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rehearing to the trial court. The defendants will file their written statement to the amended claim and the suit will be tried and disposed of in accordance with law.

There remains the question of costs. As the plaintiffs are getting an indulgence, they must pay the costs of the defendants both in the suit and in the appeal to the Bombay High Court. So far as costs of this appeal are concerned, as the defendants persisted in their contention that the plaintiffs were only acting as their agents, a contention which, if upheld, would have furnished a conclusive answer to the amended claim as well, we direct the parties to bear their own costs in this Court.

Appeal allowed.
Case remanded.

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January, 29.

KAMALA DEVI

v.

BACHU LAL GUPTA

[S. R. DAS C. J., BHAGWATI and S. K. DAS JJ.]

Hindu Law—Gift of immoveable property by widow—Daughter's marriage dowry—Ante-nuptial promise—Deed executed and registered after marriage—Validity—If binding on the reversioners—Transfer of Property Act (IV of 1882), s. 123—Hindu Succession Act, 1956 (XXX of 1956), s. 14.

In fulfilment of an ante-nuptial promise made on the occasion of the settlement of the terms of marriage of her daughter, a Hindu widow, governed by the Benares School of Hindu Law, executed a registered deed of gift in respect of 4 houses allotted to her share by a partition decree, in favour of her daughter as her marriage dowry about two years after the marriage. The partition decree gave her a right to the income, but no right to part with the corpus of the property to the prejudice of the reversioners. Her step-sons brought a suit for a declaration that the deed of gift was void and inoperative beyond her lifetime and could not bind the reversioners. The trial court found that the gifted properties constituted a reasonable portion of the estate, but that the gift not having been made at

the time of the marriage or on the occasion of the Gowna (Dwiragaman) ceremony in accordance with the provisions of s. 123 of the Transfer of Property Act, was not binding on the reversioners beyond the lifetime of the widow and decreed the suit. The High Court found that the widow had made the ante-nuptial promise, but that the gift having been made about two years after the marriage or the Gowna ceremony, the provisions of the Transfer of Property Act relating to gifts stood in the way of considering the same as having been made on the occasion of the marriage but implemented later, and affirmed the decision of the trial court, although the gifted houses were found to constitute a reasonable portion of her husband's estate. The contentions in appeal on behalf of the widow and the daughter were (1) that the widow had the power in Hindu Law, as it stood before the enactment of the Hindu Succession Act, 1956, to execute the deed of gift in question and (2) that s. 14 of the said Act had the effect of making them full owners of the property in suit.

Held, that the deed of gift in favour of the daughter was valid in law and binding on the reversioners and the appeal must succeed.

Under the Benares School of Hindu Law, as it stood prior to the enactment of the Hindu Succession Act, 1956, as also under the partition decree, the properties allotted to the widow constituted her widow's estate as on inheritance and she had no absolute right of disposal over them.

Bhugwandeen Doobey v. *Myna Baee,* (1868) 11 M.I.A. 487, referred to.

Debi Mangal Prasad Singh v. *Mahadeo Prasad Singh,* (1912) L. R. 39 I. A. 121, followed.

In Hindu Law the marriage of a daughter is a pious act and confers direct spiritual benefit on the father and a widow has the power to make a gift of a reasonable portion of her husband's estate as marriage dowry to the daughter, even after the marriage, in fulfilment of an ante-nuptial promise, whether she makes the 'sankalpa' at the time of the marriage or not.

Ganga Bisheshar v. *Pirthi Pal,* (1880) I. L. R. 2 All. 635, disapproved.

Case-law reviewed.

This power of the widow is one conferred on her by Hindu Law and is not affected by the provisions of s. 123 of the Transfer of Property Act, though the gift to be legally effective must be made in the manner prescribed by that section.

Although there is no doubt that sub-s. (1) of s. 14 of the Hindu Succession Act, 1956, gives a retrospective operation to the provisions of that section so as to make a female Hindu a

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full owner of immoveable property acquired either at a partition or by way of gift, it is not necessary in the present case to examine the true nature and scope of s. 14 of the Act.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 158 of 1953.

Appeal by special leave from the judgment and decree dated April 6, 1950, of the Calcutta High Court in appeal from original decree No. 166 of 1944 arising out of the decree dated June 30, 1943, of the Court of the Subordinate Judge, Asansol, in Title Suit No. 2 of 1942.

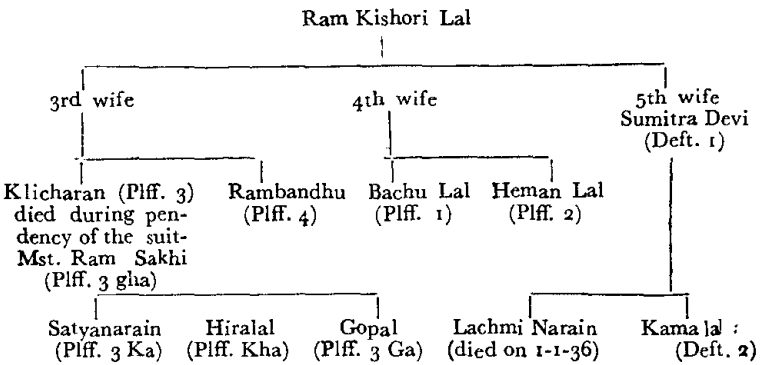
Ramanugrah Prasad and *Mohan Beharilal,* for the appellants.

H. J. Umrigar and *S. P. Varma,* for respondents Nos. 1 and 2.

1957. January 29. The Judgment of the Court was delivered by

S. K. DAS J.—This is an appeal by special leave from the judgment and decree of the High Court of Calcutta, dated April 6, 1950, by which the said High Court affirmed the judgment and decree of the Subordinate Judge of Asansol dated June 30, 1943, in Title Suit No. 2 of 1942. The suit was instituted by the four sons of one Ram Kishori Lal Sao, a resident of Asansol in Bengal, who died in September 1927. One of the plaintiffs, Kalicharan, died during the pendency of the suit and his heirs were brought on the record as plaintiffs in his stead. The defendants were Sumitra Devi, widow of the late Ram Kishori Lal, (defendant No. 1) and Kamala Devi, daughter of the late Ram Kishori Lal (defendant No. 2). The said defendants, 1 and 2, are the appellants before us.

