.A. 393 has been paraphrased into ""legitimate family purpose."" Necessity therefore is not to be understood in the sense of what is absolutely indispensable but what, according to the notions of a Hindu family, would be regarded as reasonable and proper. Speaking of the cryptic phrase "" legal necessity,"" *Golap Chandra Sarcar Sastri* in his *Hindu Law*, page 210, observes: "" The expression legal necessity is very often used to signify the causes for which, or the circumstances under which, a single member of a joint family, or a like person, having a limited interest in property, is authorized to transfer it so as to pass to the transferee a right to the entire property. It comprises maintenance and support of the family, preservation of the family estate, management of the family business, if any,

performance of necessary religious rites such as marriage and the like initiatory ceremonies, exequial rites and Sridhar ceremony,--and the payment

of debts contracted for the above purposes." In the Tagore Lectures for 1884-85 Bhattacharya says at page 488: "Legal necessity is of various

forms. All the indispensable religious ceremonies, the sacraments, such as marriage and the investiture with the sacred thread, the obsequies, the

cremation, the periodical oblations to the manes, the ceremonies customary in the family, the subsistence of the family, the education of the younger

members, the payment of the ancestral debts, the giving of presents at particular seasons and on special occasions to the relatives,-these and a

thousand other causes of expenditure are constantly cropping up in a fairly prosperous Hindu joint family. All these are in the strict sense of the

word, lawful necessity." In Babaji Mahadaji v. Krishnaji Devji ILR (1878) B. 666 where a sum of money was borrowed to buy a stock of

buffaloes with which to resume the business of a milkman, it was held that the debt was contracted to put the father in the way of earning a

maintenance and therefore under the pressure of family necessity Mr. Justice West observes at page 669: "Family necessity is an expression that

must receive a reasonable construction, and the head of the family and those dealing with him must, in the interest of the family itself be supported

in transactions which, though in themselves diminishing the estate, yet prevent or tend to prevent still greater losses. A reasonable latitude, too, must

be allowed for the exercise of a manager's judgment, especially in the case of a father though this must not be extended so as to free the person

dealing with him from the need of all precaution, where a minor son has an interest in the property. "Judged by these principles it is first of all

difficult to suppose that the marriage of the 2nd defendant was not a legitimate family purpose. I put it to the respondent's vakils whether he

contended that having regard to the age of the 2nd defendant at the time of the marriage it was not a purpose for which the father could legitimately

incur expenditure or contract a loan He disclaimed any intention of resting his case on that ground. Dismissing therefore from consideration any

question of propriety based on the ground of age, we are confronted with the broad question whether the father was justified in borrowing money

for the marriage of his son while the income of his property was sufficient to meet the expenditure. In Mahadeva Pandia v. Rama Narayana Pundia

(1902) 13 M.L.J. 76 which was a case of partition between uncle and nephews, it was held that the nephews were entitled to deduct from the

properties to be divided "the cost of the marriages of two of them as a legitimate charge on the family funds." In *Saravana Tevan v. Muttayi Ammal*

(1817) 6 M.H.C. R. 371 which was a suit to enforce a mortgage by the manager of the family, it was held that the loan incurred to defray the

expenses of the marriage of a co-parcener was for a family purpose and showed a reasonable necessity to justify the alienation. See pages 382,

383 and 384. In *Gharibullah v. Khalak Singh* ILR (1903) A. 407 the Privy Council spoke of a loan contracted for the marriage of a junior member

as for a family purpose and as a case of necessity and upheld the alienation as binding upon the family. The gift of a small portion of family property

by the father or by the widowed mother at the time of a daughter's marriage without the consent of the sons which has been upheld as valid cannot

be justified on the ground of necessity in a strict sense--*Ramasami Ayyar v. Vengidusami Ayyar* ILR (1898) M. 113 and *Kudutamma v.*

Narasimhacharyulu (1907) 17 M.L.J. 528. These cases seem to be sufficient authority for holding that in case the debt is contracted for a family

purpose (and the marriage of a junior member of a coparcenary is a family purpose) and it is reasonably necessary on the part of a prudent

manager to borrow the money for such expenditure, the transaction will bind the co-parceners. But the Subordinate Judge in the Court below and

the learned vakil for the respondent have laid great stress on the decision in *Govindarazulu Narasimham v. Devarabhotla Venkatanarasayya* ILR

