

[4 Mad. 320]

APPELLATE CIVIL.

The 14th November, 1881.

PRESENT:

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

Gopalasami Pillai.....(Plaintiff), Appellant

and

Chokalingam Pillai and others.....(Defendants), Respondents.*

Hindu Law—Sale of family property in execution of decree against father—Son's right.

Where a judgment-creditor of a Hindu father has purchased the right, title, and interest of the judgment-debtor in family land at a Court sale in execution of his decree and been put in possession of the whole of the land, the son of the judgment-debtor cannot recover his share of the land in a subsequent suit unless he can show that the debt of his father, for which the property was sold, was illegal or immoral.

[321] IN this case the plaintiff, a Hindu minor, his father being alive, sued through his mother, as next friend, to recover a moiety of certain lands, the joint property of himself and his father, from the defendants.

The first defendant, as judgment-creditor of the plaintiff's father, had been put into possession of the lands at a Court sale in execution of his decree.

Upon the authority of the ruling of the Privy Council in *Deendyal Lal v. Jugdeep Narain Singh* (I. L. R., 3 Cal., 199 : s.c. L. R., 4 I. A., 247), the Munsif held that the first defendant, whatever the nature of debt, acquired only by his purchase the right, title, and interest of the judgment-debtor, and decreed for the plaintiff.

Upon appeal the Subordinate Judge reversed the Munsif's decree and dismissed the suit on the ground that the plaintiff's father was the real plaintiff and the suit fraudulent, and that the Privy Council ruling in *Deendyal Lal's* case did not apply as the case was based on fraud.

The plaintiff appealed to the High Court on the ground that his rights could not be prejudiced by his father's conduct ; that the first defendant only purchased the right of his father, and that, not being a party to the suit, the plaintiff was not affected by any proceedings taken therein.

Mr. *Subramaniam* for Appellant.

Hon. *T. Rama Rau* for Respondents.

The Court (INNES and MUTTUSAMI AYYAR, JJ.) delivered the following

Judgment :—This case is governed by the Full Bench cases (I. L. R., 4 Mad., 1, 74), in which the majority of the Judges have decided that where there is a suit against a Hindu father for debt, and there is a decree against him, and the purchaser purchases the right, title, and interest of the father in lands attached, and the Court afterwards in execution of the decree puts the purchaser in possession of the whole of the land instead of the interest of the father purchased, the son, in a subsequent suit, cannot recover his share, unless he can show that the debt of the father for which the property was sold was illegal or immoral.

This is not shown in the present case. We must dismiss this appeal with costs.

* Second Appeal No. 150 of 1879 against the decree of M. Cross, Subordinate Judge of Kumbakonam, reversing the decree of Venkata Rau, District Munsif of Mannargudi, dated 3rd December 1878.