The suit was instituted for a declaration that a deed of gift dated March 10, 1940, executed by Sumitra Devi in favour of her daughter Kamala Devi, was void and inoperative beyond the lifetime of Sumitra Devi and was not binding on the reversion. The following genealogical table shows the relation *inter se* between the parties :



On his death, Ram Kishori Lal had left extensive properties worth several lakhs, including some houses in Asansol, two businesses at Howrah and Asansol, and large amounts of money deposited in Banks or invested in loans etc. Shortly after his death Sumitra Devi, for herself and as guardian of her two children, Lachmi Narain and Kamala, brought a suit against her step-sons for partition of the properties left by her husband. This suit was registered as Title Suit No. 664 of 1927 in the Court of the Subordinate Judge of Asansol. A preliminary decree was passed in the suit on July 22, 1933, and a final decree on June 29, 1936. This decree provided for payment of Rs. 10,000 as expenses for the marriage of the minor daughter Kamala, in addition to a maintenance allowance of Rs. 50 per month to her until she was married. Lachmi Narain, it should be noted, died on January 1, 1936. By the final decree, each of the sons obtained one-sixth share of the estate of Ram Kishori Lal. By reason of the death of Lachmi Narain before the final decree, Sumitra Devi got one-third share of the estate, one-sixth in her capacity as widow and one-sixth as the mother of her pre-deceased son. The allotment in favour of Sumitra Devi consisted mostly of house properties, and the four houses of her share with which we are concerned in this litigation were described in a schedule to the plaint and stood on Municipal Holding Nos. 16, 17, 26 and 27 of Circle 4 of the Asansol Municipality. The value of these four houses was found by the Commissioner at the time of partition to be in the neighbourhood of Rs. 19,000 only.

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The marriage of Kamala Devi was settled with one Bijoy Kumar Sao, son of Nand Lal Sao, a retired Deputy Postmaster, Patna General Post Office. The case of the appellants was that the marriage was settled at Deoghar on Shivratri day in 1938 and the plaintiffs, respondents before us, had no concern with the negotiation; it was alleged that the terms of the marriage settlement included a promise by Sumitra Devi of a gift of four houses at Asansol, worth about Rs. 20,000 as marriage dowry for Kamala. The further case of the appellants was that at the time of the marriage itself, which was performed on May 10, 1938, Sumitra Devi made a "sankalpa" of the gift of four houses at Asansol, which was accepted by Nand Lal Sao on behalf of Kamala, and the gift was later confirmed on the occasion of the Dwiragaman (Gowna) ceremony which took place in December, 1938, and possession of the houses was also given to her; soon after the marriage, however, Sumitra Devi feel ill and the deed of gift was actually executed and registered on March 10, 1940, some two years after the marriage. This was the deed of gift which was impugned by the plaintiffs-respondents.

The case of the plaintiffs-respondents was that the marriage negotiations took place at Asansol and did not contain any promise of the gift of four houses as marriage dowry. The plaintiffs-respondents alleged that the arrangements were that ornaments worth about Rs. 5,000 were to be given to Kamala Devi, a sum of Rs. 800 was to be paid as travelling expenses of the bridegroom's party, and gifts of some moveable properties were to be made out of the balance of the sum of Rs. 10,000 which was set apart for the marriage expenses of Kamala Devi. The plaintiffs-respondents denied that there was any ante-nuptial promise of a gift of four houses as marriage dowry or that there was any "sankalpa," at the time of marriage or any confirmation of the gift at the Dwiragaman ceremony. They alleged that Sumitra Devi, under the evil advice of her father and son-in-law and to deprive the plaintiffs-respondents of their right, made a gift of the four houses at Asansol in favour of Kamala Devi

on the 10th March, 1940, a gift which she was not competent under the law to make. It was alleged that the gift was collusive, fraudulent and without consideration; and in any event, it could not be operative beyond the lifetime of Sumitra Devi and was not binding on the reversion, as she had only a life interest in the corpus of the property and there was no justifying legal necessity for the alienation made by her. It was also alleged that Sumitra Devi was not legally competent to make a gift, as marriage dowry of her daughter, of such a big and unreasonable portion of the estate left by her husband.

On the aforesaid pleadings of the parties, the principle issues were Issues Nos. 2 and 3 which were in these terms :

"2. Is the defendant No. 1 competent to make any gift of the properties mentioned in the plaint beyond her lifetime to defendant No. 2 ? Is it void and inoperative against the plaintiffs beyond the lifetime of defendant No. 1 ?

3. Is the deed of gift executed by defendant No. 1 in favour of defendant No. 2 with the alleged collusive and fraudulent allegations binding on the plaintiffs on her death ?"

It is necessary now to summarise the findings of the Courts below on these issues. On the questions of fact involved in the two issues, the learned Subordinate Judge came to the following findings : (1) the marriage of Kamala Devi was settled at Deoghar as claimed by Mst. Sumitra Devi and not at Asansol ; (2) there was, however, no promise of any gift by her of four houses at Asansol either at the time of the settlement of the marriage terms at Deoghar or during the marriage ceremony ; (3) the story of the delivery of possession of the houses to Kamala Devi was not supported by reliable evidence. Basing his decision on the aforesaid findings of fact, the learned Subordinate Judge held that the interest created in favour of Sumitra Devi in respect of the properties allotted to her on partition was in the nature of an ordinary maintenance grant and she had no right to alienate the same in favour of her daughter. Even if she had the limited right of

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disposal, as in the case of a Hindu widow, she was not competent to execute any deed of gift, except with regard to a reasonable portion of the estate of her husband at the time of the marriage of Kamala Devi or on the occasion of the Gowna ceremony. Though the learned Subordinate Judge found that the properties given to Kamala Devi constituted a reasonable portion of the estate, he held that the gift not having been made at the time of the marriage or on the occasion of the Gowna ceremony in accordance with the provisions of s. 123, Transfer of Property Act, was not binding on the plaintiffs-respondents and could not operate beyond the lifetime of Sumitra Devi. He accordingly decreed the suit.