(1903) 27 M. 206 where the learned Chief Justice and Mr. Justice Moore refused to uphold a sale of family lands by the father to defray the

marriage expenses of one of his sons on the ground that there was no moral or religious obligation to get a son married That case, no doubt, which

purports to follow some observations of Mr. Justice Muthusami Aiyar in *Ponnappa Pillai v. Pappuvayyengar* ILR 1881 M. I supports the

respondent's contention. The parties to that case were Brahmins. It was held that as failure to perform marriage did not entail a forfeiture of caste it

was not a necessary ceremony or Samskara in the case of a Brahmin and the expenditure incurred for the performance of such a ceremony was in

consequence no justification for the incurring of a debt. None of the cases to which I have referred appears to have been cited. There is no

reference to them in the judgment. The decision itself has been very ably criticised and dissented from by Mr. Justice Chandavarkar with the

concurrence of Knight J. in *Sundrabai v. Shivnarayana* ILR (1907) B. 81. But for the fact that the defendants in the present case are Sudras to

whom part of the reasoning in that case has no application, I should have felt inclined to ask the Full Bench to reconsider the decision in

Govindarazulu Nara-simham v. Devarabhotla Venkatanarasayya ILR (1903) M. 206. That case proceeds upon the view of Mr. Justice

Muthusami Aiyar that PI. 29 of Chapter I, Section 1, of the *Mitakshara* is confined to such ceremonies, as if unperformed, would entail a forfeiture

of caste or status, and upon the assumption that marriage in the case of a male amongst Brahmins is not included in the initiatory ceremonies

(Samskara). Reliance is also placed upon a text of Narada (quoted and interpreted in the *Smrithi Chandrika*) Chapter XIII, P1. 33 and 34. Before

examining this decision farther, it is necessary to point out that amongst Sudras marriage is an initiatory ceremony or Samskara and perhaps the

most important of all the Samskat as performed for them. In commenting on the 2nd hemistich of Verse 10 of the *Acharadhyaya* of Yajnavalkya

rendered by Mandlik thus ""their (of the twice-born) ceremonies from conception to the funeral are performed with Mantras,"" the great

commentator Apararka observes ""that for the Sudra the Samskaras are without Mantras."" He adds on the authority of the *Brahmapurana* : "" But

the Sudra shall have the marriage Samskara alone. By the use of the word "alone" either the absence of the Mantras or of the previous Samskaras

is meant. Then there is the alternative for them notwithstanding the injunction."" Commenting on the effect of the Samskaras dealt with in the first half

of Verse 13 of Yajnavalkya rendered by Mandlik thus ""In this manner, the sin produced from the seed and the womb is destroyed"" (Mandlik page

161), Apararka says this is intended to apply to the four castes, not merely to the twice-born. In the *Samskara Mayukha* of Nilakanta, the great

Bombay authority, the author commenting on the second half of Verse 10 of Yajnavalkya already quoted observes : "" By reason of the statement

that to them (the twice-born) the ceremonies (from conception to death) are with Mantras, it is to be inferred that to the Sudra they are without

Mantras. Amongst them as he has no study of the Vedas he has not the ceremonies which are incident to it like the Upanayana and the

Vedavratas"" The Samskara Bhaskara which is a work of authority on initiatory ceremonies says in Leaf 2 (Bombay Sanskrit Edition,

Venkateswara Press) : "" The sixteen Samskaras beginning with Garbadhanam are for all. They are accompanied by Mantras only for the twice-

born "" In the Samskara Ratnamala, Volume 39, Anandasrama Series, the author commenting on the same Sloka of Yagnavalkya observes: ""It is to

be inferred that to the Sudra the ceremonies from Garbadhanam to the last rites are without Mantras. "" He adds : "" Yama says, after stating the

Samskaras, " but the Sudra should have the Samskaras done thus without Mantra. Among them those (Samskaras) have no application like

Upanayana and Kandavratas which are incident to Vedic study as he has no Vedic study" &c..." Banerjee in his Tagore Lectures, First Edition,

page 31, speaks of marriage as the only sacrament for women and Sudras. See also West and Buhler, p. 1064, Note (b) citing Colebrook's

Digest. The foregoing texts are sufficient authority for the position that marriage is a Samskara or initiatory ceremony amongst Sudras and as such it

ought to be performed in their case. What I have said so far is sufficient for the disposal of the case. But as the decision in Goviniarazulu

Narasimham v. Devarbhotla Venkatanarasayya ILR (1903) M. 206 deals with an issue of great importance as regards the position of the marriage

ceremony in the case of the Hindus it is necessary to examine the principles on which the obligatory character of the marriage ceremony rests.

