

## APPELLATE CIVIL.

1898  
July 28.*Before Sir Louis Kershaw, Kt., Chief Justice, and Mr. Justice Know.*

RUP SINGH (JUDGMENT-DEBTOR) v. PIRBHU NARAIN SINGH (DECREE-HOLDER).\*

*Hindu law—Mitakshara—Impartible raj—Impartible raj not necessarily inalienable.*

If amongst Hindus governed by the law of the Mitakshara, a raj happens to be impartible and governed by the rule of primogeniture, it does not therefore follow that it is inalienable. The condition of inalienability depends upon special custom, or, in some cases, upon the special tenure of the raj and must be clearly proved. *Rani Sartaj Kuari v. Rani Deoraj Kuari* (1), referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu *Parbati Charan Chatterji* for the appellant.

Babu *Jogindro Nath Chaudhri* and Pandit *Sundar Lal*, for the respondent.

KERSHAW, C. J., and KNOX, J.—The parties to these proceedings are Maharaja Pirbhu Narain Singh Sahib Bahadur, Kashi Nares, who is decree-holder, and Raja Rup Singh, known and styled as the Raja of Bhare, who is judgment-debtor. On the 29th of November 1891, Raja Rup Singh transferred by way of mortgage his rights and interests in certain property to the Maharaja of Benares. Upon that mortgage-deed the Maharaja of Benares instituted a suit and obtained a decree for sale. An order absolute for sale was also given subsequently. In process of time the decree-holder applied for attachment of the property with a view to its being brought to sale. No objection was raised by the judgment-debtor, and on the 19th of November 1894, an order issued for sale, and proceedings were transferred to the Collector of Mainpuri in accordance with section 320 of the Code of Civil Procedure. Upon the case reaching the Collector, steps appear to have been taken to bring the property under the management of the Court of Wards, and under its management the property

\*First appeal No. 13 of 1898 from an order of Maulvi Muhammad Mazhar Husain, Subordinate Judge of Mainpuri, dated the 14th December 1897.

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appears to have remained up to the 8th of May 1897, when the Court of Wards withdrew from management. On the 27th of March 1897, the decree-holder again applied for execution of his decree. Notice was issued to the judgment-debtor under section 248 of the Code of Civil Procedure, and the 19th of April 1897, fixed for hearing any objection that might be raised. The judgment-debtor raised no objection and the case went again to the Collector on the 27th of July 1897. Eventually the 20th of December 1897, was fixed for sale. On the 8th of December for the first time the judgment-debtor appears to have roused himself, or to have been roused into taking action. He on that date, after final orders for holding the sale of the property had issued, came forward, and for the first time asked the Court to consider whether the property which it was about to sell could or could not be sold in execution of the decree. The Subordinate Judge of Mainpuri considered that the objections taken were entitled to no weight and disallowed them. From that order the present appeal is brought, and it is again urged upon us that the property ordered to be sold is property which cannot be sold because, first, it forms part of an impartible raj, which by Hindu law and custom is inalienable; secondly, because the son and heir of the Raja of Bhare should, under the terms of section 85 of the Transfer of Property Act of 1882, have been made party to the proceedings.

It is admitted that the property forms part of an impartible raj. The learned vakil for the appellant strove to maintain that an impartible raj was also inalienable. He appears to have either overlooked or to have misunderstood the decision given by their Lordships of the Privy Council in *Rani Sartaj Kuari v. Rani Deoraj Kuari* (1). In that case it is laid down that in a raj the eldest son, where the Mitskahara law prevails and there is a custom of primogeniture, does not become a co-sharer with his father in the estate. If the estate be inalienable, the inalienability of it depends upon custom which must be proved, or it may be that in some cases it depends upon the nature of the tenure. Indeed, in

(1) L. R., 15 I. A., 51.

this case it does not lie in the mouth of the appellant to maintain at this stage this contention, seeing that when he offered the property for mortgage, he put forward that it was capable of alienation, that he made no resistance to the decree which was passed against it, and that he never, until the 8th of December 1897, attempted to put forward the objection at all; even then he put it forward as being a question based upon the general principles of Hindu law.

The principle laid down by their Lordships of the Privy Council in the case above-mentioned cuts away the ground on which the second contention is based. The Court below was quite right in dismissing both the objections taken as frivolous. They were, in our opinion, frivolous and intended to delay execution. At any rate there is ample ground for suspecting that there was such intent. We cannot believe for a moment that if they were valid objections, the appellant would not have urged them long ago, and taken care to have them fortified by evidence of custom or as to the nature of the tenure. We dismiss the appeal with costs.

*Appeal dismissed.*

*Before Mr. Justice Banerji and Mr. Justice Aikman.*

SHEORAJ SINGH (PLAINTIFF) v. AMIN-UD-DIN KHAN (DEFENDANT).\*

*Execution of decree—Application for execution by beneficial holder of decree—Application dismissed—Suit for declaration of applicant's right to execute the decree—Civil Procedure Code, section 232.*

*Held*, that where an application under section 232 of the Code of Civil Procedure by a person alleging himself to be beneficially entitled under a decree to execute such decree has been rejected, it is still competent to the applicant (no appeal lying from the order under section 232 rejecting his application) to bring a separate suit for a declaration that he is the person entitled to execute the decree. *Ram Baksh v. Panna Lal* (1) and *Halodkar Shaha v. Harogobind Das Koiburto*, (2), referred to.

THE facts of this case are fully stated in the judgment of the Court.

\*Second Appeal No. 123 of 1896 from a decree of L. G. Evans, Esq., District Judge of Aligarh, dated the 30th November 1895, reversing a decree of Babu Bepin Behari Mukerji, Subordinate Judge of Aligarh, dated the 20th June 1895.

(1) I. L. R., 7 All., 457.

(2) I. L. R., 12 Cal., 1

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