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in execution of which the grain had been attached, which was under Rs. 1,000.

Mr. Conlon, Munshi *Hanuman Prasad*, and Babu *Ratan Chand*, for the appellant.

Pandit *Bishambhar Naih* and *Shah Asad Ali*, for the respondent.

The judgment of the Court (OLDFIELD, J. and STRAIGHT, J.) was delivered by

OLDFIELD, J.—We are constrained to allow an objection taken by appellant that the Subordinate Judge had no jurisdiction to try this suit. The claim is to have declared the plaintiff's right to some grain stored in pits, by setting aside an order of the Munsif for bringing the grain to sale in execution of a decree held by defendant against a third party, his judgment-debtor. A course of decisions of this Court has held that the value of the subject-matter in dispute for determining jurisdiction will be in such cases the amount of the decree in satisfaction of which it is sought to bring the property to sale.—S. A. No. 320 of 1876, decided the 16th May, 1876 (1). We decree the appeal and set aside the proceedings in the lower Courts, and direct that the plaint be returned to the plaintiff in order that he may, if so advised, present it in the proper Court. Each party will bear their own costs in all Courts.

Appeal allowed.

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 April 5.

Before Mr. Justice Pearson and Mr. Justice Straight.

BIKA SINGH AND OTHERS (DEFENDANTS) v. LACHMAN SINGH AND OTHERS (PLAINTIFFS).*

Hindu law—Mitakshara—Mortgage by a father of ancestral property—Sale of father's rights and interests in the execution of decree—Liability of Son's share.

The undivided estate of a joint Hindu family consisting of a father and his minor sons and grandsons, while in the possession and management of the father, was mortgaged by him as security for the re-payment of moneys borrowed by him. The lender of these moneys sued the father to recover them by the sale

* Second Appeal, No. 1150 of 1879, from a decree of W. Duthoit, Esq., Judge of Shahjahanpur, dated the 28th August, 1879, modifying a decree of Babu Becha Ram Chuckerbati, Munsif of Data Gani, dated the 10th June, 1879

of the family estate, and obtained a decree against him directing its sale. The right, title, and interest of the father only in the family estate was sold in the execution of this decree. The auction-purchasers having taken possession of the family estate, the sons and grandsons joined in a suit against them to recover their shares of the estate. *Held*, that the sons and grandsons were entitled to recover their shares of the estate, inasmuch as the auction-purchasers had only acquired by their auction-purchase the rights and interests of the father in the estate, and that, for the same reason, it was unnecessary to inquire into the nature of the debt on account of which the father's rights and interests in the estate were sold. *Deendyal Lal v. Jugdeop Narain Singh* (1) followed. *Giraharee Lall v. Kuntoo Lall* (2) distinguished.

Held also that the rulings in those two cases are perfectly consistent.

THIS suit was instituted in the names of the plaintiffs, five of whom were the sons, and two the grandsons, of the defendant Gulab Singh, they being minors, by their next friend, Indra Kuar, wife of Gulab Singh. The plaintiffs claimed to establish their right to, and recover possession of, five-sixths of a defined share of a mauza called Kishorepur. It appeared that on the 17th February, 1876, Gulab Singh had given one Ganga Prasad a bond for the payment of Rs. 154 in which he hypothecated this share as collateral security for such payment. The principal amount of this bond consisted of an old loan of Rs. 54 and a new loan of Rs. 100. Ganga Prasad sued Gulab Singh on this bond and obtained a decree for the recovery of the bond-debt by the sale of the share. The rights and interests of Gulab Singh in the share were put up for sale in the execution of this decree, and of another decree against him and certain other persons held by one Tachmi Narain, on the 23rd August, 1878, and such rights and interests were purchased by the defendants in the present suit, who obtained possession of the share. The plaintiffs alleged in support of their claim that they and Gulab Singh formed a joint Hindu family; that the share was the undivided property of the family, although Gulab Singh was recorded as its proprietor in the revenue registers; that the moneys which Gulab Singh had borrowed from Ganga Prasad had been borrowed for unnecessary purposes; that the whole of the joint ancestral property had been improperly put up for sale for the satisfaction of Ganga Prasad's decree; and that, according to Hindu law, father and son had equal shares in such property.

