

*Before Mr. Justice Mitter and Mr. Justice Norris.*

SHEO PROSHAD AND ANOTHER (DEFENDANTS) *v.* JUNG BAHADOOR  
AND ANOTHER (PLAINTIFFS).\*

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August 4.

*Hindu Law—Mitakshara—Alienation by father—Joint family—Sale in execution of money decree against father of Mitakshara family.*

The mere fact of a decree being passed against the father only of a joint family governed by the Mitakshara law will not lead necessarily to the conclusion that what was sold in execution of that decree is only the father's interest in the joint family property. Notwithstanding the decree being against the father only under certain circumstances, there may be a valid sale of a joint property belonging to the family in execution thereof.

In execution of two money decrees against *A* alone, the right, title and interest of *A* in certain joint family property was sold, and the entire share of the joint family was taken possession of by the auction purchasers.

In a suit by the minor son and the wife of *A*, who with *A* constituted a joint family governed by the Mitakshara law to recover possession of their shares in the property sold, *Held* that, although the plaintiffs were not parties to the decrees, in execution of which the sales took place, the mere fact of *A* being sued alone was not sufficient to justify the finding that only his right, title and interest passed under the sales; and that as the facts of the case showed that the decrees were passed with reference to transactions which clearly concerned the joint family, the whole of the share of the joint family in the properties sold passed to the auction purchaser, the plaintiffs having failed to show that the debts, which were the foundation of the decrees in execution of which the sales were held, were contracted for immoral purposes.

*Umbica Prosad Tewary v. Ram Sahay Lall* (1), and *Ponnappa Pillai v. Pappuayyanganur* (2), followed.

*Ramphul Singh v. Deg Narain Singh* (3), dissented from.

THIS was a suit in which the plaintiffs, who were the minor son and wife of one Kali Sahai, sought to recover possession of a two-third share out of seven annas in certain mouzahs which had formerly belonged to Kali Sahai, but had been taken possession of by the plaintiffs, who alleged that they had purchased them at sales in execution of two decrees against Kali Sahai.

\* Appeal from Original Decree No. 97 of 1881 against the decree of Baboo Mohendro Nath Boss, First Subordinate Judge of Tirhoot, dated the 28th March 1881.

(1) I. L. R., 8 Cal., 898. (2) I. L. R., 4 Mad., 1.

(3) I. L. R., 8 Cal., 517.

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The plaintiffs claimed to be entitled as members of a joint family, and alleged that one of the mouzahs in question, *viz.*, Dowlatabad, had not been sold. The lower Court was of opinion that Dowlatabad had not passed under the sales, and with regard to the other mouzahs, held that the case was governed by the ruling in the case of *Deendyal Lal v. Jugdeep Narain Singh* (1), and that consequently the defendants who contested the claim had only purchased the right, title and interest of Kali Sahai in the properties, and that the plaintiffs were entitled to a decree for possession of the share claimed.

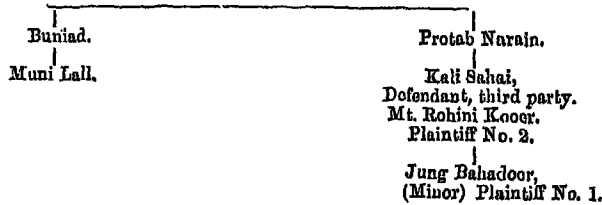
The facts of the case are sufficiently stated in the judgment of the High Court, to which Court the defendants appealed against that decree.

Mr. Branson and Baboo *Fran Nath Pundit* for the appellants.

Mr. R. E. Twidale for the respondents.

The judgment of the Court (MITTER and MORRIS, JJ.) was delivered by

MITTER J.—The following genealogical table of the family will be of help in stating the facts of this case :—



From the above tree it will appear that the plaintiffs are the minor son and wife of Kali Sahai, who has been made a *pro forma* defendant. The appellants before us were the defendants who defended the suit in the lower Court. At the time of the institution of the suit, they were in possession of seven annas of Jufferabad *aski*, Aurungabad, Jehanabad, and Dowlatabad, *dakilis*, of which plaintiffs claim to recover possession of a 4 annas 8 pie share.

It appears that these mouzahs constitute an estate, the towji

(1) I. L. R., 3 Cal., 198.

number of which is 1,300, and the Government revenue of which is Rs. 27-13-11. Eight annas of these mouzahs were held and owned by Kali Sahai, who, on the 28th February 1873, sold a one-anna share in each of these mouzahs to a third party. On the 15th September 1874, in execution of two decrees against Kali Sahai, it is alleged by the plaintiffs that the first three mouzahs were sold, but that the auction purchasers under their purchase took possession of the whole seven-annas share of these mouzahs, including Dowlatabad, on the 12th Bysack 1282 (April 24th, 1875). The plaintiffs' case is that under these auction sales only the interest of Kali Sahai in the first three mouzahs passed; therefore they claim to recover possession of two-thirds of seven annas of these mouzahs, *i.e.*, a 4 annas 8 pie share on partition thereof, between Kali Sahai on the one hand and the plaintiffs on the other.

