

SHEKHARA
PANIKER
v.
RÁM NÁYAR.

it by the Lower Appellate Court is not warranted by the language of the instrument. As the Subordinate Judge has expressed no opinion as to the value of improvements payable to the defendants, I think we should reverse the decision of the Lower Appellate Court and remit the suit for disposal on a consideration of the evidence on record as to the value of improvements.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Kindersley.

1880.
January 6.

KATHAPERUMAL AND 4 OTHERS (SECOND, THIRD, FOURTH, FIFTH, AND NINTH DEFENDANTS), APPELLANTS, v. VENKABAI (PLAINTIFF), RESPONDENT.*

By Hindu law two widows of one and the same husband take a joint interest in one undivided estate; and although the widows may arrange for the enjoyment of the estate in separate portions, there can be no compulsory partition converting the joint estate into an estate in severalty. *Semle* The interest of one of two such widows cannot be sold.

Jijoyamba Bai v. Kámakshi Bai (1); *Kindama v. Venkatarámaya* (2); *Nilmani v. Radhamani* (3); *Bhugwandeen Doobey v. Myra Bai* (4) followed.

THIS was a second appeal against the decree of H. J. Stokes, Acting District Judge of South Tanjore, in Appeal Suit No. 432 of 1878.

Mr. *Lascelles* and Mr. *Palman* for the Appellants.

T. Ráma Ráu for the Respondent.

The facts and arguments in the case fully appear in the Judgment of the Court (KERNAN and KINDERSLEY, JJ.)

JUDGMENT :—The plaintiff and the first defendant are the two widows of a deceased Hindu named Ráma Ráu. This Ráma Ráu died in 1857, and, ten years afterwards, one Anandha Padmanabha instituted a suit, 57 of 1867, to establish the fact that he had been adopted by Ráma Ráu. In that, however, he failed. In 1869 the first defendant executed in favor of the second defendant an hypothecation bond purporting to hypothecate her late

* Second Appeal No. 334 of 1879 against the decree of H. J. Stokes, Acting District Judge of South Tanjore, dated 24th February 1879, confirming the decree of the Subordinate Court of Tanjore, dated 18th September 1878.

husband's property in renewal of two hypothecation bonds alleged to have been executed previously by the pretended adopted son, Anandha Padmanabha Ráu. The District Munsif has found that those transactions were a sham, intended to defraud the plaintiff. It is clear that the bond was not executed in circumstances which would justify a Hindu widow in creating a charge upon her late husband's estate. The second defendant, not relying on the hypothecation, obtained a money decree in Original Suit 42 of 1870 in the Court of Small Causes at Kumbakonam, *ex parte*, against the first defendant, and, in execution of that decree, the second defendant himself purchased the first defendant's interest in her late husband's lands. The other defendants claim to hold from the second defendant. The plaintiff has brought this suit to recover those lands, she having been no party to the suit in which they were sold.

KATHAPERU-
MAL
v.
VENKABAI.

When the second appeal came on for hearing before us the exception of limitation was given up, and the only point which was argued was that the first defendant's purchase at the Court sale was good at least to the extent of the first defendant's life-interest in the lands of her deceased husband. It is quite settled that the undivided interest of one of several male coparceners may be attached and sold in execution of a decree. But by Hindu law two widows of one and the same husband take a joint interest in one undivided estate, and it has been held that, although the widows may arrange for the enjoyment of the estate in separate portions, there can be no compulsory partition converting the joint estate into an estate in severalty. *Jijoyiamba Bai v. Kámákshi Bai* (1); *Kindama v. Venkatarámappa* (2); *Nilamani v. Radhamani* (3); *Bhugwandeem Doobey v. Myna Bai* (4). The estate of a deceased Hindu is thus not liable at all events to compulsory partition at suit of any one of two or more widows, and the argument by which the interest of a male coparcener who could claim a share was held to be liable to attachment and sale, falls to the ground. No case has been quoted at the bar or is otherwise known to us, in which any of the superior Courts have held that the interest of one of two co-widows was liable to attach-

(1) 3 Mad. H. C. Repts., 424-452.

(2) 3 Mad. H. C. Repts., 268.

(3) I.L.R., 1 Mad., 306.

(4) 11 Moo. I.A., 487.

KATHAPERU.
MAL
U.
VENKABAI.

ment and sale; and we think that all that has been decided as to the interest which such persons have by Hindu law in the estate of their late husband, points to the conclusion that the interest of one of two such widows cannot be sold.

It is not necessary to decide this point in the present case, because whether such sale in execution was legal or not, it is quite clear that the purchaser of the first defendant's interest could have no higher right than the first defendant, and the first defendant could have no right to the possession of the whole of the lands or of any specific portion of them to the exclusion of the plaintiff. The only right the first defendant could have is to joint enjoyment with the plaintiff, or, if circumstances (pointed out in *Jijoyiamba Bai v. Kámakshi Bai* (1), *Nilamani v. Radhamani* (2)) existed, to have a separate possession of portion of the inheritance decreed in a suit for that purpose.

The possession of the second defendant and of those deriving under him, viz., second, third, fourth and fifth defendants, is illegal as against the plaintiff.

Though the first defendant may be the senior widow, she is found to have colluded with the second defendant to injure the plaintiff, and we think that the decree of the Court of First Instance, confirmed by the Appellate Court, was necessary in order to restore plaintiff's rights. At the same time, it does not decide any question between the first defendant and the second, third, fourth, fifth, and other defendants. If the second, third, fourth and fifth defendants have rights against the first defendant and her interest in the property, they must be left to assert such rights by legal means.

We do not encourage the notion that second and other defendants could establish against plaintiff any right, through first defendant, of separate possession of any portion of the joint inheritance of the widows; but we do not decide that question, as it is not properly a subject of decision in this suit.

We shall therefore affirm the decree of the Lower Appellate Court and dismiss the appeal with costs.

(1) 3 Mad. H. C. Reps., 424-452.

(2) I. L. R., 1 Mad., 300.