The learned Judges of the High Court formulated five questions of fact, four of which are important for our purpose, and on a fresh consideration of the evidence on the record, came to the following findings thereon : (1) a final settlement of the terms of marriage was made at Deoghar and the terms which were settled between the parties were : (a) that Sumitra Devi would arrange for the gift of ornaments worth about Rs. 5,000, (b) a sum of Rs. 800 would be paid for meeting the expenses of travelling of the bridegroom's party from Patna to Asansol, (c) a sum of Rs. 51 would be paid for the Tilak ceremony and (d) a gift of four houses at Asansol, worth about Rs. 20,000, would be made in favour of Kamala Devi, though the evidence led on behalf of the appellants did not make it absolutely clear or specific that the promise related to the four particular houses which were the subject-matter of the subsequent gift ; (2) the plaintiffs-respondents had nothing to do either with the settlement of the terms of marriage or with any control or management of the marriage ceremony; (3) there was no reliable evidence that Sumitra Devi had made a "sankalpa" of the gift of the houses when the bride was given in marriage and the question of confirming such a gift at the Gowna ceremony did not therefore arise ; (4) it was not proved by reliable evidence that the possession of the houses in question was made over to Kamala Devi before the actual execution of

the deed of gift. Relying on the decision in *Debi Mangal Prasad Singh* v. *Mahodeo Prasad Singh*(1), the learned Judges of the High Court pointed out that even in cases governed by the Mitakshara (the parties in this case are admittedly governed by the Benares school of Mitakshara law) the share allotted to Sumitra Devi on partition was not her stridhan but stood on the same footing as property inherited by her from her husband and that on her death the property would pass not to her stridhan heirs but to the sons or grandsons. The learned Judges then referred to the decision in *Churaman Sahu* v. *Gopi Sahu*(2) and observed that though it was competent for a Hindu widow, governed by the Mitakshara, to make a valid gift of a reasonable portion of the immoveable property of her husband to her daughter subsequent to the marriage ceremony, the gift in Churaman Sahu's case was made at the time of the Dwiragaman (Gowna) ceremony which was really a part of the marriage ceremony, while the gift in the present case was made some two years after the marriage. They then said: "In the case now before us the marriage and the Gowna ceremony took place in 1938 and the document was executed in March 1940, the lapse of time between the two is too great to describe the gift to have been made on the occasion of either the marriage or the Gowna ceremony. No authority had been placed before us supporting a gift by a widow to a daughter except at the time or on the occasion of marriage ceremony. The ante-nuptial promise cannot be regarded as a gift having been made on the occasion of the marriage. Had it not been for the provisions contained in the Transfer of Property Act governing the Law of Gifts it might have been possible to consider the gift as having been made on the occasion of the marriage, the implementation of which was subsequent. In view of the strict provisions of the Transfer of Property Act we can only consider the gift to have been made at the time when the deed was executed and registered." On the question whether the gift in favour of Kamala Devi by Sumitra Devi

(1) (1912) L.R. 39 I.A. 121. (2) [1909] I.L.R. 37 Cal. 1.

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was of a reasonable portion of her husband's properties, the learned Judges observed: "In the present case, the value of the houses gifted was just above Rs. 18,000 which was about a fourth of the value of each share allotted (*viz.,* above Rs. 73,000). Even if the provision of Rs. 10,000 made in the partition decree for meeting the marriage expenses be taken into account, we cannot say that the value of the gifted houses was disproportionate or unreasonable." In the result, the High Court affirmed the decision of the learned Subordinate Judge and dismissed the appeal preferred by the defendants who are the appellants here.

It is necessary to state now the contentions which have been urged before us on behalf of the appellants, and they may be put in two main categories—(a) contentions with regard to the findings of fact, and (b) contentions of law. Learned counsel for the appellants has impeached the concurrent finding of the Courts below that there was no "sankalpa" or promise of a gift of the four houses in question at the time of the marriage ceremony which, it was alleged, was followed by a confirmation of the gift at the Gowna ceremony. The finding has been impeached on the ground of a serious error of record said to have been committed by the High Court and on the ground of non-consideration of relevant evidence. It has been argued before us that the proper finding should have been that Sumitra Devi made a "sankalpa" of the gift of the four houses in question after the Sampradan ceremony on the occasion of the marriage of Kamala Devi and that the gift was accepted by Nand Lal on behalf of his minor daughter-in-law and that such a gift was again confirmed at the Gowna ceremony. The main contentions of law are three in number: firstly, it has been contended that even accepting the findings of the final Court of fact as correct, the gift being of a reasonable portion of the estate of Ram Kishori Lal Sao and in pursuance and fulfilment of an ante-nuptial agreement made by Sumitra Devi at the time of the final settlement of the marriage negotiations at Deoghar, was for the spiritual

benefit of Ram Kishori Lal and valid in Hindu law; any such lapse of time as occurred in the execution and registration of the deed of gift was immaterial, if the deed of gift was in fulfilment of the moral obligation flowing from the ante-nuptial agreement: secondly, it was suggested that Sumitra Devi got an absolute right in the properties given to her as her share on partition; thirdly, a reference was made to section 14 of the Hindu Succession Act, 1956 and it has been argued that in view of the said provisions the plaintiffs-respondents were not entitled to the reliefs which they claimed. It may be stated here that arguments in the case had concluded before the Court closed for the annual vacation in 1956 and during the vacation the Hindu Succession Act, 1956, came into force on June 17, 1956. On an application filed by the appellants, fresh arguments were heard with regard to the provisions of s. 14 of the Hindu Succession Act, 1956.

