PRIVY COUNCIL.

P.C. 1888. Nov. 1.

MINAKSHI NAYUDU (DEFENDANT),

and

IMMUDI KANAKA RAMAYA GOUNDAN (PLAINTIFF).

[On appeal from the High Court at Madras.]

Execution sale—Hindú Law—Ancestral zamindári sold in execution of decree for money against the father, including the son's right of succession—Debt not immoral.

A sale in execution of a decree against a zamindar, for his debt, purported to comprise the whole estate in his zamindári. In a suit brought by his son against the purchaser, making the father also a party defendant, to obtain a declaration that the sale did not operate as against the son as heir, not affecting his interest in the estate, the evidence did not establish that the father's debt had been incurred by him for any immoral or illegal purpose:

Held, that the impeachment of the debt failing, the suit failed; and that no partial interest, but the whole estate, had passed by the sale, the debt having been one which the son was bound to pay:

Hardi Narain Sahu v. *Ruder Perkash Misser*(1) (where the sale was only of whatever right, title, and interest the father had in property), distinguished.

APPEAL from a decree (7th April 1884) of the High Court varying a decree (14th April 1883) of the Subordinate Judge of Madura (West).

The question here was whether the whole estate of inheritance in an ancestral zamindári had passed to a purchaser at a sale in execution of a money decree against the zamindar, or only such right as he held in the estate, as distinguished from his son's right of succession.

The suit was brought by the son of the zamindar of Velliyakundam against his father, and the present appellant, for a declaration that a promissory note for Rs. 2,000, made by the zamindar and held by the latter, was given for a debt contracted by the zamindar for an immoral purpose; that, thus, the sale of the zamindári in execution of a decree, obtained upon the promissory note, was invalid as against the plaintiff, who, it was alleged, was

Present: Lord FITZGERALD, Lord HOBHOUSE, and Sir RICHARD COUCH.

(1) L.R., 11 I.A., 26; I.L.R., 10 Cal., 626.

entitled to succeed on the death of the present zamindar notwithstanding the sale.

For the defence it was denied that the debt was incurred for any immoral purpose, and an issue was fixed to that effect.

The decree against the father was obtained on 20th August 1879; the zamindári was sold on 30th August 1880; the son filed his objection on 4th November 1880, and brought this suit on 15th November 1882.

The acting subordinate judge (C. Purushotham) dismissed the suit on the ground that the evidence had failed to show that the debt was incurred for any immoral purpose. He cited *Gopalasami Pillai* v. *Chokalingam Pillai*(1).

On an appeal to the High Court, this decree was varied by a Division Bench (Turner, C.J., and Muttusámi Ayyar, J.). Their judgment, after referring to the circumstances under which the note was made, proceeded thus:

"That consideration was paid for the promissory note was proved by the first defendant who was called as a witness by the second defendant; but, although general evidence was given that the first defendant was immoral and kept a concubine, the evidence as to the purpose for which the loan was taken was discrepant, and the subordinate judge, while he was not convinced it was taken for a family purpose, was also not satisfied that it had been taken for an immoral purpose. On this finding, in view of rulings to which he alluded, he held that the claim failed.

"We agree with the subordinate judge that the suit is not barred by limitation. There was no inquiry whether the plaintiff was entitled to resist the sale. We also agree that the evidence offered by the plaintiff was too unreliable to warrant a finding that the first defendant had contracted the debt on which the decree was obtained for an immoral purpose.

"We see no reason to think that the lease was not created for good consideration, and it is not denied that two sums of Rs. 6,000 and Rs. 3,000, respectively, have, in fact, been applied for the satisfaction of the decree in original suit No. 16 of 1863.

"The income which remained for the support of the family was not large, and although the first defendant may have been extravagant in his expenditure in proportion to his fortune and

(1) I.L.R., 4 Mad., 320.

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have indulged immorality, it is not shown that the loan was taken with the intention that it should be expended in immoral purposes, or that it was so expended; the lender, looking to the necessitous circumstances of the family, may well have believed the money was required for family purposes, though there is no evidence that any representation of this kind was made to him or that he lent his money on the faith of such a representation. All that is shown is that the first defendant contracted a debt. We have then to consider whether the plaintiff is entitled to the whole or any portion of the relief sought by him. He is not entitled to a declaration that the debt was contracted for immoral purposes, nor is he entitled to a declaration that the judgment-debt is not, under any circumstances, binding on him; but, in view of the recent ruling of the Privy Council that a sale in execution of a money-decree of the right, title, and interest of a Hindu father will affect only the interests of the father, the plaintiff is entitled to a declaration that the sale in execution of the decree of 1879 has affected the interests of the first defendant only and not those of the plaintiff.