(1) I. L. R., 3 Calc., 198. (2) L. R., 1 Ind. App., 321; 14 B. L. R., 187.

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and Gulab Singh's share was therefore one-sixth, and they were entitled to the remaining five-sixths of the joint ancestral property of the family.

The auction-purchasers defendants stated in defence of the suit that it had been brought at the instance of Gulab Singh; that the property in suit was not ancestral property, but the separate property of Gulab Singh; that Gulab Singh was a person of good moral character; that the debts for the satisfaction of which the property had been sold were incurred by him for lawful purposes; and that, as under the Hindu law it was the pious duty of the son to pay his father's just debts, and the property in suit had been sold to satisfy such debts, the suit ought to be dismissed. It appeared that before the suit came to be tried the defendant Gulab Singh died.

The second and third issues fixed by the Munsif were as follows:—“(ii). Whether the property in dispute was the joint ancestral property of the plaintiffs and Gulab Singh the father of plaintiffs, and Gulab Singh was in possession thereof as the head of the family or not? (iii). Whether the debt in satisfaction of which the property was sold had been incurred under a legal necessity or not, and what rights have the defendants acquired by the auction-purchase?” With reference to the first of these issues the Munsif found that the property in dispute was the ancestral property of Gulab Singh and his sons, and not the separate property of Gulab Singh, and that Gulab Singh was in possession of it as the head of the family, and that it was not shown how the moneys borrowed from Ganga Prasad had been expended. The Munsif held that it was not necessary to ascertain how these moneys were expended, as whatever might have been the nature of the debt the defendants could not take under the execution-sale more than the right, title, and interest of the judgment-debtor. The judgment of the Munsif on this part of the case was as follows:—“But this issue is immaterial in the present suit. This case is exactly on all fours with *Diendyal Lal v. Jugdeep Narain Singh* (1) decided by the Judicial Committee of the Privy Council. In that case their Lordships held that ‘whatever may have been the nature of the debt, the appellant cannot be taken to have acquired by the

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

execution-sale more than the right, title, and interest of the judgment-debtor. If he had sought to go further, and to enforce his debt against the whole property, and the co-sharers therein who were not parties to the bond, he ought to have framed his suit accordingly, and have made those co-sharers parties to it. By the proceedings which he took he could not get more than what was seized and sold in execution, *viz.*, the right, title, and interest of the father. This ruling is applicable to this case. The bond was executed by the father and the decrees obtained against him only. The plaintiffs who were not parties to the bonds were not also made parties to the suits in which the decrees were obtained in execution of which the property in suit was sold. Following the ruling of the Privy Council, I hold that the defendants Bika Singh, Narain Singh, Bahlwan Singh, Tika Singh, and Pulandar Singh have acquired by the auction-purchase merely the right, title, and interest of Gulab Singh to and in the property in dispute."

The Munsif accordingly gave the plaintiffs a decree. On appeal the District Judge affirmed the Munsif's decision, but varied his decree. The material portion of the District Judge's judgment was as follows:—"The auction-purchasers appeal. The cases of *Girdhars Lall v. Kantoo Lall* (1), *Narayanacharya v. Narso Krishna* (2), *Venkatarami Naik v. Kuppaiyan* (3) have been cited on their behalf. The last-named precedent is so entirely at variance with their contention that it has probably been cited under a misapprehension. There can be no doubt, however, that the two first-noted precedents do support the appellants' case and lay down the rule that the sale of a father's ancestral estate in execution of a decree of Court will bind Hindu sons *in esse*, and there is no doubt that the property in this case was ancestral and that the sons were *in esse*. But there seems also to be no doubt that the principle enunciated in *Muddun Thakoor v. Kantoo Lall* (4) has been very materially varied by *Deendyal Lal v. Jugdeep Narain Singh* (5), which has been followed by two Madras Full Bench decisions,—*Venkatarami Naik v. Kuppaiyan* (3); *Venkataramayyan v. Venkatasubramania Dikshatar* (6)—in the latter of which the genesis of the law as now

(1) L. R. 1 Ind. App. 321; 14 B. L. R., 137. (4) L. R. 1 Ind. App. 321; 14 B. L. R., 137.