We proceed now to deal with the contentions in the order in which we have stated them. First, we take up the contentions with regard to the findings of fact referred to above. It has been pointed out to us that the learned Judges of the High Court made a serious error of record in dealing with the oral evidence as to the verbal gift said to have been made at the time of the marriage of Kamala Devi and the acceptance of such a gift by Nand Lal, father-in-law of Kamala Devi. In dealing with the oral evidence on this question, the learned Judges have said: "If we leave out of account for the present the evidence of Sumitra Devi and Bijoy as also of Kamal, who has been contradicted on a very material point by the other witnesses and also Nand Lal, father of Bijoy, we are left with Parasuram and Rash Behary. Parasuram, a tenant, happens to be present at the psychological moment only for a few minutes when the Sankalpa is being made." The High Court clearly made a mistake in dealing with the evidence of Parasuram Sharma and confused Parasuram Sharma (witness No. 16) with Pashupati Sarkar (witness No. 10). Pashupathi Sarkar was a tenant of Sumitra Devi and it was his evidence that he went to

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the place of marriage at about 12 midnight or 1 a.m. and stayed there for two minutes only and then came away. Parasuram Sharma (witness No. 16) was not a tenant of Sumitra Devi. He was the Head Master of the Indian H.E. School at Patna, a school where Bijoy, husband of Kamala, was a pupil for two years. This Head Master said that he attended the marriage as a member of the bridegroom's party and was present when from behind the purdah Sumitra Devi made a "sankalpa" of the gift of four houses; this was conveyed by Ganapati Sastri who recited "mantras" and was accepted by Nand Lal. It is unfortunate that the High Court confused Parasuram Sharma (witness No. 16) with Pashupati Sarkar (witness No. 10), with the result that Parasuram Sharma's evidence was not properly considered by the High Court. This defect in the consideration of the evidence by the High Court is undoubtedly there. The point for consideration is if this is a sufficient ground for departure from the ordinary rule of this Court not to go behind the findings of fact arrived at by the Courts below. Though the mistake made in unfortunate, we do not think that it is sufficient to disturb the finding of the Courts below or even to re-open the finding at this stage. It is worthy of note that the learned Subordinate Judge made no mistake about Pashupati and Parasuram. He pointed out that the witnesses examined on behalf of the appellants with regard to the verbal gift at the time of the marriage and its acceptance by Nand Lal, were mostly interested witnesses and none of them were really independent. Even Parasuram Sharma, whose evidence has been placed before us by learned counsel for the appellants, cannot be said to be completely independent. He was invited to attend the marriage as a member of the bridegroom's party and he said that he *overheard* Sumitra Devi saying that she was making a "sankalpa" of the gift of four houses as promised—evidence which is not of a very satisfactory nature. There were many other criticisms of the evidence regarding the verbal gift at the time of the marriage; the learned Judges of the High Court have referred to these criticisms and they accepted some of them. One

of the criticisms which greatly weighed with the learned Subordinate Judge was the absence of any reference to the gift of four houses in contemporaneous Court proceedings with regard to the withdrawal of Rs. 10,000 by Sumitra Devi, the sum which was set apart by the partition decree for the marriage expenses of Kamala Devi. This criticism was not, however, fully accepted by the learned Judges of the High Court who placed greater reliance on the evidence of Rai Saheb Jogendra Nath Roy (witness No. 14) who was the most respectable and reliable witness examined on behalf of the appellants. The evidence of this witness supported the evidence of Sumitra Devi with regard to the promise made regarding the gift of four Asansol houses at the time of the settlement of marriage negotiations at Deoghar. There can be no doubt that Rai Saheb Jogendra Nath Roy was a very respectable witness and had no reasons to tell lies. Though he supported that part of the evidence of Sumitra Devi which related to the promise of a gift of four houses at Asansol at the time of the marriage negotiations at Deoghar, he made no statement about a verbal gift having been made at the time of the marriage itself. The witness said that he went to Sumitra Devi's house on the evening of the marriage and stayed for fifteen to twenty-five minutes only. He further said that he was not present at the time of the marriage ceremony. It may, therefore, be that Rai Saheb Jogendra Nath Roy was not present at the time when the verbal gift was alleged to have been made.

By far and large, the learned Judges of the High Court did examine with care the oral evidence with regard to the alleged verbal gift at the time of the marriage and but for the unfortunate confusion between Parasuram Sharma and Pashupati Sarkar, we do not think that the consideration of the oral evidence by the High Court is open to any other serious criticism. The learned Judges rightly pointed out a serious discrepancy which existed between the evidence of Kamal Narayan Pandey (witness No. 8), who is said to have acted as the priest for the marriage, and the evidence of other witnesses with regard to the "lagan" or time

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of marriage. Taking all these circumstances into consideration, we do not think that we shall be justified in going behind the finding of the Courts below that the appellants had failed to prove by satisfactory evidence that Mst. Sumitra Devi made a verbal gift of the four houses in question at the time of the marriage of her daughter Kamala Devi and that such a gift was accepted by Nand Lal on behalf of him minor daughter-in-law. In view of this finding, the question as to whether the gift was again confirmed at the time of the Gowna ceremony does not really arise. There can be no confirmation of an act which did not itself take place.

As the appellants have impeached the finding of the Courts below with regard to the verbal gift said to have been made at the time of the marriage, the respondents have also impeached before us the finding of the High Court about an ante-nuptial agreement said to have been made at Deoghar. It has been contended by learned counsel for the respondents that there were no compelling reasons for the High Court, which was the appellate Court, to differ from the appreciation of the oral evidence by the learned Subordinate Judge, who had the advantage of seeing the witnesses, with regard to the question of the ante-nuptial agreement said to have been made at Deoghar. It is true that the learned Subordinate Judge did not accept the evidence of the witnesses who testified to the terms of settlement of the marriage negotiations at Deoghar. What tipped the scale in favour of the finding arrived at by the High Court on this point was the evidence of Rai Sahib Jogendra Nath Roy (witness No. 14). The learned Subordinate Judge gave certain reasons for not accepting the evidence of this witness. The learned Judges of the High Court considered those reasons very carefully and rightly pointed out that there were no good grounds for thinking that Rai Saheb Jogendra Nath Roy had fallen a victim to lapse of memory or for holding that he was an interested witness. The evidence of Rai Saheb Jogendra Nath Roy was considered in the context of contemporaneous Court proceedings for the withdrawal of Rs. 10,000 and the learned Judges

of the High Court accepted the explanation which Rai Saheb Jogendra Nath Roy gave for not mentioning the promise of a gift of four houses in Asansol in the application which Sumitra Devi made for the withdrawal of the said sum of Rs. 10,000. In our opinion, the finding of the High Court as to an ante-nuptial agreement for the gift of four houses at Asansol, worth about Rs. 20,000, is not vitiated by any error of fact or law. That finding must, therefore, be accepted as a correct finding, even though the learned Subordinate Judge came to a contrary conclusion with regard to it.

