proof whatever that an adoption can be made without a formal giving and taking of the child or some other un equivocal manifestation of the adoptor's intention to confer upon the adoptee the legal status of son. For these reasons we accept the appeal and decree for plaintiff with costs throughout.

R.M./R.K. *Appeal accepted.*

A. I. R. 1918 Lahore 34 (1)

SHADI LAL AND LEROSSIGNOL, JJ.

Amar Nath—Plaintiff—Appellant.

v.

Rustomji and *another*—Defendants—Respondents.

Second Appeal No. 1149 of 1916, Decided on 29th October 1917, from decree of Sub-Judge, First Class, Lahore, D/- 19th January 1916.

Hindu Law—Debts—Father—Son's liability—Neither illegal nor immoral — Execution sale of entire ancestral property is valid—Son cannot challenge even to extent of his share.

A money decree against a Hindu father, for a debt which was neither illegal nor immoral and whether incurred for family purposes or not, may be enforced in his lifetime by an execution sale of the entire coparcenary estate and is binding on his sons.

Where therefore in a suit for a declaration to the effect that the plaintiff's ancestral haveli was not liable to attachment and sale in satisfaction of a money decree against his father, it appeared that the decree was not based upon any immoral debt :

Held : that the plaintiff had no right to set up his interests in the ancestral house as a bar to the remedy claimed by the creditor : *A I R 1917 P C 61, Dist.* [P 34 C 2]

Ram Lal—for Appellant.

Moti Sagar and *Dhanpat Rai*—for Respondents.

Judgment.—This appeal is connected with Appeals Nos. 365 and 366 of 1917. The defendant, Rustomji, in 1908 obtained a simple money decree of Rs. 5,719 odd against the plaintiff's father Guranditta and now seeks to execute that decree by attachment and sale of an ancestral house inherited by Guranditta from his father. The plaintiff was born long after the decree and the lower Court has found that the decree was not based upon any immoral debt, that the plaintiff can maintain the case because at the time of the attachment of the property he was in existence but that as the debt was not an immoral one the plaintiff cannot set up his interests in the ancestral property against his father's creditor.

The counsel for the appellant has cited *Sahu Ram Chandra* v. *Bhup Singh* (1) which is a Privy Council ruling, but on a study of that case we find that the question before their Lordships was whether the mortgage in suit was granted in respect of an antecedent debt and after discussion of the expression "antecedent debt" their Lordships came to the conclusion that the mortgage was invalid as against the coparcener, because the borrowing on account of which the mortgage was granted was made on the occasion of the grant of the mortgage. It was pointed out by the learned counsel for the appellant that in that case a decree on the mortgage was refused to the mortgagor and that he was not even given a money decree, but there is nothing in the judgment to indicate that a money decree was asked for or that if asked for the claim would have been within time. In the case the principal defendant does not seek to enforce a mortgage. All that he asks is the execution of a simple money decree against an ancestral house and the law applicable in such a case is resumed in Trevelyan's Hindu Law at p. 302 et seq. and Mulla's Hindu law p. 240. From these authorities it is clear that a money decree against the father, when the debt was neither illegal nor immoral and whether he incurred expenses for family purposes or not, may be enforced in his lifetime by an execution sale of the entire coparcenary estate and is binding on the sons.

In this case we note that the sum recoverable from Guranditta by his creditor would have been far less than it is but for the obstinacy and perverseness of Guranditta. But as the debt was neither immoral nor illegal we cannot find that plaintiff has any right to set up his interests in the ancestral house as a bar to the remedy claimed by the creditor. We accordingly dismiss this appeal with costs.

R.M./R.K. *Appeal dismissed.*

1. A I R 1917 P C 61=39 All 437=39 I C 280 =44 I A 126 (P C).

A. I. R. 1918 Lahore 34 (2)

LEROSSIGNOL, J.

Wazira—Appellant.

v.

Muhammadi and *others*—Respondents.

Second Appeal No. 1138 of 1917, Decided on 21st November 1917.

Registration Act (16 of 1908), S. 35 (3)—Illiterate executant of sale deed denying sale of part of property—Vendor's protest amounts to denial of execution of document.