There are two paths laid down for the Hindu in the sacred texts, (See Mahadeva Sastri's Bhagavat Gita with Sankara's commentary page 2). One

is the path of work or attachment to the things of this world and the other the path of non-attachment or renunciation. The four asramas or stages

of life are prescribed for the regenerate classes or at all events for the Brahmin. The journey from stage to stage in regular order of succession is

contemplated as progress along the path of worldly work. And every Hindu of the twice-born classes has to pass from each stage to the next and

until he develops complete non-attachment in the last, the stage of the ascetic, when he prepares himself for final liberation. It is true that it is laid

down in the Srutis (see the text of Jabala Upanishad), Volume 29, Anandasrama Series, pages 242 and 243, that if he has conquered his passions

and cultivated the feeling of non-attachment he may pass direct without going through the intermediate stages to the Asrama of the Sanyasin (See

Medhadhithi's Commentaries on Verse 36 of Manu, Chapter VI, and also the Mitakshara on Verses 56 and 57 of the Prayaschittadhyaya of

Yajnavalkya, page 309 of the Sanskrit Edition). But except for him who has thus qualified for entry direct into other Asramas than that of house-

holder the stage of householder is practically compulsory. The twice-born Hindu is not to be a student as long as he chooses. He may remain a

Naishtika Brahmacharin devoted to life-long studentship under strict conditions Slokas 49 and 50 of Yajnavalkya, Acharadhyaya, have been

translated as follows by Mandlik. "" The Naishtika Brahmacharin is to live near the Acharya : in his absence near his son or his wife, or his fire. In

this manner the Bramacharin using his body, and subduing his senses, attains the world of Brahma, and is not born again."" I translate the

commentary of the Mitaksbara on these verses as follows: "" In this manner i.e., in the manner stated, Naishtika, i.e., one who conducts himself till

death, he shall live all his life near his preceptor. He shall not be his own master after the period of receiving instruction in the Veda.. In his absence

near his son ; in the absence of the latter near his wife, in her absence near the fire ; disciplining his body in the manner stated, his senses being

controlled, the Brahmacharin attains the world of Brahma, i.e., achieves deathlessness. Never is he born here again."" Apararka, in his

Commentary on the same verses at pages 71 and 72 of Volume 46 of the Anandasrama Series, enters into a more elaborate explanation of the

two classes of Brahmacharis, Upakurvana and Naishtika, the former being one who passes to the stage of Grahastha in the ordinary course of life

and the latter being one who stays with his preceptor for life under rigid rules of self-discipline. In Chapter II of Manu, Verses 243 to 249 deal

with the Naishtika Brahmacharin. It is enough to quote the first of those verses in order to indicate that the life of the Naishtika is a life of discipline

under the teacher for life to qualify for liberation. Verse 243 (Buhler's Translation) says: "" But if a student desires to pass his whole life in the

teacher's house, he must diligently serve him, until he is freed from this body. "" But to the Upakurvana or a student who remunerates his teacher to

pass on with his leave to the next stage of life Manu has the following injunction. Chapter III verse 2 says: ""A student who has studied in due order

the three Vedas, or two, or even one only, without breaking the rules of studentship, shall enter the order of house-holders."" Verse 4 says: ""Having

bathed, with the permission of his teacher, and performed according to the rule the Samavarthanam (the rite on returning home), a twice-born man

shall marry a wife of equal caste who is endowed with auspicious bodily marks." The house-holder's entry into the next stage of Vanaprasatha or

the hermit in the forest is thus enjoined. Manu, Chapter VI, Verse (1) says : " A twice-born Snataka, who has thus lived according to the law in the

order of house-holders, may, taking a firm Resolution and keeping his organs in subjection, dwell in the forest, duly (observing the rules given

below) ". The following slokas relate to the entry into the fourth stage namely, that of the; ascetic Chapter VI, verses 33, 34, 36 and 37: " But

having thus passed the third part of (a man's natural term of) life its the forest, he may live as an ascetic during the fourth part of his existence, after

abandoning all attachment to worldly objects. He who after passing from order to order, after offering sacrifices and subduing his senses, becomes,

tired with (giving) alms and offerings of food, an ascetic, gains bliss after death. Having studied the Vedas in accordance with the rule, having begat

sons according to the sacred law, and having offered sacrifices according to his ability, he may direct his mind to (the attainment of) final liberation.

