

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Wilkinson.

BHASHYAM AND OTHERS (DEFENDANTS), PETITIONERS,
and

JAYARAM (PLAINTIFF), RESPONDENT.*

1887.
Dec. 19.

Civil Procedure Code, s. 622—Error of law—Material irregularity—Personal decree against minors for debt of deceased Hindu father.

In a suit to recover a debt incurred by the deceased father of a Hindu family, the District Judge gave a personal decree against the sons of the debtor, of whom two were minors :

Held, that under s. 622 of the Code of Civil Procedure, the decree against the minors should be reversed, but that the Court had no power to revise the decree against the other defendants.

APPLICATION under s. 622 of the Code of Civil Procedure to set aside the decree of S. T. McCarthy, District Judge of Chingleput, modifying the decree of P. Dorasami Ayyar, District Munsif of Chingleput, in suit 73 of 1886.

Plaintiff by his next friend sued to recover from defendants Rs. 408, principal and interest, due under a promissory note executed on 15th February 1882 by the (deceased) father of defendants 1, 2, 3 and 4 and by Narasimhulu Naidu, the (deceased) undivided brother of defendants 5 and 6. The Munsif decreed that plaintiff should recover the amount claimed and costs from the self-acquired property of Narasimhulu Naidu, deceased, "if he has any."

On appeal the District Judge decreed that defendants 1 to 4 and their share of the undivided family property should be held liable for the amount sued for.

This application was made by defendants 1 to 4, defendants 3 and 4 being minors.

Mr. Ramasami Raju for petitioners.

Parthasardi Ayyangar and Srirangacharyar for respondents.

The Court (Kernan and Wilkinson, JJ.) delivered the following

JUDGMENT:—The defendants 1 to 4 were bound by their father's debt to be recovered out of any assets of their father or out of

* Civil Revision Petition No. 125 of 1887.

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ancestral property of the father and sons. Under the circumstances it may have been illegal for the Judge to make a personal decree against any of the defendants 1 to 4. But the word "illegal" in s. 622 has been held by the Privy Council not to mean an error of judgment—*Amir Hassan Khan v. Sheo Baksh Singh*(1). The Judge had jurisdiction to determine the question of liability of the defendants to pay the debt, and in the exercise of his judgment he may have decided erroneously, but we cannot interfere as to this. Then did he act with material irregularity? Irregularity refers to procedure. The Judge did not distinguish between the adult and non-adult defendants 1 to 4. In the circumstances procedure did not warrant a personal decree against an infant. As regards the infants 3 and 4 the Judge acted with material irregularity in giving a personal decree against them.

Therefore so far as it did give such personal relief against the infants, the decree is set aside.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Muttusami Ayyar.*

ARIYAPUTRI (DEFENDANT NO. 1), APPELLANT,

and

ALAMELU AND ANOTHER (PLAINTIFF AND DEFENDANT NO. 2),
RESPONDENTS. *

1887.
Oct. 18.
1888.
Jan. 6.

Hindu law—Widow's estate—Mortgage by two co-widows—Sale of equity of redemption in execution of decree against one widow—Suit to redeem by other widow—Decree for redemption of moiety on payment of moiety of mortgage amount.

A mortgage of ancestral estate having been made by A. and B., two Hindu co-widows, the equity of redemption of the said estate was sold in execution of a decree for money against B. only and purchased by the mortgagee :

Held, that A. was entitled to redeem only a moiety of the estate during the lifetime of B.

APPEAL from the decree of J. Hope, District Judge of South Arcot, confirming the decree of C. Suri Ayyar, District Munsif of Cuddalore, in suit 53 of 1886.

(1) I.L.R., 11 Cal., 6.

* Second Appeal 16 of 1887.