Having disposed of the contentions of fact urged before us, we proceed now to a consideration of the contentions of law. It may be convenient to dispose of, first, the argument somewhat faintly advanced on behalf of the appellants that even prior to the enactment of the Hindu Succession Act, 1956, Sumitra Devi had an absolute right of disposal in the share allotted to her on partition in 1933-36 under Mitakshara law. The question whether the share allotted to a mother on partition is stridhan or not, according to the Benares school, was left open by their Lordships of the Privy Council in *Bhugwandeen Doobey* v. *Myna Baee* (1), the very case in which they held that property inherited by a woman was not stridhan according to the Mitakshara. In *Debi Mangal Prasad Singh* v. *Mahadeo Prasad Singh* (2), the Allahabad High Court, after a review of all the authorities on the subject, held that it was stridhan; but the Privy Council held that it stood on the same footing as property inherited by a woman and that it was not stridhan. The actual point decided in *Debi Mangal Prasad's* case was that there was no substantial difference in principle between a woman's property acquired by inheritance and that acquired by partition. It is worthy of note that the partition decree proceeded on the footing that Sumitra Devi would be entitled to the income from the properties allotted to her but should not be in a position to prejudice the reversioners by destroying the corpus. The preliminary decree for partition stated: "The Commissioner is further directed to allot as little liquid

(1) [1868] 11 M.I.A. 487, 514. (2) (1912) L.R.39 I.A. 121.

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cash to the share of plaintiff No. 2 (Sumitra Devi) as possible on partition and as a rule should allot such properties to her share of which she may receive income without trouble, but may not prejudice the reversioners by destroying the corpus". It follows, therefore, that under the Mitakshara law and also under the partition decree, Mst. Sumitra Devi did not have an absolute right or interest in the share allotted to her on partition. Under the decision in *Debi Mangal Prasad Singh* v. *Mahadeo Prasad Singh*(1), the property allotted to Mst. Sumitra Devi on partition stood on the same footing as property inherited by her from her husband. She had no absolute right of disposal of the property.

This brings us to a consideration of the principal point argued before us on behalf of the appellants, namely, whether Sumitra Devi was competent to make a gift of a reasonable portion of the estate of her husband to her daughter Kamala Devi as a marriage dowry in pursuance and fulfilment of an ante-nuptial agreement, even though the gift was made some two years after the marriage ceremony. This point was urged before us, as we have already stated, prior to and irrespective of the enactment of the Hindu Succession Act, 1956. The argument of learned counsel for the appellants was that Sumitra Devi was competent to make such a gift under the Hindu law, even as it stood prior to the enactment of the Hindu Succession Act, 1956. We shall, therefore, deal with this point, irrespective of the provisions of s. 14 of the Hindu Sucession Act, 1956.

It may be stated at the very outset that the concurrent finding of the Courts below was that the gift of four houses at Asansol, of a value of about Rs. 19,000, was not disproportionate or unreasonable if one had regard to the large extent of properties left by Ram Kishori Lal Sao on his death; this was so even taking into consideration the sum of Rs. 10,000 which was set apart for the marriage expenses of Kamala Devi and which was withdrawn by Sumitra Devi. In our opinion, that finding is correct and must be accepted as such. Therefore, the narrow question is if Sumitra Devi was competent to make the gift of four houses at

(1) (1912) L.R. 39 I.A. 121

Asansol as marriage dowry to her daughter, some two years after the marriage, in pursuance and fulfilment of the ante-nuptial agreement made at Deoghar.

There are a number of decisions bearing on the question, to which our attention has been drawn by learned counsel for the parties, and we propose now to examine some of them. In *Sardar Singh* v. *Kunj Behari Lal* (1) it was observed : "There can be no doubt upon a review of the Hindu law, taken in conjunction with the decided cases, that the Hindu system recognises two sets of religious acts. One is in connection with the actual obsequies of the deceased, and the periodical performance of the obsequial rites prescribed in the Hindu religious law, which are considered as essential for the salvation of the soul of the deceased. The other relates to acts which although not essential or obligatory, are still pious observances which conduce to the bliss of the deceased's soul. In the later cases this distinction runs clearly through the views of the learned judges..... With reference to the first class of acts, the powers of the Hindu female who holds the property are wider than in respect of the acts which are simply pious and if performed are meritorious so far as they conduce to the spiritual benefit of the deceased. In one case, if the income of the property, or the property itself, is not sufficient to cover the expenses, she is entitled to sell the whole of it. In the other case, she can alienate a small portion of the property for the pious or charitable purpose she may have in view." In a very early decision, *Cossi Naut Bysack* v. *Hurroo Soondry Dossee* (2), which was heard by the Supreme Court at Calcutta in 1819 and by the Judicial Committee in 1826 and quoted in *Churaman Sahu* v. *Gopi Sahu* (3), it was stated by Lord Gifford that a Hindu widow had "for certain purposes a clear authority to dispose of her husband's property and might do it for religious purposes, including dowry to a daughter." There are several texts which lay down that it is the imperative religious duty and a moral obligation of a father, mother or other guardian to give a girl in marriage

(1) (1922) L.R. 49 I.A. 383, 391.
(2) Morley's Digest 198.
(3) (1909) I.L.R. 37 Cal. 1, 7.