"The court cannot make any order directing or prohibiting mutation of names in the revenue register. To the extent indicated, the decree of the subordinate judge is reversed and the claim in part decreed, and, in modification of the order of the subordinate judge, it will be ordered that the parties do bear their own costs in both courts."

This appeal was thereupon preferred by the purchaser.

Mr. J. D. Mayne, for the appellant, argued that the decree of the first court dismissing the suit should be restored. By the concurrent findings of two courts, the son's suit had failed to show that the father's debt had been contracted for any immoral purpose. The debt having been contracted for no immoral purpose, the court which executed the decree of 1879 was competent to sell, and had sold, on 30th August 1880, the whole estate. As to the quantity of interest sold, the procedure in execution sales no longer restricted, since Act X of 1877 came into operation, the thing sold to the right, title, and interest of the judgment-debtor, as did Act VIII of 1859, s. 259 (sale certificate). The corresponding sections in the amended procedure of Act X of 1877, in XII of 1879, and in XIV of 1882 were adapted to the sale of all such

interest in the estate itself as might be legally sold. He referred to ss. 287 and 316 of the latter Acts.

The interest of the son was liable to be sold in satisfaction of his father's debt, and the High Court Judges had apparently meant to refer to the then recent case of *Hardi Narain Sahu* v. *Ruder Perkash Misser*(1), where, however, the sale was only of the father's right, title, and interest, with the result that, for that reason, the son's interest was held not to have been sold. The general rule being that one member of a joint family could not be made liable by another member for a debt, not for the family benefit; there were exceptions, of which one was that the son was bound to pay the father's debt, and the grandson, the grandfather's, if not incurred for any immoral purpose. He referred to *Hunooman Persaud Panday* v. *Mussumat Babooee Munraj Koonweree*(2), *Girdharee Lall* v. *Kantoo Lall*(3), *Suraj Bunsi Koer* v. *Sheoproshad Singh*(4).

He referred also to *Deendyal Lal* v. *Jugdeep Narain Singh*(5) as applying the principle of the above exception to the case of executions of decree against the father binding the son's interest, unless restricted to the father's interest, where the debt was of the proper character; this being the development of the principle that the father had power, for a lawful and moral purpose, to anticipate against his son, by action taken in his own life-time; in other words to bind his interest by sale or mortgage.

He referred also to *Nanomi Babuasin* v. *Modhun Mohun*(6), *Simbhunath Panday* v. *Golab Singh*(7), *Pettachi Chettiar* v. *Sangili Vira Pandia Chinnathambiar*(8), *Bhagbut Pershad* v. *Mussumat Girja Koer*(9), and he distinguished the effect of sales of the father's right, title, and interest only from that of the sale in the present case.

In regard to the character of the property sold, he referred to *Sartaj Kuari* v. *Deoraj Kuari*(10).

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(1) L.R., 11 I.A., 26; I.L.R., 10 Cal., 626.
(2) 6 Moore I.A., 393.
(3) L.R., 1 I.A., 321.
(4) L.R., 6 I.A., 88; I.L.R., 5 Cal., 148.
(5) L.R., 4 I.A., 247; I.L.R., 3 Cal., 198.
(6) L.R., 13 I.A., 1; I.L.R., 13 Cal., 21.
(7) L.R., 14 I.A., 77; I.L.R., 14 Cal., 572.
(8) L.R., 14 I.A., 84; I.L.R., 10 Mad. 241.
(9) L.R., 15 I.A., 99; I.L.R., 15 Cal., 717.
(10) L.R., 15 I.A., 51; I.L.R., 10 All., 272.

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The respondent did not appear. Their Lordships' judgment was delivered by Lord FITZGERALD.

