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Hindu widow or a daughter we are not informed. In neither case had she the power to alienate except for legal necessity. The District Judge, in the face of an objection by the rever- sioners, has ordered the purchase-money to be paid to the Musam- mat. This order cannot stand. The case is manifestly one provided for by section 32 of Act No. I of 1894. We set aside the order of the Court below, and direct that, under the pro- visions of section 32, the money shall be invested in the purchase of other lands, to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or, if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit. Payment of the rent or other proceeds of such investment will be made to Musammât Mohri as the person for the time being entitled to the possession of such land. The Judge will further strictly comply with the other provisions of section 32. We make no order as to costs.

*Appeal decreed.*

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*Before Sir Arthur Strachey, Knight, Chief Justice and Mr. Justice Banerji.*

HIRA LAL SAHU (DECREE-HOLDER) v. PARMESHAR RAI (OBJECTOR).\*

*Execution of decree—Decree for sale on mortgage—Powers of Court executing decree—Hindu law—Joint Hindu family—Objection by son that his interest in the property mortgaged is not saleable in execution of a decree obtained against his father.*

*Held*, that it is not open to a son in a joint Hindu family, who has been made a party as the legal representative of his father to proceedings in execu- tion of a mortgage decree against the father, to raise an objection in those execution proceedings that the decree against the father is not binding on him in his personal capacity by reason of his not having been made a party to the suit in which the decree was passed. *Bhawani Prasad v. Kallu* (1) referred to. *Sauwal Das v. Bismillah Begam* (2) and *Liladhar v. Chatarbhuaj* (3) approved. *Lochan Singh v. Sant Chandar* (4) not followed.

\* Second Appeal No. 910 of 1896, from a decree of H. D. Griffin, Esq., District Judge of Azamgarh, dated the 25th August 1896, modifying a decree of Munshi Ahmad Ali Khan, Subordinate Judge of Azamgarh, dated the 15th May 1896.

(1) (1895) I. L. R., 17 All., 537.

(2) (1897) I. L. R., 19 All., 480.

(3) (1899) I. L. R., 21 All., 277.

(4) Weekly Notes, 1899, p. 24.

THE facts of this case sufficiently appear from the judgment of Banerji, J.

Messrs. *W. M. Colvin* and *D. N. Banerji*, for the appellant.

Maulvi *Ghulam Mujtaba*, for the respondent.

BANERJI, J.—The appellant obtained a decree for sale under section 88 of the Transfer of Property Act, 1882, against the father of the respondent. The decree directed the sale of the property comprised in the mortgage. This appeal arises out of an application made by the decree-holder for an order absolute for sale under section 89 of the Act. That application was made against the respondent by reason of the mortgagor having in the meantime died. The respondent objected to the order under section 89 being passed in respect of the whole property, on the ground that it was ancestral property, and that as he, the respondent, was not joined as a party to the suit in which the mortgagee decree-holder had obtained his decree, that decree could not affect his interests, and those interests were not liable to sale in execution of that decree. Both the Courts below have allowed the objection and exempted a one-third share of the mortgaged property, which they have declared to be the share of the respondents, from liability under the decree. The decree-holder mortgagee has preferred this appeal, and the question which we have to determine is whether the Courts below were competent to consider the objection raised by the respondent, the decree being one for sale under a mortgage, and directing that the whole of the mortgaged property should be sold. It is urged, and with reference to the rulings of this Court, rightly, that an application under section 89 of the Transfer of Property Act is an application in execution of the decree for sale. The Court which dealt with that application was therefore dealing with a matter which must be taken to have arisen in connection with the execution of a decree. There can be no doubt that a Court executing a decree is bound to give effect to the decree as it finds it, and is not competent to vary or alter it in any way. The decree in this case directs, as stated above, the sale of the whole of the mortgaged

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property. That being so, could the Court executing the decree consider the question whether any portion of that property was exempt from liability under the decree? No doubt according to the ruling of the Full Bench in *Bhawanji Prasad v. Kallu* (1) the son of a Hindu mortgagor who had not been joined as a party to the mortgagee's suit for sale, is competent to sue for the exemption of his interests in the mortgaged property from sale on the single ground that he was not a party to the suit in which the decree was passed; but that is not a question which, it seems to me, can be raised in execution proceedings by the son of the mortgagor, if he happens to be made a party to those proceedings in his character of legal representative of his father. The determination of such a question would lead to a determination of the question of the validity of the decree passed against the father. Such a question is beyond the scope of the powers of a Court executing a decree. This was the principle of the ruling in the case of *Sanwal Das v. Bismillah Begam* (2), and the same view was apparently taken in the case of *Liladhar v. Chatarbhuj* (3). No doubt in the case of *Lochan Singh v. Sant Chandar* (4) sitting with my brother Aikman, I held that it was open to a son who had been made a party to the execution proceedings as the legal representative of his father to raise an objection on the ground that the decree against the father was not binding on him in his personal capacity by reason of his not having been made a party to the suit in which the decree was passed; but on reconsideration that view seems to me to be erroneous. I may observe that in a later case a doubt was expressed by my brother Aikman and myself as to the correctness of the view taken in the case of *Lochan Singh v. Sant Chandar*. A Court executing a decree, as I have said, is bound to give effect to the decree as it stands. If the decree orders the whole of the property mortgaged by the father to be sold, the Court executing the decree cannot consider the question whether the decree was validly made against the

(1) (1895) I. L. R., 17 All., 537.

(2) (1897) I. L. R., 19 All., 480.

(3) (1899) I. L. R., 21 All., 277.

(4) Weekly Notes, 1899, p. 24.

interests of the son. If a son, although a party to the execution proceedings, in his capacity as legal representative of his father, could be allowed to raise the question of the binding effect of the decree on his interests, and if the Court executing the decree be permitted to give effect to such objection, the result would be that such Court might be in a position to vary the decree. This certainly a Court, in the exercise of its powers relating to the execution of decrees, is not competent to do. Upon reconsideration, I think that the view which was taken in the case of *Sanwal Das v. Bismillah Begam* was the right view. I would allow the appeal, and, setting aside the orders of both the Courts below, remand the case to the Court of first instance, with directions to make an order under section 89 of the Transfer of Property Act in respect of the whole of the property comprised in the decree under section 88, and then to proceed with the application for execution. I would allow the appellant his costs here and in the Courts below.

STRACHEY, C. J.—I am of the same opinion.

*Appeal decreed, and cause remanded.*

*Before Sir Arthur Strachey, Knight, Chief Justice and Mr. Justice Banerji.*

NARAIN SINGH AND ANOTHER (PLAINTIFF) v. JASWANT SINGH

(DEFENDANT).\*

*Civil Procedure Code, section 43—Application for leave to sue in forma pauperis—Application rejected—Subsequent suit not barred—Civil*

*\* Procedure Code, section 413.*

*Held, that section 43 of the Code of Civil Procedure would not apply so as to bar a subsequent suit where the so-called previous suit was not a regular suit but an application for leave to sue in forma pauperis, which was rejected.*

THIS was a suit to enforce as against the property of the defendant a lien for contribution arising out of a mortgage entered into by the plaintiff Narain Singh and the defendant jointly, on the allegation that the plaintiff's property had been sold in

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\* Second Appeal No. 887 of 1896, from a decree of G. A. Tweedy, Esq., District Judge of Farrukhabad, dated the 27th June 1896, confirming a decree of Maulvi Anwar Husain Khan, Subordinate Judge of Farrukhabad, dated the 20th December 1895.