LAKSHMINDRATHIRTHA SWAMIAR v. RAGHAVENDRA RAO.

(mahant, swamiyar or whatever other title he may possess) intended to make himself personally liable. From this point of view, the decrees of the Courts below were right and the Second Appeal should be dismissed with costs.

K.R.

SPENCER, J.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.

1920, March 2.

SOMASUNDARAM CHETTY (THIRD RESPONDENT), APPELLANT,

v.

UNNAMALAI AMMAL AND TWO OTHERS [PETITIONER (PLAINTIFF) AND FIRST AND SECOND RESPONDENTS], RESPONDENTS *

Hindu Law—Decree for maintenance to a widow of a joint family creating a charge on family properties—Subsequent purchaser of such properties under money decree binding on family—Priority of charge.

A charge on joint family properties created by a decree for maintenance payable to the widow of a member of a joint Hindu family takes precedence over the right of a subsequent purchaser of the same properties in execution of a money decree binding on the family.

APPEAL against the order of A. EDGINGTON, District Judge of South Arcot, in Execution Petition No. 66 of 1917 in Original Suit No. 33 of 1914.

The facts are stated in the Judgment.

S. Duraiswami Ayyar and *A. Raghunatha Rao* for appellant.

S. T. Srinivasa Gopala Achariyar for first respondent.

The JUDGMENT of the Court was delivered by

SESHAGIRI AYYAR, J.

SESHAGIRI AYYAR, J.—This matter arises in execution. A suit was brought in July 1913, against the father of a debtor who was undivided from his father, for money borrowed. The son had died in March 1913. An application for attachment before judgment was obtained on 11th July 1913. There was a simple money decree against the father, executable against the assets of the son in his hands. On 30th July 1914, the widow of the son sued her father-in-law for maintenance, and claimed that it should be charged against the family properties.

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* Appeal against Order No. 90 of 1919.

The decree as prayed for was made on 28th of November 1914. Meantime, the decree holder under the money decree brought the property to sale; he had notice of the charge created in favour of the daughter-in-law. This lady has now applied to execute her decree for maintenance against the purchaser under the money decree. It must be taken to have been found that the decree against the father-in-law was for a claim binding on the family. The first question which was argued was that as the decree creating a charge was during the pendency of the attachment under the money decree the charge is affected by *lis pendens*. One answer to this contention is that section 64 of the Civil Procedure Code relates to voluntary transfers and not to charges created by a decree. However this may be, we have not materials to enable us to say that the sale and purchase were in pursuance of the attachment before judgment, and that such an attachment was subsisting when the charge was created.

The more important question is whether the charge is ineffective as against a creditor whose debts are binding on the family. In the first place, it seems undesirable to draw a distinction between the kinds of charges created under a decree. Whatever may have been the original obligation which was pursued in a Court of law, the moment that a Court declares that its decree is to be discharged by the creation of a charge on immovable property it is as binding on all subsequent purchasers of the property, at least, as if there was a mortgage for a binding debt created by the debtor on the property. In this view, the charge would take precedence over all claims which have not ripened into a lien on the property. Secondly, the proposition that a debt binding on a Hindu family takes precedence over a maintenance claim in all cases is not supported by any clear authority. It may be stated as a general proposition, that in the administration of a Hindu's estate, binding debts would take precedence over mere claims for maintenance, or residence, on the part of the female members of the family. But there is no clear authority for the proposition that a charge *bona fide* created for maintenance can be defeated by a creditor who has lent money for family purposes. *Sham Lal* v. *Banna*(1), and *Gur Dayal* v. *Kaunsila*(2),

(1) (1882) I.L.R., 4 All., 296 (F.B.). (2) (1883) I.L.R., 5 All., 367.

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have been relied on before us. In neither of them was a charge created for the maintenance claimed. The *obiter dictum*, that even if there is a charge it would be subordinated to the claim of the creditor, is not supported by any text of Hindu Law or by any decided case. The observations in *Krishna Patter* v. *Sinnaponnu*(1), are of the same character. On the other hand there are the observations of BHASHYAM AYYANGAR, J., in *Jayanti Subbiah* v. *Alamelu Mangamma*(2), which are to the effect that a creditor transferee can under certain circumstances be subjected to the obligation of paying maintenance. In *Rangammal* v. *Echammal*(3), SUBRAHMANYA AYYAR, J., pointed out that the moral obligation to maintain a daughter-in-law would under certain circumstances ripen into a legal obligation. It would be on *a fortiori* case where a decree charges specific property. In our opinion the rule of Hindu Law is limited in its application only so long as the two obligations—the one to pay a binding debt and the other to pay maintenance—are both of them not made charges on the property. If either of them assumes that shape, then it would take precedence over the other. This is the principle underlying section 39 of the Transfer of Property Act and that principle is quite consistent with the rule of Hindu Law. In our opinion, therefore, the Lower Court is right and this Appeal should be dismissed with costs.

N.R.

(1) (1914) 25 I.C., 759. (2) (1904) I.L.R., 27 Mad., 45.
(3) (1899) I.L.R., 22 Mad., 305.