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before she attains puberty. Some of these texts have been quoted in *Churaman Sahu's case* (1) and *Ram Sumran Prasad* v. *Govind Das* (2). According to these texts, the marriage of a girl by her father is enjoined as a religious duty in order to prevent him from being degraded and visited with sin; there is also direct spiritual benefit conferred upon him by such a marriage. Marriage, according to the Sastras, is a religious act; a Sanskara for a man or woman. According to Manu, Chapter II, verse 67, the sacrament of marriage is to a female what initiation with the thread is to a male. The Mitakshara also recognises marriage as a religious obligation for both male and female (*Sundrabai Javji Dagdu Pardeshi* v. *Shivnarayana Ridkarana* (3)). The texts also recognise that gifts can be made at the time of or on the occasion of the marriage or any ceremonies connected therewith, and may also be made in fulfilment of a promise made in connection with the marriage; some decisions have gone to the extent of laying down that the moral obligation continues till it is discharged or fulfilled and such fulfilment may be subsequent to the marriage: see Mitakshara, Chapter I, section VII, Placitum 5 to 14. In Placitum 9 is quoted Manu's text: "To the maiden sisters, let their brothers give portions out of their own allotments respectively; to each the fourth part of the appropriate share; and they, who refuse to give it shall be degraded." In Placitum 11, it is stated: "If it be alleged, that, here also the mention of a quarter is indeterminate, and the allotment of property sufficient to defray the expenses of the nuptials is all which is meant to be expressed: the answer is no; for there is not any proof, that the allotment of a quarter of a share is indefinite in both codes; and the withholding of it is pronounced to be a sin." In *Ramasami Ayyar* v. *Vengidusami Ayyar* (4), it was observed with reference to the aforesaid passages in the Mitakshara, and also to certain passages in the Smriti Chandrika, wherein the texts of Manu, Yajnavalkya and other Smriti writers dealing with the question of

(1) (1909) I.L.R. 37 Cal. 1, 7.
(2) (1926) I.L.R Pat. 646, 681.
(3) [1907] I.L.R. 32 Bom. 81.
(4) [1898] I.L.R. 22 Mad. 113, 114.

allotment to be made by brothers to their maiden sisters at the time of partition, were commented upon, that with regard to the true meaning of those texts commentators were divided: some of them held that all that the texts mean is that funds required for the marriage of sisters should be provided out of their father's estate but other commentators, Vijnaneswara among them, laid down that inclusive of their marriage expenses sisters were entitled to a provision not exceeding a fourth of what they would have got had they been males. It was further observed therein that it was not necessary to decide which of the two views was to be taken as law. Subramania Ayyar J. then said: "Assuming that, as argued for the appellant, the view advocated by Vijnaneswara and his followers is not law, the fact that so high an authority as the author of the Mitakshara propounds a rule thus favourable to maiden daughters ought to make one hesitate to accept as sound the exceedingly limited construction which was insisted on on behalf of the appellant and which can scarcely be said to be in itself very reasonable, *viz.*, that the texts justify a disbursement out of the estate of only the price of things required in connection with the celebration of the marriage. In my opinion, the better and sounder view is, as contended for the respondents, that the authorities should be understood to empower a qualified owner like Thaiyyu Ammal to do all acts proper and incidental to the marriage of a female according to the general practice of the community to which she belongs." It should be noted that the observations aforesaid were made in a case where a widow gave her daughter in marriage and at the time of the marriage made a gift of a portion of the lands inherited by her from her husband to her son-in-law, and the question was if the widow Thaiyyu Ammal, who was a Hindu qualified owner, had authority to make such a gift.

In *Kudutamma* v. *Narasimla Charyulu*(1), the brother, as managing member of the joint family, made a gift of a reasonable portion of the joint family properties to his sisters. The sisters were married in

(1) (1907) 17 M.L.J. 528, 531, 532.

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the father's lifetime but were left for some reason or other without a marriage portion. The gift was made after the father's death and subsequent to the marriage. It was held that the brother had authority to make the gift. Miller J. observed: "If then a brother, finding that his sister though married in his father's lifetime, has been for any reason left without a marriage portion which she ought to have received, it is difficult to see how he can be held to have exceeded his powers if he makes good the deficiency out of the family property. We are not required to hold that he is bound to do so; we are not required to hold that his father was bound in law to give his daughter anything at her marriage; it is only necessary for us to hold that the gift is not in excess of the powers of the brother and cannot therefore be recalled by him or avoided by his son." Wallis J. who concurred in the judgment, observed: "In such a case there was, I think, a strong moral obligation on the joint family over the father as managing member to make a gift out of the joint family property on the occasion of the marriages either to the girls themselves or to their husbands as a provision for them, and the fact that the father maintained both the daughters and their husbands out of the joint family property until his death may be regarded as a continuing recognition of such moral obligation. Mere neglect on the part of the joint family to fulfil a moral obligation at the time of the marriages cannot, in my opinion, be regarded as putting an end to it, and I think it continued until it was discharged by the deed of gift now sued on and executed after the father's death by his son, the 1st defendant, who succeeded him as managing member of the joint family."

In *Churaman Sahu's case*(1), the gift was no doubt made on the occasion of the daughter's *gowna* ceremony which took place some two years after the marriage, and it was held that the *gowna* ceremony was a ceremony of importance, closely connected with the marriage, though it was not a ceremony necessary to complete the marriage. The gift was upheld on that footing. What is worthy of note, however, is

(1) [1909] I.L.R. 37 Cal. 1,7.

that in *Churaman Sahu's case*(1), the decision in *Kudutamma* v. *Narasimha Charyulu*(2) was approved, and that was a decision in which the gift was made subsequent to the marriage and not on the occasion of any particular ceremony.

Sundararamayya v. *Sitamma*(3) is another decision of some importance. There the marriage took place about forty years before the gift and there was no evidence that the father had any intention to give any property at the time of the marriage. The question was if in those circumstances the gift was valid. After referring to the decision in *Churaman Sahu* v. *Gopi Sahu*(4) and *Ramasami Ayyar* v. *Vengidusami Ayyar*(4), it was observed: "We see no reason to differ from these two decisions. The father or the widow is not bound to give any property. There may be no legal but only a moral obligation. It is also true that in the case before us the father did not make any gift and discharge that moral obligation at the time of marriage. But it is difficult to see why the moral obligation does not sustain a gift because it was not made to the daughter at the time of marriage but only some time later. The moral obligation of the plaintiff's father continued in force till it was discharged by the gift in 1899." The learned Judges referred with approval to the earlier decision in *Kudutamma* v. *Narasimha Charyulu*(2). The decision in *Bhagwati Shukul* v. *Ram Jatan Tewari*(5) is somewhat out of the ordinary in the sense that a widow transferred the entire property inherited by her from her husband to a blind and crippled daughter in order to get her married and supply her with a handsome dowry. It was observed that no hard and fast rule could be laid down to define the extent and limit of the widow's power of disposing of the property inherited by her for the marriage of her daughter. The decision of the same case when it went up in Letters Patent appeal is reported as *Bhagwati Shukul* v. *Ram Jatan Tewari*(6). The decision of the single judge was upheld on the

(1) (1909) I.L.R. 37 Cal. 1,7.
(2) (1907) 17 M.L.J. 528,531,532.
(3) (1911) I.L.R. 35 Mad. 628,629.
(4) (1898) I.L.R. 22 Mad. 113, 114.
(5) A.I.R. 1922 All. 381.
(6) (1922) I.L.R. 45 All. 297.