JUDGMENT.—In this case the appellant was the decree creditor. The note for Rs. 2,000 was not originally passed to him, but he became the *bonâ fide* holder, and upon that note he obtained a money decree against the zamindar. An attempt has been made to impeach that decree which their Lordships will presently refer to. The decree creditor then took the ordinary proceedings to have the zamindári attached and sold. The son of the zamindar, who was the plaintiff in the suit now before their Lordships, intervened, and he first sought by petition an order that his interest in the zamindári should be excluded from the sale, and that the sale should be made subject to his right. It does not appear from any document before their Lordships what order, if any, was made on that petition; but their Lordships assume that the petitioner failed before the court below in obtaining that protection which he sought. Notwithstanding that petition, proceedings towards a sale went on, and upon the documents before their Lordships they must come to the conclusion that the thing professed and intended to be sold, and actually sold, was not the father's share, but the whole interest in the zamindári itself. Throughout this case the son does not appear to have ever contended that no more than his father's interest was sold. His case was that the whole zamindári was sold out and out; he impeached the debt which led to the sale, and asserted that the decree founded on it could not bind his interests. That impeachment of the debt has failed. It was said to have been for illegal and immoral purposes, and if it had been in its inception illegal and immoral, the son would not be liable to pay the debt, and the zamindári would not be the subject of sale. But that ground has entirely failed. The subordinate judge, who examined the evidence with the greatest care, correctly came to the conclusion that there was no satisfactory evidence that the debt was contracted for illegal or immoral purposes, and there is no doubt in the case that the original creditor advanced the Rs. 2,000 *bonâ fide*, and that it was a debt contracted by the father and coming within the ordinary rule of Hindú law with reference to an estate such as is now before their Lordships, that the son would be liable for the debt contracted by the father to the extent of the assets coming to him by descent from the father, and that his

interest in the zamindári was liable and might be sold for the satisfaction of that debt. The son, having failed to get the protection which he sought by his petition, instituted this suit impeaching the debt and seeking to be absolutely relieved from it. He has failed entirely in that, and their Lordships quite agree with the judgment of the subordinate court that, failing in that, his whole suit failed. The plaintiff based his case upon the impeachment of the debt and upon that alone, and failing in that allegation and that impeachment, the whole suit fails. That being the case, there might have been a sale of this estate under this decree, including the whole interest or of so much as was necessary. Upon the documents their Lordships have arrived at the conclusion that the court intended to sell, and that the court did sell, the whole estate, and not any partial interest in it.

Their Lordships do not intend in any way to depart from principles which they have acted upon in prior cases. The High Court, in dealing with the case, entirely agrees with the subordinate judge in the view which he took of the evidence, and would so far confirm his ruling; but it says, "but in view of the recent ruling of the Privy Council that a sale in execution of a money decree of the right, title, and interest of an Hindu father will affect only the interests of the father, the plaintiff is entitled to a declaration that the sale in execution of the decree of 1879 has affected the interests of the first defendant only and not those of the plaintiff." The "recent ruling" referred to is probably that to be found in *Hardi Narain Sahu* v. *Ruder Perkash Misser*(1).

The High Court seems to have acted on the rule so laid down as a rigid rule of law, apparently applicable to this particular case. But the distinction is obvious. In *Hardi Narain's* case all the documents showed that the court intended to sell and that it did sell nothing but the father's share—the share and interest that he would take on partition, and nothing beyond it—and this tribunal in that case puts it entirely upon the ground that everything showed that the thing sold was "whatever rights and interests the said judgment debtor had in the property" and nothing else.

Their Lordships are of opinion that the decision of the sub-

(1) L.R., 11 I.A., 26; I.L.R., 10 Cal., 626.

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ordinate judge was entirely right, and that the decision of the High Court was wrong in holding that less than the entirety of the estate was sold.

Their Lordships therefore will humbly advise Her Majesty that the decision of the High Court varying the decision of the subordinate judge be reversed, that the appeal to the High Court be dismissed with costs, and that the decree of the subordinate judge be reinstated, and their Lordships give the appellant the costs of this appeal.

Solicitors for the appellant, *Messrs. Rowcliffes, Rawle & Co.*

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Wilkinson.

1888.
Nov. 15, 20.

QUEEN-EMPRESS

against

RAMASAMI.*

Penal Code, ss. 95, 477—*Destruction of a valuable security—Unstamped document purporting to be a valuable security—Act causing slight harm.*

A, having had certain transactions with B, wrote out a rough account showing his indebtedness to B and signed the total. The paper was not stamped. B afterwards presented it to A and demanded payment of the total amount. A paid part only and after an altercation tore up the paper:

Held, that the act of tearing up the paper constituted the offence of destroying a valuable security, and the harm caused was such that a person of ordinary sense and temper would complain of it.

APPEAL against the conviction and sentence of C. Ramachandra Ayyar, Acting Sessions Judge of Nellore, in Sessions case No. 26 of 1888.

The appellant was a sub-overseer on the Nellore Railway and the complainant was a contractor employed by him on railway work. The appellant having become indebted to the complainant to the amount of Rs. 164, wrote a rough account containing figures only with no particulars, and signed the total. This document he handed to the complainant, and promised to pay the money due on

* Criminal Appeal No. 447 of 1888.