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January 7.

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the ground on which judgment was reserved in that case was that it was questionable whether it was one in which a declaratory decree ought to be given. There is no question of that kind in the present case, and we must dismiss the Special Appeal with costs.

*Appeal dismissed.*

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## FULL BENCH.

*Before Sir W. Morgan, C. J., Mr. Justice Innes and  
Mr. Justice Kindersley.*

1878.  
January 14.

VENKATASAMI NAIK (PLAINTIFF) SPECIAL APPELLANT v.  
KUPPAIYAN (14TH DEFENDANT) SPECIAL RESPONDENT (1).

*Execution—Sale—Personal debt—Co-sharer.*

Plaintiff's father (1st defendant) borrowed money to enable him to sue for the recovery of certain lands, and being unable to repay it, judgment was obtained against him, and the lands in suit were sold, and purchased at the Court sale by the 14th defendant. Plaintiff brought the present suit to set aside the sale of one-half of those lands on the ground that they formed his share, that he was a minor when his father incurred the debt, and that his share was not liable for debts incurred by his father. The Munsif gave a decree in favor of plaintiff. The 14th defendant appealed. The District Judge reversed the Munsif's decree.

On Special Appeal by the plaintiff, *Held*, that as the debt was the 1st defendant's personal debt, and the decree was against him personally, only his rights and interest in the property could be sold, and nothing beyond his rights would pass to the purchaser. *Dindiyal Lal v. Jagdip Narain Singh* (2) followed.

PLAINTIFF brought this suit to recover his one-half share of ancestral family property from the 1st defendant, his father, and from the other defendants (16 in number) his alienees. The facts were as follows—The plaintiff's father borrowed money to enable him to sue for the recovery of certain lands, and being unable to repay the sum lent judgment was obtained against him in a suit No. 472 of 1866 and the lands in suit were sold, and purchased at the Court sale by the 14th defendant Kuppaiyan.

Plaintiff sought in this suit to set aside the sale of one-half of those lands on the ground that they formed his share, that he was a minor when his father incurred the debt, and that his share was not liable for debts incurred by his father. The Munsif decreed

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(1) Special Appeal No. 452 of 1877, against the decree of E. F. Webster, District Judge of Trichinopoly, dated 16th February 1877, reversing the decree of the District Munsif of Trichinopoly, dated 15th January 1877.

(2) I. L. R., 3 Calc., 198.

in favor of the plaintiff. The 14th defendant appealed. The District Judge, in reversing the decision of the Munsif, remarked, "I can see no force whatever in this position. If there had been no sale under an execution, then the question would be whether plaintiff had succeeded in proving that his father had incurred this debt for an illegal or immoral purpose. For it is settled law that the freedom of the son from the obligation to discharge the father's debt has respect to the nature of the debt and not to the nature of the estate. There is nothing in the nature of the suits brought by the father which can properly be termed illegal or immoral, and if there had been no sale in execution, I should still hold that plaintiff was not entitled to set aside the sale. But here the case is stronger, for the defendant was not bound to go further back than the decree to see that the decree was given against the father, and that the property was liable to satisfy the decree, and as he has *bonâ fide* bought the land and paid valuable consideration for it, the plaintiff is not entitled to come in and set aside all that has been done under the decree and execution and recover back the estate. I, therefore, reverse the Munsif's decision with costs."

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Against this decision the plaintiff preferred a Special Appeal on the following grounds, among others.—'The Lower Appellate Court threw the burden of proof on the wrong party. It lay upon the 14th defendant to show that the alienation made by the father was lawful, and that the plaintiff's share should be held liable. The 14th defendant purchased only the right, title and interest of the 1st defendant in the land in question, and the plaintiff was no party to the decree, in the execution whereof the 14th defendant became a purchaser.'

T. Râma Râu for the Appellant.

Mr. O'Sullivan (*Advocate-General*) for the Respondent.

The Court, MORGAN, C. J., INNES, J., and KINDERSLEY, J., delivered the following

JUDGMENT :—It is found by the Munsif that the 1st defendant "freely indulged himself in useless and unprofitable litigation." There is nothing, as the Lower Appellate Court observes, to establish the fact that he incurred debts for illegal or immoral purposes. Nor, on the other hand, is it shown that the debts were such as should be a charge on the family estate. The decree in

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O.S. No. 472 of 1866 shows that the debt was the 1st defendant's personal debt, and the decree was against him personally. Under this decree, only his rights and interests in the property could be sold, and nothing beyond his rights would pass to the purchaser. The recent decision of the Privy Council in *Dindiyal Lal v. Jagdip Narain Singh* (1), delivered on the 25th July 1877, contains the following passage, "whatever may have been the nature of the debt, the appellant cannot be taken to have acquired by the execution sale more than the right, title and interest of the judgment-debtor. If he had sought to go further, and to enforce his debt against the whole property, and the co-sharers therein who were not parties to the bond, he ought to have framed his suit accordingly, and have made those co-sharers parties to it. By the proceedings which he took he could not get more than what was seized and sold in execution, viz., the right, title and interest of the father." Here the debt was a personal debt and, further, had it been otherwise, the suit was not framed to enforce the debt against the whole property. The judgment of the Lower Appellate Court will be reversed with costs.

*Appeal allowed.*

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## APPELLATE CIVIL.

*Before Sir W. Morgan, C. J., and Mr. Justice Innes.*

1878.  
January 18.

KAMALAM (PLAINTIFF) APPELLANT v. SADAGOPA SÁMI  
(1ST DEFENDANT) RESPONDENT (2).

*Dancing girl, suit by—Mírásí right.*

The suit was brought by a dancing girl to establish her right to the mírásí of dancing girls in a certain pagoda, and to be put in possession of the said mírásí with the honors and perquisites attached thereto as set forth in schedules to the plaint annexed. The defendants denied the claim. The District Munsif, finding that the claim had been established, decreed for plaintiff, but, on appeal by the 1st defendant, the District Judge dismissed the suit on the authority of *Chinna Unmayi v. Teagarai Chetti* (3). On second appeal, *Held*, that the present case was distinguishable from that of *Chinna Unmayi v. Teagarai Chetti* (3), in that there was no allegation in that case of any endowments attached to the

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(1) I.L.R., 3 Cal., 198.

(2) Second Appeal No. 600 of 1877, against the decree of J. Hope, Acting District Judge of Chingleput, dated 18th July 1877, reversing the decree of the District Munsif of Trivellár, dated 22nd January 1876.

(3) I.L.R., 1 Mad., 168.