

a copy of the decree which had been obtained by another party, and claimed a deduction under the section, of the time taken in obtaining such a copy. It was held in *Ramamurthi Aiyar v. Subramania Aiyar*(1) that he was not entitled to the deduction, but the Allahabad High Court in *Ramkishan Shastari v. Kashi Bai*(2) dissented from this ruling for which no reasons are given and we are unable to follow it. As has often been pointed out this and other sections of the Limitation Act must be read together with the corresponding provisions of the Code of Civil Procedure. If we so read them, it is clear that the copy of the decree appealed from which is mentioned in the section, is the copy of the decree appealed from which has to accompany the memorandum of appeal under Order XLI, rule 1 (formerly section 541), Civil Procedure Code. The Code does not require that the copy of the decree accompanying the memorandum should have been obtained on the application of the appellant himself and there are no grounds for importing this restriction into section 12 of the Limitation Act. The appellant was in order when he presented a copy obtained by another party with his memorandum, and was entitled under the section to the deduction claimed. We must therefore overrule the objection that the appeal is out of time.

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APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Sadasiva Ayyar.

P. SURIYANARAYANA RAO NAIDU (PLAINTIFF),

APPELLANT,

v.

P. BALASUBRAMANIA MUDALI AND SIX OTHERS

(DEFENDANTS), RESPONDENTS.*

1919,
December
19, and 1920
January 30.

Hindu Law—Right of residence—Unmarried sisters' right—Decree against mother of last male owner on her personal debt—Sale of house in execution—Auction purchasers' right to oust unmarried sisters in possession—Right of residence of other females against purchasers.

An auction purchaser of an ancestral house, sold in execution of a money-decree passed on a personal debt of the mother who inherited the property a

(1) (1902) 12 M.L.J., 385.

(2) (1907) I.L.R., 29 All., 264.

* City Civil Court Appeal No. 20 of 1919.

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heir to her son, is not entitled to oust the unmarried sisters of the latter, who reside in the house.

APPEAL against the order of Rao Bahadur C. R. TIRUVENKATA ACHARIYAR, City Civil Judge of Madras, in Original Suit No. 327 of 1918.

The material facts appear from the judgment of SADASIVA AYYAR, J.

Mes-vs. Venkatasubba Rao and Radhakrishna Ayya for the appellant.

K. Rajah Ayyar for first, sixth and seventh respondents.

SADASIVA
AYYAR, J.

SADASIVA AYYAR, J.—The plaintiff is the appellant. He purchased in Court auction sale the plaint house in execution of a decree passed against the defendants Nos. 2, 3 and 4. The defendants Nos. 3 and 4 had no rights in the property and we may take it that the plaintiff purchased the right, title and interest of the second defendant in the house. The house belonged to the second defendant's husband Ekambara Mudali and then to Ekambara Mudali's only son who died a minor. On her minor son's death, the second defendant as his heir became the qualified female owner of the house. The minor left his two sisters, defendants Nos. 6 and 7 unmarried. The money-decree against the second defendant was passed for a personal debt of the second defendant, the mother and next heir of the last male owner. The plaintiff, purchaser in Court auction, obtained delivery of the downstairs portion, but the upstairs portion of the house now in dispute was occupied by the defendants Nos 6 and 7, the two unmarried sisters of the last male owner, and they refused to vacate as they claimed a right under the Hindu Law to reside in the house which belonged to their father and their brother till their (the said defendants') respective marriages. Hence the suit brought to eject them on the ground that they had no such rights under the Hindu Law.

The learned City Civil Judge decided this interesting question of Hindu Law against the plaintiff and in favour of the defendants Nos. 6 and 7 and dismissed the suit: hence this appeal.

So far as the widows of undivided co-parceners are concerned (including a widowed mother), the authorities are very clear that a private sale by the surviving male co-parcener which was

not for family necessity or an execution sale held for a decree debt which did not arise out of family necessity would not entitle the purchaser to oust such widows as the latter were entitled to reside in the ancestral family house till at any rate, other adequate provision is made for their residence. The question of unmarried girls who were not related to the surviving male co-parcener as direct descendants from him but as sisters or cousins (that is, as daughters of deceased undivided co-parceners) seems not to have formed the direct subject of any reported decision. In the case of the wife or widow of the surviving co-parcener, it has been held in *Jayanti Subbiah v. Alamelu Mangamma*(1) that the wife cannot set up any right of residence against the purchaser in execution for her husband's debts. I shall presently consider the ratio of that decision. But before leaving this part of the subject, I would finally remark that the general question was elaborately considered by Sir BARNES PEACOCK, C.J. (with whose judgment MITTER, J., concurred) in *Mungola Dabee v. Dinonath Bose*(2). The very general language of the learned Chief Justice's dictum is to the effect that the father's widow and

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“the other females of the family who are entitled to maintenance out of the dwelling selected by the father for his own residence and in which he left the females of his family at his death cannot be turned out of that residence at least until some other place has been provided for them.”

If this general dictum applies, the unmarried daughters of the father being also

“females of the family entitled to maintenance” and residence can resist being turned out of the dwelling selected by their father for his own and their residence. No doubt there is a distinction between the widows of co-parceners and the father's widow on the one side and unmarried females on the other side because the former are entitled to maintenance and residence till death or remarriage, whereas unmarried females are entitled to maintenance and residence only until their marriage. But as the learned City Civil Judge points out, the difference in the length of the period and in the

(1) (1904) I.L.R., 27 Mad., 45.

(2) (1869) 12 W.B., O.J., 35.