A sale-deed of certain land with shamilat executed by an illiterate vendor was presented for registration and before the Sub-Registrar the vendor stated that he had sold the land but without the shamilat:

Held: that the vendors's protest amounted to a denial of execution of the document produced for registration within the meaning of S. 35 (3). [P 35 C 1]

Muhammad Iqbal—for Appellant.

Umar Bakhsh—for Respondents.

Judgment.—On 18th June 1896 Wazira plaintiff by written deed sold 9 Kanals of land with shamilat to one Gandu. The deed was presented for registration on the same day and before the Sub-Registrar Wazira stated that he had sold the land but without the shamilat. The Sub-Registrar noted the statement of Wazira but registered the document. The present suit is to recover the shamilat not from the original purchaser Gandu, but from third persons who are the second transferees from Gandu. The trial Court decreed for plaintiff but the District Judge dismissed the suit holding that only the document and not the Sub-Registrar's note could be looked at to determine the terms of the transaction.

Both parties agree that the learned District Judge is wrong in his ratio decidendi and has obviously overlooked the provisions of S. 92, Evidence Act, which allow an aggrieved person to establish by oral evidence that a document is invalidated by mistake or fraud. The outstanding fact in the case is that Wazira as soon as the purport of the deed was explained to him protested that he had not sold the shamilat and there can be no doubt that this protest of his amounted—as he is illiterate—to a denial of execution of the document produced for registration and the Sub-Registrar would have been well advised to refuse registration. The document however was registered and mutation took place according to the document. It is true that shamilat was not specially mentioned at the time of mutation, but Wazira although present before the attesting officer did not raise the point. Nor did he take any other steps to right the wrong if indeed any had been done him. The shamilat partition proceedings were started in 1910 and even then Wazira did not raise the point; in 1913 possession of the shamilat in dispute was given to defendants but it was only in 1916 or nearly three years later that Wazira launched this suit. Equity aids the vigilant and it would at this stage be quite impossible to find on oral evidence that the shamilat was not sold; further the original vendee has disappeared and the present real defendants are bona fide purchasers whom Wazira as permitted to believe that their transferors had a good title to convey in the shamilat. For these reasons I think the suit has been properly dismissed and I dismiss the appeal with costs.

R.M./R.K. *Appeal dismissed.*

A. I. R. 1918 Lahore 35

SCOTT-SMITH, J.

Girdhari Lal and *another*—Mortgagees—Appellants.

v.

Sarab Kishen and *others*—Creditors—Respondents.

Misc. First Appeal No. 2277 of 1917, Decided on 9th April 1918, from order of Dist. Judge, Ludhiana, D/- 10th July 1917.

Provincial Insolvency Act (1907), Ss. 36 and 37—Mortgage of insolvent's property—Mortgagee can show that he was bona fide incumbrancer for valuable consideration—Mortgagee not previous creditor—Section 37 does not apply.

N. mortgaged certain property to *C.* and absconded immediately after the registration of the mortgage-deed. On the petition of his creditors he was declared an insolvent. The receiver in insolvency applied to have the mortgage to *C.* declared void and fraudulent under Ss. 36 and 37, Provincial Insolvency Act:

Held: (1) that the mortgagee not being a previous creditor, S. 37, Provincial Insolvency Act had no applicability to the case; (2) that under S. 36 of the Act the mortgagee was entitled to show that he was a bona fide incumbrancer for valuable consideration. [P 36 C 1]

Tek Chand and *Jagan Nath*—for Appellants.

Balwant Rai—for Respondents.

Facts.—On 18th March 1917 one Nau Nihal Singh of Ludhiana executed a mortgage-deed in favour of Girdhari Lal appellant for Rs. 12,000. The deed was registered on 20th March 1917, when the mortgagee paid the mortgage money (Rs. 12,000) to Nau Nihal Singh before the Sub Registrar. It appears that Nau Nihal Singh was in financial difficulties and he seeing his inability to pay off his creditors absconded on 21st March 1917. The mortgagee, Girdhari Lal, took possession of the property mortgaged on 22nd