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ground that in order to get the girl married, it was "a sheer necessity" for the widow to provide a dowry of Rs. 500 or its equivalent by the gift of the property. The property was very small in value, being in the neighbourhood of Rs. 500 only, and where under the circumstances the marriage of the girl into a suitable Brahmin family, having regard to her blindness and infirmity, necessitated the spending of the equivalent in value of that property, then the alienation was a "sheer legal necessity." It should be observed here that this decision is on its peculiar facts, and other decisions do not support the view that an alienation of the entire property is permissible; most of the decisions lay down that an alienation of a reasonable portion of the property is only permissible. What is reasonable must depend on the facts and circumstances of each case.

In *Vettor Ammal* v. *Pooch Ammal*(1), the gift was made some years after the marriage. The gift was upheld and was held to be reasonable being about one-sixth of the whole property. In *Sailabala* v. *Baikuntha Nath*(2), a gift made by a widow of twelve annas share of her husband's estate on the occasion of the marriage of her daughter was supported on the ground that it was impossible to define the extent and limit of the widow's power of disposing of property inherited by her because it must depend upon the circumstances of the disposition whenever such disposition was made. In *Ram Sumran Prasad* v. *Gobind Das*(3), the gift was made on the 28th July, 1901, but the marriage took place in 1899, two years earlier. The gift was made in pursuance of an earlier promise and a verbal declaration made at the time of the Gantha Pakrai (catching hold of the skirt of the mother-in-law) performed during the marriage. On an exhaustive review of the decisions, the case law was summarised as follows: "The case law on the subject summarised above fully indicates the inclination of all the High Courts to uphold a gift by a widow of *landed property* to her daughter or *son-in-law*

(1) (1911) 22 M.L.J. 321.
(2) A.I.R. 1926 Cal. 486.
(3) [1926] I.L.R. 5 Pat. 646, 681.

on the occasion of the marriage or any ceremonies connected with the marriage and that the promise made may be fulfilled afterwards; and it is not essential to make a gift at the time of the marriage but that it may be made afterwards, upon the ground that the gift when made fulfils the moral and religious obligation of giving a portion of the property for the benefit of the daughter and the son-in-law. The only limitation placed upon this power of making a gift is that it should bear a reasonable proportion to the entire property of the deceased father and that it should be justifiable in the circumstances of the case in terms of the principle laid down in *Cossi Naut Bysack* v. *Hurroosoondry Dossee*(1)". In *Sithamahalakshmamma* v. *Kotayya*(2), Mr. Justice Venkataramana Rao summarised the case law in the following words: "Thus it will be seen that it is competent to a Hindu father to make a gift of a reasonable portion of the ancestral immoveable property to his daughters without reference to the son;.....It is a power vested in the father under the Hindu law, which he can exercise subject to the restriction of limitations imposed on him by the said law. The decided cases have held that the gift must be a reasonable one. The question whether a particular gift is reasonable or not will have to be judged according to the state of the family at the time of the gift, the extent of the family immoveable property, the indebtedness of the family, and the paramount charges which the family was under an obligation to provide for; and after having regard to those circumstances if the gift can be held to be reasonable such a gift will be binding on the joint family members irrespective of the consent of the members of the family.....If under the law it is a moral obligation on the family to make a provision as and by way of a marriage portion and such obligation continues until it is fulfilled by a reasonable provision being made therefor, the fact that one of the sons has become indebted cannot take away the power of the father to make such a gift.....". In *Pratap Kunwar* v. *Raj Bahadur Singh*(3) the marriage took

(1) 2Morley's Digest 198.
(2) A.I.R. 1936 Mad. 825,827.
(3) A.I.R. 1943 Oudh 316.

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place in 1923 and the gift was made in 1926. After examining the evidence the learned Judges held that Mst. Raj Kuer, the widow in question, did not make any "sankalpa" of the gift of fifteen villages at the time of her daughter's marriage. On behalf of the plaintiffs it was argued before them that a Hindu widow could make a gift of her husband's immoveable property to her daughter only at the time of her marriage. The learned Judges repelled this contention and held that the gift made by Mst. Raj Kuer in favour of her daughter and son-in-law was valid, even though she did not make a "sankalpa" at the time of marriage. In *Abhesang Tirabhai* v. *Raisang*(1), it was held that gifts by a Hindu widow on the occasion of her daughter's marriage are valid as they are understood in Hindu law to conduce to the spiritual benefit of the widow's husband. In *Ramalinga Annavi* v. *Narayana Annavi*(2), a father made a gift to his daughter of a sum of Rs. 5,000 and a usufructuary mortgage. It was held that the father had undoubtedly the power under the Hindu law of making within reasonable limits gifts of immoveable property to a daughter; similarly, gifts of sums of money, if reasonable, would be upheld.