A twice-born man who seeks final liberation, without having studied the Vedas, without having begotten sons, and without having offered

sacrifices, sinks downwards," The obligatory character of marriage or entry into the order of householder is thus propounded by Manu with great

emphasis. Verses 51 and 52 of Yajnavalkya, Acharadhyaya and also verses 45, 56 and 57 of the Prayaschittadhyaya, (see pages 167, 249 and

250 of Mandlik) enforce the same view. Both the commentators of Manu and the commentators of Yajnavalkya have come to the conclusion after

a full discussion of Sruti and Smriti texts that the stage of house-holder is obligatory on all the twice-born. But to those who have pursued the path

of non-attachment, Naishtika Brahmacharya, or perpetual studentship or entry from studentship into the stage of the hermit or ascetic direct, is

open Some indeed have maintained that there is no warrant for the Asramas of hermit and ascetic and that the stage of house-holder is the only

one in which a man is at liberty to pass his life. The text of Gautama, Sacred Books of the East Vol. II, verse 36 at page 193, supports that view.

But the venerable teacher (prescribes) one order only, because the order of house-holders is explicitly prescribed (in the Vedas)". And, in Verse

1 he expresses it as the opinion of "some" that "he (who has studied the Veda) may make his choice (which) among the orders (he is going to enter)", Gautama's view is, however, rejected by Medhathiti and Vignaneswara. But that rejection is not to be understood as a sanction to each man to follow which order he likes or to be in no order at all. Marriage is a Vyavasthitha Vikalpa or fixed alternative, i. e., compulsory when certain conditions exist (see Jaiminiya Nyayamala, Chapter, 12, Pada 4, Adhikarna 7) and not an Aichehika Vikalpa or alternative to be chosen according to pleasure (Jaiminiya Nyayamala, Chapter 12, Pada 3, Adhikarana 4) Except to the man who pursues the path of non attachment to all others the order of a householder is a necessary stage in the journey of life. A person is not justified in being in none of the Asrams. Daksha (Manmathanath Dutt's Translation, page 434) says "a twice born person should not live even for a day without following any order. If he lives without following an order he is required to perform a penitential rite." See the Sanskrit text in Volume 48, Anandhasrama Series, page 72. Apararka (Anandhasrama Series, Volume 46) relies on the same text of Daksha. He further adds on the authority of a text whose author is not named : "Aman is not fit for Karma, O, King without a wife, whether he is a Brahman, Kshathria, Vaisya or Sudra. The wife is the chief factor for men in the attainment of Dharma Artha and Kama" which are three out of the four ends of life, the last being final liberation. The stage of the householder is extolled by Gautama in verse 3 of Chapter III, Page 190, Sacred Books of the East, Vol II. "The householder is the source of these, (the four orders) because the others do not produce offspring." Manu expresses the same view. He says in Sloka 7 Chapter III: " Because men of the three (other) orders are daily supported by the house-holder with gifts of sacred knowledge and food, therefore (the order of) house-holders is the most excellent order." In Chapter VI again he returns to the same theme. Verse 87 runs : "The student, the house-holder, the hermit, and the ascetic, these (constitute) four separate orders, which all spring from (the order of) house-holders " Verse 8: " But all (or) even (any of) these orders, assumed successively in accordance with the Institutes (of the sacred law), lead the Brahmana who acts by the preceding (rules) to the highest state." Verse 9 " And in accordance with the precepts of the Veda and of the Smriti, the house-keeper is declared to be superior to all

of them ; for he supports the other three"" (Buhler's (Translation).

3. There is again a text of the Yajurveda which is referred to by the commentators on Manu and Yajnavalkya and which is to the following effect.

