

On appeal to the High Court the defendant Ganraj contended, *inter alia*, that the alienation of Kishen's share of the joint family property to the plaintiff without the consent of the defendant Kalahal, a co-sharer of that property, was invalid.

The *Senior Government Pleader* (Lala Juala Prasad), for the appellant.

Pandit *Ajudhia Nath* and Babu *Jogindro Nath Chandhri*, for the respondent.

The portion of the judgment of the Court (PEARSON, J., and STRAIGHT, J.,) material to the purposes of this report was as follows :—

PEARSON, J.—The plea which constitutes the second ground of the appeal was not taken in the Court of first instance. There it is true Kalahal pleaded that Kishen's estate was not a separate one, but not that the mortgage made by his widow and sons was invalid because it had been made without his consent; and Ganraj pleaded that it was invalid because she was not a lawful wife and his children were illegitimate. The plea now set up is here for the first time set up, not by Kalahal, who alone might under other circumstances, *i. e.*, if he had not by his own act incapacitated himself, have been competent to urge it, but by Ganraj, a stranger to the family, in whose mouth it does not lie,—*Bullabh Das v. Sundar Das* (1) The second ground of appeal is consequently disallowed. The appeal is dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Oldfield and Mr. Justice Straight.*

CHANDRA SEN (DEFENDANT) v. GANGA RAM AND ANOTHER (PLAINTIFFS).\*

*Hindu law—Joint Hindu family property—Alienation by Father—Son's Rights.*

G, a member of a joint undivided Hindu family consisting of himself and his sons, having wrongfully converted to his own use the property of another person, such person sued him for damages for such conversion, and obtained a decree,

\* Second Appeal, No. 1178 of 1879, from a decree of W. Tyrrell, Esq., Judge of Bareilly, dated the 30th July, 1879, affirming a decree of Pandit Indar Narain, Munsif of Barcilly, dated the 26th May, 1879.

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in the execution of which *G*'s rights and interests in the family property were put up for sale and purchased by *C*, who in execution of such decree took possession of such property. *G*'s sons thereupon sued *C* to recover their shares according to Hindu law of such property. Held per OLDFIELD, J., that, although the father's debt was not one which the sons were in duty bound to pay, it might be that, had the family estate passed out of the family under the execution-sale, the sons could not have recovered it from *C*, who was an auction-purchaser and a stranger to the suit against the father. Inasmuch as, however, the claim in that suit was not for a joint family debt, but a personal claim against the father, who was alone represented in that suit, and the decree in that suit was against him personally, and it was only his rights and interests that were put up for sale and purchased by *C*, the sons were entitled to recover from *C* their shares of the family property. *Suroj Bansi Koor v. Sheo Persad Singh* (1) distinguished.

Per STRAIGHT, J.—That the sons were entitled to recover their shares of the family property, the decree being purely a personal decree against the father, and his rights and interests only in such property having been put up for sale and purchased by *C*.

THIS was a suit instituted on behalf of the two plaintiffs, who were minors, by their uncle as their next friend, for possession of a two-ninths share of a certain dwelling-house. This house was ancestral property which had descended to the plaintiffs' father, Gopal Das, and his two brothers in equal one-third shares. On the 31st July, 1878, the rights and interests of Gopal Das in the house were put up for sale in the execution of a decree for money, which one Ram Kinkar had obtained against him in a suit for damages for wrongfully converting to his own use certain jewels belonging to Ram Kinkar. Such rights and interests were purchased by the defendant in this suit. The defendant having taken possession of one-third of the house, the present suit was brought against him by the plaintiffs for possession of their shares of such one-third. The defendant contended that the suit was not maintainable, inasmuch as the family property of the plaintiffs and their father had been put up for sale in the satisfaction of a debt incurred by their father for their support, and the defendant had purchased the property in good faith. The contention that the debt had been incurred for the support of the plaintiffs was based upon the allegation that Gopal Das had converted the property of Ram Kinkar to his own use in order to maintain himself and his children during a time of famine. The Court of first instance disallowed this contention and gave the plaintiffs a

(1) L. L. R., 5 Calc., 148.

decree, which, on appeal by the defendant, the lower appellate Court affirmed, disallowing the same contention.

On appeal to the High Court the defendant contended that the property had passed to him and could not be recovered, as he was a stranger to the proceedings against Gopal Das and had purchased in good faith.

Lala *Lalta Prasad* and Mir *Zuhur Husain*, for the appellant.

Munshi *Hanuman Prasad*, for the respondents.

The following judgments were delivered by the Court :

OLDFIELD, J.—The plaintiffs are two minor sons of one Gopal: the latter misappropriated some jewels which were pledged to him by one Ram Kinkar, who brought a suit against him for damages and obtained a decree, and in its execution caused his judgment-debtor's rights and interests in a joint ancestral house to be sold, and appellant became the purchaser. Plaintiffs sue to recover their shares of the house. Both Courts have decreed the claim, and we consider that the appeal fails.

The law is that, when joint ancestral property has passed out of the joint family under a sale in execution for a father's debts, his sons by reason of their duty to pay his debts cannot recover the property, unless they show that the debts were contracted for immoral purposes and that the purchaser had notice that they were so contracted, and a purchaser at an execution-sale being a stranger to the suit, if he has not notice that the debts were contracted for immoral purposes, is not bound to make inquiries beyond what appears on the face of the proceedings.—*Suraj Bunsji Koer v. Sheo Persad Singh* (1).

In the case before us the debt is not one which the sons were in duty bound to pay, but it may be that, had the property passed out of the family under the sale in execution of the decree, they could not recover it from the appellant, who is an auction-purchaser and a stranger to the suit; but an examination of the suit and decree and execution-proceedings shows that no more than the right, title, and interest of the judgment-debtor in the property

(1) I. L. B., 5 Calc., 148.

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passed under the execution-sale. The claim was not for a joint family debt, but a personal claim against Gopal, who was alone represented in the suit, and the decree was against him personally for a money-claim, and it was only his right, title, and interest that was put up for sale and bought by the appellant. I would dismiss the appeal with costs.

STRAIGHT, J.—I concur in the judgment of my honorable colleague entirely on the ground that the decree was purely a personal one against Gopal, and that all that was put up and brought to sale was his right, title, and interest. The appeal should be dismissed with costs.

*Appeal dismissed.*

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*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.*

CHIMMAN SINGH (PLAINTIFF) v. SUBBAN KUAR AND OTHERS (DEFENDANTS)\*

*Act XL of 1858, s. 18—Mortgage by certificate-holder without sanction—  
Act IX of 1872 (Contract Act), s. 23.*

A mortgage by a person holding a certificate of administration in respect of the estate of a minor under Act XL of 1858 of immoveable property belonging to the minor, without the sanction of the Civil Court previously obtained, is void with reference to s. 18 of that Act and s. 23 of the Indian Contract Act, even though the mortgage-money was advanced to liquidate ancestral debts and to save ancestral property from sale in the execution of a decree.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Lala Lalta Prasad and Munshi Kashi Prasad, for the appellant.

Mr. Niblett and Babu Beni Prasad, for the respondents.

The High Court (STUART, C. J., and OLDFIELD, J.,) delivered the following

JUDGMENT.—The widows of Thamman Singh and guardians of his son the plaintiff, and of another son, Sirdar Singh, since deceased, executed on 19th July, 1870, three deeds of mortgage of property left by Thamman Singh in favour of the defendants or persons now represented by defendants. The sons of Thamman Singh were

\* First Appeal, No. 18 of 1879, from a decree of Maulvi Abdul Qayum Khan, Subordinate Judge of Bareilly, dated the 13th December, 1878.