As against the very large number of decisions referred to above, the only decision which can be said to strike a dissentient note is the decision in *Ganga Bisheshar* v. *Pirthi Pal*(3). That was a case in which one Debi Prasad executed a deed of gift of a certain share in a certain village, being the ancestral property of his family, in favour of the defendant Ganga Bisheshar, the father-in-law of his daughter, on April 25, 1872, about two years after the marriage of the daughter. Mr. Justice Spankie observed as follows: "I understand the finding of both the lower Courts to be that the transfer was not made for any necessary purpose allowed by the Hindu law. The deed of gift appears to have been made by the father in performance of a promise to give a dowry to his daughter. But I am not aware that the performance of such a promise can be regarded as a lawful purpose justifying alienation

(1) (1912) 14 Bom. L.R. 602,
(2) A.I.R. 1922 P.C. 201.
(3) (1880) I.L.R. 2 All. 635,638.

under the Hindu law. It was not necessary for the support of the daughter, it was not for any religious or pious work, nor was it a pressing necessity. Daughters must be maintained until their marriage and the expenses of their marriage must be paid. But in this case the gift was not made at the time of the marriage. It was not executed until two years after the marriage." There is no consideration, nor any discussion, of the texts bearing on the question, and the learned Judge did not consider the alienation from the point of view that the marriage of the daughter was a religious duty and the promise to make a gift to the daughter as her marriage portion created a moral or religious obligation in fulfilment of which it was competent for the father to execute a deed of gift in favour of the daughter of a reasonable portion of the estate.

On an examination of the decisions referred to above, the following principles clearly emerge: (1) It is the imperative religious duty and a moral obligation of a father, mother or other guardian to give a girl in marriage to a suitable husband; it is a duty which must be fulfilled to prevent degradation, and direct spiritual benefit is conferred upon the father by such a marriage. (2) A Hindu widow in possession of the estate of her deceased husband can make an alienation for religious acts which are not essential or obligatory but are still pious observances which conduce to the bliss of the deceased husband's soul. (3) In the case of essential or obligatory acts, if the income of the property or the property itself is not sufficient to cover the expenses, she is entitled to sell the whole of it; but for acts which are pious and which conduce to the bliss of the deceased husband's soul, she can alienate a reasonable portion of the property. (4) Gifts by a widow of landed property to her daughter or son-in-law on the occasion of the marriage or any ceremonies connected with the marriage, are well recognised in Hindu law. (5) If a promise is made of such a gift for or at the time of the marriage, that promise may be fulfilled afterwards and it is not essential to make a gift at the time of the marriage but it may be made afterwards in fulfilment of the promise. (6) Some decisions

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go to the length of holding that there is a moral or religious obligation of giving a portion of the joint family property for the benefit of the daughter and the son-in-law, and a gift made long after the marriage may be supported upon the ground that the gift when made fulfils that moral or religious obligation.

In the case before us, it is not even necessary to go to the extent to which the decisions covered by the last item stated above (item 6) have gone. The finding of the final Court of fact is that there was an ante-nuptial agreement by Sumitra Devi that she would give four houses at Asansol, of the value of Rs. 20,000, to her daughter as marriage dowry. It was open to Sumitra Devi to fulfit that promise as a religious act which conferred spiritual benefit upon her deceased husband, irrespective of the consideration whether she made a "sankalpa" at the time of the marriage or not. We have already stated that we concur in the finding of the Courts below that the gift was neither disproportionate nor unreasonable in extent.

The learned Judges of the High Court referred to s. 123 of the Transfer of Property Act which lays down that for the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. In one part of their judgment, they said that but for the aforesaid provisions it might have been possible to consider the gift as having been made on the occasion of the marriage, the implementation of which was subsequent. In our opinion, the learned Judges of the High Court were in error with regard to the scope and effect of s. 123 of the Transfer of Property Act. It is true that a gift becomes legally effective only when a registered instrument is executed in the manner laid down in that section. Section 123 does not deal with nor does it affect the power of a Hindu widow to make an alienation of a reasonable portion of her husband's estate in favour of the daughter as marriage dowry. That right is governed by Hindu law and it is open to a widow to make an effective gift in favour of her daughter

subsequent to the marriage, if the conditions laid down by Hindu law are fulfilled.

For the reasons given above, we hold that the alienation made by Mst. Sumitra Devi in favour of her daughter Kamala Devi on March 10, 1940, was valid and binding on the reversioners. The decision of the High Court to the contrary was erroneous in law.

We now turn to the Hindu Succession Act, 1956, which came into force on June 17, 1956. Section 14, on which learned counsel for the appellants has relied, is in these terms :

"(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, 'property' includes both moveable and immoveable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as *stridhana* immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

There is no doubt that by reason of the use of the expression "whether acquired before or after the commencement of this Act" the section is retrospective in effect. The Explanation to the section shows that "property" includes immoveable property acquired by a female Hindu at a partition or by gift from any person, whether a relative or not, before, at or after her marriage. The argument of learned counsel for the appellants is two-fold. He has contended

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that the four houses in question are now in the possession of Kamala Devi and under s. 14 Kamala Devi is a full owner of the houses; the plaintiffs-respondents cannot therefore get the declaration which they have asked for. Alternatively, he has contended that if Sumitra Devi is still in possession of the houses, she also becomes a full owner and in that event also the plaintiffs-respondents are not entitled to the reliefs claimed. Learned counsel for the respondents has relied on sub-section (2) of s. 14 which says that nothing in sub-s. (1) shall apply to any property acquired by way of gift, etc., where the terms of the instrument or decree, etc., prescribe a restricted estate in such property. It is argued that Sumitra Devi got a restricted estate by the partition decree and sub-s. (1) has no application to the estate. It is further argued that Kamala Devi as donee could not get a larger estate than what the donor had in the property, if the view of Hindu law, as contended for by learned counsel for the respondents, is accepted as correct; therefore, Kamala Devi is also not entitled to the benefit of sub-s. (1) of s. 14.

We do not think that it is necessary to decide this case on the rival contentions presented to us with regard to s. 14 of the Hindu Succession Act, 1956. We have already held that under Hindu law Mst. Sumitra Devi could make a gift in favour of her daughter as marriage dowry, two years after the marriage, in fulfilment of the ante-nuptial promise made by her and that such a gift is binding on the reversioners. That being the position, it is unnecessary to decide in this case the true scope and effect of s. 14 of the Hindu Succession Act, 1956.

For the reasons given above, we allow the appeal and set aside the judgment and decree of the Courts below. The suit of the plaintiffs-respondents must be dismissed and the appellants will be entitled to their costs throughout.

Appeal allowed.

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