That a person is born with three debts one of which is to the pithris and that debt is discharged by the begetting of offspring. Manu refers to the

same rule in Chapter VI verses 35 and 94. Verse 94 says ""a twice-born man who, with collected mind, follows the tenfold law and has paid his

(three) debts, may, after learning the Vedama according to the prescribed rule, become an ascetic."" Both Medhathiti and Vignaneswara quote the

Vedic text in their commentaries on Manu and Yajnavalkya to enforce the view that the stage of householder is compulsory to all who have not

attained to the level of non attachment which fits them for perpetual studentship or the stages of hermit and ascetic.

4. Passing now to the grounds of the decision in Govindarazulu Narasimham v. Devarabhotla Venkatanarasayya ILR (1903) M. 206 the first that

invites our attention is the statement ""nowhere is marriage in the case of a male included in the initiatory ceremonies."" Having regarded to the

numerous statements in authoritative works on the Samskaras that marriage is an essential Samskara it is perfectly plain the learned pleaders who

argued the case failed to draw the attention of the learned Judges to such texts. Mr. Mayne says: ""A Hindu marriage is the performance of a

religious duty. Hindu Law, page 108. Banerjee says in his Tagore Lectures First Edition, page 30: "" It is regarded as one of the ten Samskaras

necessary for regeneration of men of the twice-born classes."" West and Buhler say [page 873 note (f)] "" marriage is a Samskara that is strongly

enjoined."" The Samskara Mayukha the Samskara Bhaskara and the Samskara Ratnamala, all of them authoritative treatises on the Samskaras but

none of which has yet been translated into English, deal exhaustively with the Samskaras. Marriage is there shown by them to be among the most

important. See the Samskara Mayukha leaf 6, Samskara Bhaskara leaf 2, and the Samskara Ratnamala pages 2--5, Anandasrama Series, Volume

39. These works show that according to Gautama the Sams karas are forty of which marriage is one. According to Angiras they are twenty-five

including marriage. According to Asvalayana and others they are sixteen and marriage is among the number. The Samskara Ratnamala quotes the

sages in full and points out at page 6 the fruit of the several Samskaras. As regards marriage, "" the fruit of the Samskara is stated to be the

discharge of the debts to the Gods and the Pitris-."The learned Chief Justice in Govindarazulu Narasimham v. Devarabhotla Venkatanarasayya

ILR (1903) 27 M. 206 refers to the opinion of Colebrook at page 301 of Volume II of Jagann .dha"s Digest and also to the note in Stokes, H. L.

Books, at page 398, and observes: "" We cannot find that Mr. Colebrook had any sufficient authority for including marriage among the ceremonies

necessary to perfect the class of a twice-born. "" This statement would no doubt be correct if it was intended to mean that in order to become a

twice-born person marriage is not a necessary condition. But Mr. Colebrooke does not say and it is not necessary for the purpose of establishing

the obligatory character of marriage to say it, that marriage is a necessary condition to make a person twice-born. All that he says is that marriage

is among the obligatory Samskaras. The eight ceremonies or Samskaras he refers to, are also those that are prescribed for girls as made without

Mantras. See leaf 2, Samskara Bhaskara. He includes marriage as an additional Samskara on the authority of Jagannadha himself who speaks of

ten Samskaras at page 254 of the Digest. There is also another reason for separating marriage ""from the Samskaras that precede it, for as pointed

out at page 300 of the Digest it is not a Samskara which a father does for the sons as he does in the case of the preceding Samskaras but one in

which the son himself participates as the active agent. Stress has been laid on the text of Narada in Chapter XIII. Verse 32 is as follows: "" Or, no

paternal wealth being left, the initiatory ceremonies must be invariably performed for their brothers by those previously initiated contributing the

required funds for their own portions." The Smriti Chandrika no doubt in P1. 41 of Chapter IV quote this verse"as prescribing the rule in case

there is no patrimony and adds the comment in P1. 42 "" that the ceremonies contemplated by this text commence in Jatakarma and end in

