

No. 1 is not the senior anandravan. We are of opinion that a blind man is not a fit person to be the karnavan of a tarwad, and that to permit a blind man to continue to occupy that post under such circumstances as those disclosed in this case would inevitably tend to the ruin of the tarwad. We must therefore uphold the decree of the Subordinate Judge on this point.

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Their Lordships then directed the Subordinate Judge to record a finding as to the truth of the allegation of plaintiff No. 1 that he was senior anandravan of the tarwad. But plaintiff No. 1 having died before the case came on for re-hearing, a decree was passed merely confirming the decree of the Subordinate Judge so far as it decreed the removal of the defendant from the post of karnavan.

APPELLATE CIVIL.

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

RAMANADAN (DEFENDANT), APPELLANT,

1889.
Jan. 7, 21.

v.

RAJAGOPALA AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Hindu law—Money decree against father—Attachment of ancestral estate.

In execution of a money decree ancestral property of the joint family of the judgment-debtor was attached. His sons sued to release their interest from attachment, alleging that the judgment debt had been incurred for immoral purposes, which was denied by the decree-holder. It was held by the lower Courts that nothing more than the father's share was liable to be attached, as the sons were not parties to the decree :

Held, that the nature of the debt should be determined, since the creditor's power to attach and sell depends on the father's power to sell, which again depends on the nature of the debt.

Mussamut Nanomi Babuasin v. Modun Mohun (L.R., 13 I.A., 1; s.c. I.L.R., 13 Cal., 21) discussed and followed.

SECOND APPEAL against the decree of T. Kanagasabai Mudaliar, Subordinate Judge of Tanjore, in appeal suit No. 41 of 1886, affirming the decree of S. Subbayya, District Munsif of Negapatam, in original suit No. 267 of 1884.

* Second Appeal No. 405 of 1887.

RAMANADAN
v.
RAJAGOPALA.

Suit by the members of a joint Hindu family to release the attachment of their interest in certain family property attached in execution of a money decree obtained against their father by the defendant in original suit No. 35 of 1883.

The plaintiffs, who were not parties to the suit of 1883, alleged that the decree debt had been incurred by their father "not for family purposes, but borrowed by him and his brother for immoral purposes." The defendant pleaded that the decree was binding on the plaintiffs and their share of the family property.

The District Munsif passed a decree in favor of the plaintiffs, and it was affirmed on appeal by the Subordinate Judge, who based his decision on the ground "that the decree for which the disputed property had been attached was but a simple decree against the father alone."

The defendant preferred this second appeal.

Mr. Norton for appellant.

Subramanya Ayyar for respondents.

The arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J., and Muttusami Ayyar, J.).

JUDGMENT.—The question for decision in this second appeal is whether, in the execution of a money decree against a Hindu father, ancestral property, in which he and his sons are jointly interested as co-parceners, is liable to be attached. In original suit No. 35 of 1883 the appellant obtained a decree for a sum of money against the respondents' father and his brothers, and attached their joint family property. Thereupon the respondents resisted the attachment on the ground that they were not parties to the decree, and that their interest in the family property was not liable to be proceeded against. But their claim petition was rejected without an inquiry as presented too late, and the respondents then instituted this suit to obtain a release of their three-quarters share from attachment. The appellant's case was that the decree debt was a family debt, that the bond sued upon was executed not only by the respondents' father, but also by his brothers, the adult male members of the family at the time, and that, at the date of the bond, the respondents Nos. 2 and 3 had not been born. The respondents contended that the debt was contracted by their father for immoral purposes, and the issue recorded for decision was whether the property attached was liable for

the decree debt. *But both the lower Courts held that, in execution of a money decree against the father, nothing more than the father's share in ancestral property was liable to be attached if the sons were not made parties to the decree, and that it was unnecessary to enter upon an inquiry upon the nature of the debt or* to consider the other questions raised by the appellant. Though the respondents' claim was rejected, the appellant's pleader admits that the execution-creditor has not yet brought the property to sale. It is argued before us that the lower Courts were in error in considering that the execution-creditor could only bring to sale the father's share in joint family property and that the fact of the sale not having yet taken place makes no difference.

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We are of opinion that the decrees of the Courts below must be reversed, and that the case remanded to the Court of first instance for disposal on the merits. The decision of the Privy Council in *Mussamut Nanomi Babuasin v. Modun Mohun*(1), followed and explained by this Court in *Kunhali Beari v. Keshava Shanbaga*(2), is conclusive on the point. Those decisions show that, if the execution-creditor actually brought to sale the entire family estate and bargained and paid for it, the entire estate would pass by the Court sale, unless the son impugning it showed that the debt was immoral or vicious, and was therefore one for the payment of which the father had no power to sell it. The principle underlying the decision is that, if the entire ancestral estate was actually sold in execution of a money decree against the father to which the son was not a party, the interest that passed by the Court sale was one which the father had power to sell with reference to the nature of the decree debt, that if the son showed that it was vicious or immoral, nothing more than the father's interest passed, and that if the debt was a family debt or an antecedent personal debt of the father for the payment of which the father was entitled to sell the son's interest also, the whole estate passed by the sale. Thus the creditor's power to attach and sell depends on the father's power to sell, which again depends on the nature of the debt. If the debt was one binding on the joint family as alleged by the defendant, he would be entitled to attach and sell the whole ancestral estate, but if on the other hand the debt was vicious or immoral as alleged by the

(1) L.R., 13 I.A., 1; s.c. I.L.R., 13 Cal., 21.

(2) I.L.R., 11 Mad., 75.

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plaintiffs, their interest would not be liable to be attached and sold. The fact of the sale having either taken place or not taken place before the sons instituted the suit cannot affect the father's power to sell, or, therefore, the execution-creditor's power to attach in view to bring the property to sale. We set aside the decrees of the Courts below and remand the case to the Court of first instance for disposal on the merits. Costs incurred hitherto will be provided for in the revised decree.

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Shephard.

1889.
March 8, 13.

RAMALINGAM (PLAINTIFF), APPELLANT,

v.

THIRUGNANA SAMMANDHA (DEFENDANT), RESPONDENT.*

Res judicata.

Certain land was attached and sold in execution of a decree against the dharmakarta of a devasthanam. One claiming to be the lawful successor in office of the judgment-debtor now sued the purchaser for a declaration that the sale was invalid :

Held, the suit should not be dismissed on proof that the plaintiff had failed to obtain a declaration of his right to the dharmakartaship against another claimant to the office, in a suit to which the present defendant was not a party.

APPEAL against the decree of S. Gopalacharyar, Subordinate Judge of Madura (East), in original suit No. 21 of 1887.

Suit (1) to declare that a sale of certain properties (consisting of a mutt in Ramnad, a mutt in Rameswaram and an adjoining tope) in execution of a decree passed in original suit No. 5 of 1882 is not binding on the interest of the plaintiff, (2) to restrain the defendant from interfering with the properties in question.

The plaint set out that the plaintiff was the duly appointed head of the Rameswaram mutt, and that the properties in question "are properties which everybody who becomes the head of the mutt should always live upon ; but they cannot be alienated. They are not liable for the debts of any kind incurred by the heads of the mutt." It was further alleged that in execution of the decree passed in original suit No. 5 of 1882 against one

* Appeal No. 40 of 1888.