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circumstances when the right of maintenance and residence ceases, cannot affect, on principle, the right to resist the eviction from the family dwelling house so long as the right of maintenance and residence subsists.

Mr. Radhakrishna Ayyar for the appellant argued that if every female entitled to maintenance and residence can exercise the right, of obstruction to ejection, it would be very unfair on purchasers from the surviving member of a Hindu family and on purchasers in execution of debts due by such member and even the wife of the debtor and the unmarried daughters of the debtor might claim to resist the purchaser. I might here remark that even as regards the mother and the co-parcener's widow of the debtor the right of residence is curtailed (a) by restricting it to cases where the debt for which the property is sold is not contracted for necessity and (b) by the rule that the females cannot claim a right of residence in the whole of the premises if a portion of the house could be set apart for them and would afford reasonably sufficient accommodation and (c) that if other reasonable accommodation even outside the family dwelling house is offered, they may be bound to accept such a substitute, at least in certain circumstances.

As regards the wife, I shall now return to *Jayanti Subbiah v. Alamelu Mangamma*(1), where BASHYAM AYYANGAR, J., delivered the judgment which was concurred in by BENSON, J. While affirming the general principle which had been laid down in *Venkatammal v. Andyappa Chetti*(2) and *Ramanadan v. Rangammal*(3), the learned Judge distinguished the case of the wife of the debtor for whose debt the property was sold on the following grounds: (so far as I am able to follow his reasoning) (a) the debt contracted by the husband himself is necessarily binding upon the wife absolutely; (b) on his death without male issue, his estate devolves on her by right of inheritance and so no right of maintenance or residence apart from ownership as heir can be invoked in her favour as in the case of a co-parcener's widow; (c) the mother's right may be traced to the father's co-parcenary right just as in the case of the other co-parceners;

(1) (1904) I.L.R., 27 Mad., 45.

(2) (1883) I.L.R., 6 Mad., 130.

(3) (1889) I.L.R., 12 Mad., 260.

and is not derived from the debtor directly; (d) the wife's right of maintenance during her husband's lifetime

"is only a matter of personal obligation on the part of the husband quite independent of the possession of the ancestral property by him."

The learned Judge also fortified himself by the dictum of KERNAN, J., in *Venkatammal v. Andiyappa Chetti*(1) that if the debt in respect of which the sale took place was a debt due by the husband of the woman who claims the right of residence,

"no doubt could be entertained that she had no such right."

After making the above distinctions, he disallowed the right of the widow of the debtor to resist possession by the purchaser in Court auction. In doing so, he dissented from the decision in *Manilal v. Bai Tara*(2). (J. C. Ghose in his very learned work on Hindu Law seems to be inclined in favour of the Bombay decision and against BASHYAM AYYANGAR, J.'s opinion.)

I shall not lengthen this judgment by elaborately considering whether all the four distinctions (a) to (d) relied on by the learned Judge are tenable. It is sufficient to state that the wife and unmarried daughters of the debtor stand on a different footing from the widows of deceased co-parceners (including the mother) and from unmarried sisters. If even the undivided sons of the debtor cannot attack the sale in execution of the father's debt (not illegal or immoral), I do not see how unmarried daughters can be allowed to attack it or put forward a right of residence against the purchaser. As regards the wife, she is under even a greater obligation (under the Hindu Law) than the sons, not to question the validity of her husband's debts. The mother and the widows of co-parceners and the unmarried sisters are under no such obligation with respect to the debt of the surviving male owner which was not incurred for family necessity. I need hardly say that if the sale for their brother's debt itself would not deprive defendants Nos. 6 and 7 of their right of residence, a sale for the debt of the brother's next female heir and legal representative (which is the present case) cannot be held to deprive them of such right. The question whether a private sale of a person's ancestral family dwelling house without necessity (apart from the question of its being

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(1) (1893) I.L.R., 6 Mad., 130. (2) (1893) I.L.R., 17 Bom., 398.

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sold in execution of a decree for his debt) or without the purchase money being required to discharge his own antecedent debts can deprive even his wife and unmarried daughters of their right of residence is a somewhat more difficult question on which it is unnecessary to express a final opinion in this case.

In the result, I would dismiss the appeal with costs.

WALLIS, C.J.

WALLIS, C.J.—I entirely agree.

K.B.

APPELLATE CIVIL.

*Before Sir John Wallis, Chief Justice and Mr.
Justice Krishnan.*

SUBRAMANYAM, APPELLANT (FOURTH DEFENDANT),

v.

NARASIMHAM AND THREE OTHERS, RESPONDENTS
(PLAINTIFF AND DEFENDANTS NOS. 1 TO 3).*

1920,
February 4
and 10.

*Limitation Act (IX of 1908), sec. 12 (2), (3) Christmas Holidays—Deduction of,
in computing time for appeal.*

The defendant, against whom a judgment and decree were passed on 21st December 1919, i.e., on the first day of the Christmas vacation, applied for copies of the same on the 7th January 1920, i.e., some days after the re-opening.

Held, that in computing the time for appeal, the defendant was not entitled to deduct the period of the Christmas vacation as 'time requisite for obtaining copies' within section 12 of the Limitation Act.

SECOND APPEAL sought to be preferred against the decree of the District Court of Kistna in Appeal Suit No. 33 of 1918, preferred against the decree of the Subordinate Judge of Bezwada, in Original Suit No. 23 of 1916.

The facts are given in the judgment.

The respondent in the above Second Appeal took the objection that the Second Appeal was filed out of time.

B. Somayya for appellant.

Venkataramana Rao for respondent.

* Stamp Register No. 18328 of 1919.