Upanayana. "" The marriage of an unmarried brother is certainly not a duty cast on the married brothers when there is no patrimony. And the

limitation of Verse 34 of Narada"s text in the particular case of no patrimony to the ceremonies that I end with Upanayana does not justify the

inference that the author of the Smriti Chandrika regarded marriage as a Samskara which was not obligatory. Dr. Jolly"s note which is perfectly 1

correct with reference to the comment of the Smriti Chandrika is perhaps appended by mistake to Verse 34. There is no note under Verse 34 and

it may be Dr. Jolly's observation is not applicable to the case put in Verse 33 of Narada. But, however, this may be there can be no doubt that the

Smriti Chandrika is no authority for the position that marriage is not an obligatory Samskara. There remains one important matter to be noticed. I

have not been able to find on what authority Mr. Justice Muthusami Iyer based his observations in Ponnappa Pillai v. Pappu-vayyengar ILR

(1881) 4 M. 1. that the phrase "the like" in P1. 29 Mitakshara Chapter 1, Section 1, refers only to such ceremonies as if unperformed would

entail a forfeiture of caste. The discussion in the Mitakshara from P1. 17 to 29 is with reference to the question whether property arises by birth or

by partition. As usual with the author he first propounds the problem, see P1 17. He states the argument of the opponent strengthening it by apt

quotations in P1. 18--22. In P1. 23--26 he states his argument in answer to the opponent's view and in P1. 27 his conclusion, namely, that

property is by birth. Some texts apparently inconsistent with this view are explained away as referring to particular exceptions, P1. 27 after stating

the conclusion explains the text showing that the father has greater power than the mere holder of a joint interest as applicable to moveables.

Another text which deals with a single member's power over immovables is explained as confined to exceptional cases. There is no reference in

P1. 28 to the single member being the manager. But the text, however, is generally cited as dealing with the powers of a manager. The explanation

of that text in Pl.29 (Colebrooke's Translation) is as follows: "While the sons and grandsons are minors, and incapable of giving their consent to a

gift and the like, or while brothers are so and continue unseparated; even one person, if capable, may conclude a gift, hypothecation, or sale, of

Immovable property, if a calamity affecting the whole family require it, or the support of the family renders it necessary or indispensable duties,

such as the obsequies of the father or the like, make it unavoidable," The words in the Mitakshra which have been rendered into English by

Colebrooke by the clause "or indispensable duties such as the obsequies of the father or the like make it unavoidable" are simply void; a

father's shradha etc., which have to be necessarily done." It will be noticed that Mr. Colebrooke has, by using

the words ""indispensable"" and ""unavoidable,"" added to the stringency of the condition under which an alienation is permissible. The word "Adi"

which is translated ""or the like"" means beginning with and merely indicates that the father's ceremony which is named is one out of a group of

ceremonies. There is; no implication that forfeiture of caste is a consequence of a failure to perform the obsequies and that a similar consequence

flows from a failure to perform other ceremonies which are grouped together with the obsequies of the father. If we dismiss the idea then of

forfeiture of caste as the penalty which must characterise the class of ceremonies for which the Immovable property of the family may be alienated

by the manager there is nothing in P1. 29 of the Mitakshara which prevents our holding that a debt borrowed for defraying the expenses of the

marriage of the son is recoverable from the family property as having been incurred for a family purpose in a case of necessity. The importance of

the marriage ceremony in the case of every Hindu, subject to the exceptions already noticed, is so well recognised by Mitakshara that in the

commentary at page 416 on Sloka 289 of Yajna-valkya, Vignaneswara observes. "" Harita says a person who is in no Asrama (after leaving

studentship) for a year shall perform Prajapatya Krichra and enter the (next) Asrama. After the second year the penance of Athi Krichra; after the

third Krichrathi Krichra ; beyond that Chandrayana. This is in case (the Asrama) is not available. But if available ordinarily the purifications

prescribed for Upapatahkas should be ordered according as the abstention was intentional or not."" It is unnecessary for our present purpose to

explain these expiatory rites. The above passage from the Mitakshara is decisive of the obligatory character of the Marriage ceremony. This

passage is quoted in Leaf 199 of the Samskara Bhaskara with approval. I have therefore no hesitation in holding that the marriage of the and

defendant for which the loan was contracted by the 1st defendant and the mortgage executed was a proper family purpose and the 3rd

defendant's interest in the mortgaged property is consequently liable for the mortgage debt. I would set aside the decree of the Subordinate Judge

as regards the 3rd defendant and restore that of the District Munsif. I make no order as to costs.