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lands in the present dispute, that a sale of the proprietary right in a village covers both.

MUHAMMAD
ABDUL KADIR
v.
KUTUB
HUSSAIN.
KAMAL-UD-
DIN AHMAD
v.
KUTUB
HUSSAIN.

This being the view I take, both these appeals Nos. 154 and 155 must be dismissed with costs.

BRODHURST, J.—I entirely concur in dismissing both these appeals with costs.

*Appeals dismissed.**

REVISIONAL CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

DURGA PRASAD (PLAINTIFF) v. RACHLA KUAR AND OTHERS (DEFENDANTS).*

Suit for declaration that property is liable to sale in execution of decree—Valuation of suit—Jurisdiction.

In a suit to have it declared that certain property valued at Rs. 400 was liable to sale in execution of the plaintiff's decree for Rs. 1,500,—*held* that in this case the value of the property determined the jurisdiction, that it was immaterial that the amount of the decree was higher than the limit of the Munsif's jurisdiction, and that the case was therefore triable by the Munsif. *Gulzari Lal v. Jadaun Rai* (1) distinguished.

THE plaintiff stated in his plaint that on the 4th April, 1877, one Sheo Dat Rai who owned a 5½ gandas share in a certain village, gave a simple mortgage of 2 gandas to Mahipat Rai, his first cousin, and that this mortgage was a collusive transaction. He then, on the 13th July, 1877, gave a simple mortgage of the 5½ gandas to Hira Rai and Ram Charan Rai. Subsequently he caused a suit to be instituted against himself in respect of the mortgage of the 4th April, 1877, and this resulted in Mahipat Rai obtaining, on the 20th September, 1877, a decree against him for Rs. 121-15. On the 15th December, 1883, Hira Rai sold to the plaintiff two-thirds of the rights and interests of the mortgagees under the mortgage of the 13th July, 1877, and the plaintiff subsequently sued to enforce that mortgage, and obtained a decree for Rs. 1,505-7-9, and for the sale of two-thirds of the 5½ gandas share in satisfaction of the decretal amount. On the 1st September, 1885, the plaintiff learnt that Rachla Kuar, widow of

* Application No. 193 of 1883, for revision of an order of J. M. C. Steinbelt, Esq., District Judge of Azamgarh, dated the 31st July, 1886, affirming an order of Maulvi Muhammad Amin-ud-din, Munsif of Muhamdabad, dated the 10th May, 1886.

Shipat Rai, had caused 2 gandas to be attached and proclaimed for sale in execution of the decree obtained by her deceased husband.

Upon these allegations the plaintiff brought this suit to establish his right to bring to sale the $5\frac{1}{2}$ gandas share as the property of Sheo Dat Rai, "by protecting the 2 gandas from being sold in execution of the Musammat's decree." The value of the 2 gandas was stated to be Rs. 400. The Court of first instance (Munsif), referring to *Gulzari Lal v. Jadann Rai* (1), held that the value of the subject-matter in dispute in the suit, for the purposes of jurisdiction, was the amount of the plaintiff's decree, Rs. 1,505-7-2, and as that amount exceeded Rs. 1,000, it could not take cognizance of the suit. It therefore made an order returning the plaint to be presented to the proper Court. The plaintiff appealed from this order, and the appellate Court affirmed it.

The plaintiff then applied to the High Court for revision, contending that the value of the subject-matter in dispute should in this case be determined with reference to the value of the 2 gandas in dispute.

Munshi *Kashi Prasad*, for the plaintiff.

Munshi *Hanuman Prasad*, for the defendants.

OLDFIELD, J.—This is an application for revision of an order of the Court below, passed under s. 57 of the Civil Procedure Code, returning a plaint because the value of the subject-matter appeared to be beyond the Munsif's jurisdiction.

The claim of the plaintiff was to have certain property declared liable to sale in execution of his decree for Rs. 1,505-7-9, the value of such property not exceeding Rs. 400, and the question for decision was whether the suit, for jurisdiction purposes, should be valued at the latter or the former amount. I am of opinion that the value of the property which the decree-holder seeks to have sold, determines the jurisdiction in this suit, and it is immaterial whether the amount of the decree is higher than the limit of the Munsif's jurisdiction.

The case referred to by the lower Court, *Gulzari Lal v. Jadann Rai* (1), is clearly distinguishable from this; for in that case the value of the property in suit was higher than the amount of the

(1) I. L. R., 2 All. 799.

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decree, and the valuation was rightly limited to the amount of the decree, that being all that was recoverable in the event of the plaintiff being successful.

I would set aside both the decretal orders of the lower Courts, and direct that the plaint be accepted as regards the value of the subject-matter of the suit, and that it be dealt with according to law. The costs of the plaintiff-appellant in all three Courts will follow the result.

BRODHRUST, J.—I am of the same opinion, and concur in the proposed order.

Appeal allowed.

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December 7.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

BALBIR SINGH (PLAINTIFF) v. AJUDHIA PRASAD AND OTHERS (DEFENDANTS)

JAGRAJ SINGA (PLAINTIFF) v. AJUDHIA PRASAD AND OTHERS
(DEFENDANTS)*

Hindu Law—Joint Hindu family—Mortgage of family property by father—Decree against father enforcing mortgage—Decree for money against father—Sale in execution of decrees—Rights of sons.

The members of a joint Hindu family brought suits in which they respectively prayed for decrees that their respective proprietary rights in certain ancestral property might be declared, and that their interests in such property, which were about to be sold in execution of two decrees against their father, might be exempted from such sale. One of these decrees was for enforcement of a hypothecation by the plaintiffs' father of the property in suit. It was admitted on behalf of the plaintiffs, in connection with this decree, that, although the judgment-debtor was a person of immoral character, the creditor had no means of knowing that the monies advanced by him were likely to be applied to any other purpose than that for which they were professedly borrowed, namely, for the purpose of an indigo factory in which the family had an interest.

Held that the plaintiffs were not entitled to any declaration in respect of the execution proceedings under the decree for enforcement of hypothecation.

The second of the decrees above referred to was a simple money decree for the principal and interest due upon a *hund* executed by the father in favour of the decree-holder. The suit terminating in that decree was brought against the father alone, and the debt was treated as his separate debt.

Held that the creditor's remedy was to have brought his suit, if he desired to obtain a decree which he could execute against the family property and not against the father's interest only, and if he could maintain such suit, either against those members of the family against whom he desired to execute his decree, or against

* First Appeals Nos. 16 and 149 of 1885, from decrees of Maulvi Abdul Basit Khan, Subordinate Judge of Malapuri, dated the 18th May, 1885.