(2) I. L. R. 1 Bom. 262.

(5) I. L. R., 3 Calc. 198.

(3) I. L. R., 1 Mad. 354.

(6) I. L. R., 1 Mad. 358.

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settled is detailed, and it must I think now be taken as certain that, when the sons are not parties to the suit in which the decree is passed, the right, title, and interest of the father can alone be considered as sold in execution. I find, therefore, no reason to differ from the lower Court upon the main point in this case, but I am of opinion with reference to the case of *Babaji Lakshman v. Vasudev Vinayak* (1) and *Kallapa v. Venkatesh Vinayak* (2) that the decree must be varied, and that its form should be in that given in *Babaji Lakshman v. Vasudev Vinayak* (1). The lower Court's decree is modified by declaring the plaintiffs entitled to joint possession along with the defendants of Gulab Singh's share in the zamindari estate of mauza Kishorepur. The relative proportions of their interests, if a division *in specie* be desired, must be determined in a suit to ascertain the same or by private arrangements."

The defendants appealed to the High Court.

Pandit *Bishambhar Nath* and *Munshi Sukh Ram*, for the appellants.

Munshi Hanuman Prasad, for the respondents.

The judgment of the High Court (PEARSON, J. and STRAIGHT, J.) was delivered by

PEARSON, J.—In the case of *Girdharee Lall v. Kantoo Lall* (3) and *Muddun Thakoor v. Kantoo Lall* (3) decided by the Privy Council on the 12th May, 1874, it was ruled that ancestral property which descends to a father under the Mitakshara law is not exempted from liability to pay his debts because a son is born to him, that it would be a pious duty on the part of the son to pay his father's debts, unless they had been illegally contracted or for immoral purposes, and that, it being a son's pious duty to pay his father's debts, the ancestral property in which the son, as the son of his father, acquires an interest by birth, is liable to the father's debts. In the later case of *Suraj Bansi Koer v. Sheo Persad Singh* (4), decided by the Privy Council on the 1st

(1) I. L. R., 1 Bom. 95.

(2) I. L. R., 2 Bom. 878.

(3) L. R. 1 Ind. App. 321; 14 B. L. R., 187.

(4) I. L. R., 5 Cal. 148.

February, 1879, reference is made to the above-mentioned decision as an authority for the following proposition, *viz.*, that when a joint ancestral property has passed out of a joint family either under a conveyance executed by a father in consideration of an antecedent debt or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they show that the debts were contracted for immoral purposes and that the purchasers had notice that they were so contracted.

In the case of *Deendyal Lal v. Jugdeop Narain Singh* (1), decided by the Privy Council in July 1877, it was ruled that the right and interest of one co-sharer in a joint ancestral estate may be attached and sold in execution of a decree obtained against him personally under the Mitakshara law, and that the purchaser at such a sale acquires merely the right to compel a partition as against the other co-sharers which the judgment-debtor possessed.

The rulings in the two cases of 1874 and 1877 appear to be perfectly consistent, and, in our opinion, the lower appellate Court has erred in holding that they are at variance with each other, and that the decision in the earlier case supports the appellants' contention. In that case the whole of the taluqa in which the plaintiffs were co-sharers had been sold by their fathers. The ruling in that case is therefore inapplicable to the present in which it has been distinctly found that the appellants only acquired by their auction purchase the rights and interests of their judgment-debtor Gulab Singh in the joint ancestral estate in manza Kishorepur. That finding assimilates the case to that of *Deendyal Lal v. Jugdeop Narain Singh* (1).

The reason why it is unnecessary to inquire into the nature of Gulab Singh's debts on account of which his rights and interests were sold is that the rights and interests of the plaintiffs are found not to have been sold to the appellants. The appeal fails and is dismissed with costs.

Appeal dismissed.

(1) I. L. R., 3 Calc. 108.

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