It will be convenient here to state the transactions which led up to the auction sales mentioned above. Muni Lall and Pertab Narain, father of Kali Sahai, borrowed from one Khajeh Mohamed Rs. 1,200, and executed a bond in favour of the creditor on the 30th June 1858, hypothecating certain properties other than those in suit. This bond was renewed on the 28th April 1862 by Muni Lall, who executed it for himself, and as guardian of Kali Sahai, who was then a minor, his father Pertab Narain having died in the meantime. There was a second renewal of this debt by Muni Lall for self and as guardian of Kali Sahai on the 29th January 1866. Khajeh Mohamed, after the death of Muni Lall, brought a suit against his widow, Deoti Koper and Kali Sahai, for the recovery of the money due under the last mentioned bond. On the 18th August 1870 he obtained a decree. It appears that on the 15th February 1872, Kali Sahai borrowed from Jugger Nath Singh and Janki Sahai Rs. 5,000, to pay off the debt due from him to the decree-holder Khajeh Mohamed. The creditors, on the 8th February 1873, obtained a decree against Kali Sahai for the money due under this bond. Certain properties, other than those in dispute, having been hypothecated in the bond executed in favor of Jugger Nath Singh and Janki Sahai, the decree of the 8th February 1873 declared that the money decreed should continue to be a charge upon the

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properties hypothecated. In execution of this decree, the right, title, and interest of Kali Sahai in mouzah Jufferabad, towji No. 1,300, and bearing a sudder jumna of Rs. 27-13-11, were brought to sale on the 15th September 1874, and purchased by Peary Lall and Girdharee Mahto for Rs. 4,300. The appellants before us are purchasers from Peary Lall and Girdharee.

On the same 15th September 1874, in execution of another decree, dated the 18th April 1874, against Kali Sahai, his right, title, and interest in seven annas of monzachs Aurungabad and Jehanabad, were sold and purchased by the same auction-purchasers. Aurungabad was purchased for Rs. 775, and Jehanabad for Rs. 1,750. The history of this decree is as follows: After the death of Muni Lall there was a dispute between Kali Sahai and Deoti Kooer his widow, regarding Muni Lall's property. Kali Sahai claimed the whole of it on the ground that the family was joint. The dispute between these parties was settled by a compromise filed by them in a regular appeal pending in this Court between them in 1870. By this compromise, Muni Lall's properties were divided between Kali Sahai and Mussamut Deoti Kooer in certain proportions, Kali Sahai having taken over all the debts due from the estate of Muni Lall. One Ram Dhoni Sahai was a creditor of this estate, and it was for Ram Dhoni's debt that the decree of the 18th April 1874 was passed against Kali Sahai. It has been already stated that in execution of this decree Kali Sahai's right, title and interest in seven annas of mouzachs Aurungabad and Jehanabad were brought to sale on the 15th September 1874, and purchased by Peary Lal and Girdharee Mahto. The appellants before us are the purchasers from these auction-purchasers in this instance also. They contend that in execution of the first-mentioned decree, the whole seven annas share of the estate No. 1,300, including all the *dakhili* mouzachs, was sold, and that the auction-purchasers took possession under their purchase in April 1875 of the whole seven annas share of the estate.

The lower Court held that in the first auction sale only mouzah Jufferabad was sold, and the *dakhili* monzachs Aurungabad and Jehanabad were sold in execution of the other decree. Mouzah Dowlatabad was not sold at all. Then as regards the interest that was sold, it was of opinion that, as the plaintiffs

were not parties to the decrees, the interest of the father alone in these properties was sold.

We agree with the lower Court that Dowlatabad was not sold. If under the first auction purchase the purchasers had acquired a seven annas share of the whole estate, they would not have bid for the *dakhili* mouzahs of Aurungabad and Jehanabad which were brought to sale on the same date. It was said in the course of the argument before us that the purchasers in the first sale bid for the *dakhili* mouzahs in the second sale, because they wanted to avoid litigation, which might have ensued if they had allowed third parties to purchase the *dakhili* mouzahs. But it appears to us that, if they had really purchased in the first auction sale all the *dakhili* mouzahs, they would have *at least made an attempt* to prevent a second sale of two of them. On this point we agree with the lower Court in the conclusion to which it has come.

With reference to the question as to what was sold, we are of opinion that the decision of the lower Court is not correct. That Court was of opinion that, because the plaintiffs were not parties to the decrees, in execution of which the sales in question took place, therefore, according to the principle laid down by the Judicial Committee of the Privy Council in *Deendyal Lall v. Jugdeep Narain Sing* (1), only the interest of the father passed. It has been shown that the circumstance of the father being sued alone will not necessarily bring the case within the ruling in *Deendyal Lal v. Jugdeep Narain Sing*. See *Umbica Prosad Tewary v. Ram Sahay Lall* (2). The same view was taken by a Full Bench of the Madras High Court in the case of *Ponappa Pillai v. Pappuwayyengar* (3).

In a recent case decided by their Lordships of the Judicial Committee of the Privy Council (*Muttayan Chetti v. Sangili Vira Pandia Chinnatambiar* (4), in which the judgment was delivered on the 10th May last), the Full Bench decision of the Madras High Court has been approved as laying down the law correctly. A contrary view seems to have been taken by a Division Bench of

(1) I. L. R., 3 Cal., 198.

(2) I. L. R., 3 Cal., 898.

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

(4) I. L. R., 6 Mad., 1.

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this Court (PRINSEP and FIELD, JJ.) in *Ramphul Singh v. Deg Narain Singh* (1). This decision is dated the 1st August 1881, but Mr Justice Prinsep in another case, the judgment of which has not yet been reported, took the same view as was taken in *Umbica Prosad Tewary's case*. This judgment was delivered on the 16th Junelast. Under these circumstances, and specially as the Madras Full Bench decision has been approved by the latest judgment of the Judicial Committee of the Privy Council on this point, we do not think that we are bound to refer this question to a Full Bench on the ground of there being a conflict in the decisions of this Court. The preponderance of authorities, therefore, is in favour of the proposition that the mere fact of a decree being passed against the father only will not lead necessarily to the conclusion that what was sold in execution of that decree is only the father's interest in a joint family property. Notwithstanding the decree being against the father only, under certain circumstances there may be a valid sale of a joint property belonging to the father and the son in execution thereof.

What we have to determine in this case is whether the whole seven annas share belonging to Kali Sahai and his son was sold or only the father's interest. If the former, can the sale stand?

Although the plaintiff No. 1 was not of age at the time of the sales, yet it is quite clear upon the evidence that both his father and mother, who are interested in protecting his interest, were under the belief that the whole seven annas share was sold. The auction-purchasers were allowed without any opposition or protest on their part to take possession of the whole seven annas share. The decree in execution of which the first sale took place, was passed with reference to a transaction which clearly concerned the joint family. The bond, which was the basis of that decree, was the final outcome of a loan which had been originally contracted by Pertab Narain, Kali Sahai's father. Having regard to these circumstances, we are of opinion that the whole seven annas share in Mouzahs Jufferabad, Aurungabad and Jehanabad passed by the auction sales.

The next question is whether these sales are binding upon the

(1) I. L. R., 8 Cal., 517.

minor son, Jung Bahadoor. According to the principle laid down in *Suraj Bansi Koer v. Sheo Prosiad Singh* (1) the plaintiffs can set aside the sales if they can prove that the debts, which were the foundations of the decrees in execution of which they were held, were contracted by the father for immoral purposes. This the plaintiffs in this case have failed to prove. Their suit, therefore, as regards Jufferabad, Aurungabad and Jehanabad, will fail. We, therefore, modify the decree of the lower Court to this extent, *viz.*, that we dismiss the plaintiff's suit as regards these mouzahs, but we affirm the decree so far as the Mouzah Dowlatabad is concerned. As the major portion of the plaintiff's claim has failed, they must pay the defendant's costs in both Courts.

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*Appeal allowed and decree modified.*

*Before Mr. Justice Wilson and Mr. Justice Field.*

RAMJOY SURMA (DEFENDANT) *v.* JOY NATH SURMA (PLAINTIFF).\*

*Contribution, Suit for—Money paid in satisfaction of joint decree—  
 Small Cause Court, Jurisdiction of.*

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 July 27.

A suit for contribution for money paid by one judgment-debtor in satisfaction of a joint decree against him and others cannot be entertained by a Court of Small Causes.

*Rambux Chittanjeo v. Mudhoosoodun Paul Chowdhry* (2); *Shaboo Majee v. Noorai Mollah* (3) followed; *Nathprasad v. Baijnath* (4), dissented from.

In this case the plaintiff alleged that he and the defendant jointly had borrowed a sum of money from one Ram Kanai Das, who, on the 9th of September 1876, obtained a joint decree for the amount, with costs, against the plaintiff and the defendant. In 1877, the decree-holder took out execution against the plaintiff alone, and recovered from him Rs. 250. The decree-holder applied

\* Appeal from Appellate Decree No. 1998 of 1880 against the decree of Baboo Ram Coomar Paul, Subordinate Judge of Sylhet, dated the 10th July 1880, modifying the decree of Baboo Upendro Chunder Ghose, Munsiff of Nubeegunge, dated the 31st March 1880.

- (1) L. R., 6 I. A., 88; S. C., I. L. R., 5 Calc., 148.
- (2) B. L. R. Sup. Vol., 675; 7 W. R., 377.
- (3) B. L. R., Sup. Vol., 691.
- (4) I. L. R., 3 All, 66.