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see anything to preclude him from proceeding against other portions of the property, so long as he does so within the time allowed by law. For these reasons we dismiss the appeal with costs.

Appeal dismissed.

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December 13.

FULL BENCH.

Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Knox and Mr. Justice Banerji.

DEBI SINGH AND OTHERS (PLAINTIFFS) *v.* JIA RAM AND OTHERS (DEFENDANTS).*

Hindu Law—Mitakshara—Joint Hindu family—Mortgage of joint family property executed by the father—Decree and sale of mortgaged property—Suit by sons to recover their shares—Act No. IV of 1882 (*Transfer of Property Act*), *section* 85—*Effect of sale.*

Where property belonging to a joint Hindu family has been sold by auction in execution of a decree obtained upon a mortgage of such property executed by the father of the joint family, it is open to the sons to sue for the recovery of their shares in the property so sold, if they were not made parties to the suit in which the decree against their father was obtained, provided that the mortgagee had at the time of suit notice of their interests in the property. But their suit must be based upon some ground which under the Hindu law would free them from liability as sons in a Hindu joint family to pay their father's debts. A sale once having taken place, the sons cannot succeed in a suit to recover the property sold upon the sole ground that they were not made parties to the original suit. *Kaunsilla* v. *Chandar Sen* (1) overruled. *Hargu Lal Singh* v. *Gobind Rai* (2) and *Bhawani Prasad* v. *Kallu* (3) distinguished. *Rewa Mahton* v. *Ram Kishen Singh* (4), *Nanomi Babuasin* v. *Modhun Mohun* (5), *Suraj Bunsi Koer* v. *Sheo Proshad Singh* (6), *Malkarjun* v. *Narhari* (7) and *Bhagbut Pershad Singh* v. *Girja Koer* (8) referred to.

Jia Ram and his three sons, Debi Singh, Balwant Singh and Dharam Singh, constituted a joint Hindu family governed by rules of the Mitakshara law. As such joint Hindu family Jia Ram and his sons owned a 10 biswansi share in a holding in

* Appeal No. 55 of 1901, under section 10 of the Letters Patent.

(1) (1900) I. L. R., 22 All., 377.
(2) (1897) I. L. R., 19 All., 541.
(3) (1895) I. L. R., 17 All., 537.
(4) (1886) I. L. R., 14 Calc., 18.
(5) (1885) I. L. R., 13 Calc., 21.
(6) (1879) I. L. R., 6 I. A., 88.
(7) (1900) I. L. R., 25 Bom., 337.
(8) (1888) I. L. R., 15 Calc., 717.

Kunjan Bazar, pargana Meerut. Jia Ram executed three mortgages of this share in favour of one Tulsi Ram, namely a mortgage of the 22nd of March, 1882, to secure a principal sum of Rs. 1,360 and interest: a mortgage of the 4th of December, 1886, to secure a principal sum of Rs. 850 and interest, and a mortgage of the 28th of April, 1887, to secure a principal sum of Rs. 300 and interest. On the two later mortgages Tulsi Ram instituted a suit against Jia Ram for sale of the mortgaged property, but he did not make Jia Ram's sons parties to that suit. A decree for sale was passed in that suit on the 10th of June, 1890, and on the 19th of January, 1891, an order absolute was made for sale of the mortgaged property, and the same was sold on the 20th of December, 1893, and purchased by two persons named Tara Singh and Nain Singh, subject, however, to the first mortgage of the 22nd of March, 1882. The names of the purchasers were subsequently recorded in the khewat as owners of the property. Thereafter, on the 8th of September, 1896, the sons of Jia Ram instituted a suit for recovery of proprietary possession of their shares, amounting to seven and a half biswansis, in the property sold, on the ground that the decree and sale were illegal and void as against them. The Court of first instance decreed the plaintiffs' claim, and this decree was upheld by the lower appellate Court on appeal. But the defendants appealed to the High Court, and there the decision of the two lower Courts was reversed, and the suit was dismissed. The single Judge who heard the appeal followed the decision in *Kaunsilla* v. *Chandar Sen* (1). From this decision the plaintiffs preferred an appeal under section 10 of the Letters Patent of the Court, which, owing to doubts entertained by a Division Bench as to the correctness of the ruling referred to, was laid before a Bench of three Judges for disposal.

Munshi *Haribans Sahai*, for the appellants.

Pandit *Moti Lal Nehru*, for the respondents.

STANLEY, C. J.—This appeal has arisen out of a suit which was brought by Debi Singh, Balwant Singh and Dharam Singh, the sons of one Jia Ram, for recovery of possession of 7½ biswansis of a 10 biswansi share in a holding in Kunjan Bazar,

(1) (1900) I. L. R., 22 All., 377.

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pargana Meerut. Jia Ram and his sons constituted a joint Hindu family at the date of the execution by Jia Ram of certain mortgages which I shall presently mention, and as such joint family were entitled to the share above specified in Kunjan Bazar. Jia Ram executed three mortgages of this share in favour of Tulsi Ram, the father of the defendant Nanhe Mal, namely a mortgage of the 22nd of March, 1882, to secure a principal sum of Rs. 1,360 and interest; a mortgage of the 4th of December, 1886, to secure a principal sum of Rs. 850 and interest, and a mortgage of the 28th of April, 1887, to secure a principal sum of Rs. 300 and interest. On foot of the two last mentioned mortgages Tulsi Ram instituted a suit against Jia Ram for sale of the mortgaged property, but did not make the plaintiffs parties to the suit. A decree for sale was passed in that suit on the 10th of June, 1890, and on the 19th January, 1891, an order absolute was made for sale of the mortgaged property, and the same was sold on the 20th of December, 1893, and purchased by the defendants, Tara Singh and Nain Singh, subject, however, to the mortgage of the 22nd of March, 1882. The names of the purchasers were subsequently recorded in the khewat as owners of the property. The plaintiffs instituted this suit on the 8th of September, 1896, and in it claimed to be entitled to proprietary possession of their share of the property, *viz.* a 7½ biswansi share out of 10 biswansis, on the ground that the decree and sale were void and illegal as against them. The Court of first instance decreed the plaintiffs' claim, and this decree was upheld by the lower appellate Court on appeal; but upon second appeal the decision of the two lower Courts was reversed, and the suit was dismissed on the ground that the defendants were auction purchasers, and being such, "when bidding at an auction sale held under the orders of a competent Court, there was no duty imposed on them of inquiring whether the decree under which the sale was being made was a decree which the Court ought or ought not to have passed." The learned Judge who heard the appeal decided it in accordance with the rule laid down in the case of *Kaunsilla* v. *Chandar Sen* (1). From this decision an appeal was preferred

(1) (1900) I. L. R., 22 All., 377.

under section 10 of the Letters Patent. The Judges before whom the appeal came having some doubts as to the correctness of the decision in the case which I have mentioned, referred the appeal to a larger Bench.

In the case of *Kaunsilla* v. *Chandar Sen* the facts were shortly as follows:—One Jagannath owned 11¼ biswas in a particular mahal, which he mortgaged to Tulshi Ram by a simple mortgage, which was subsequently treated as an usufructuary mortgage, the mortgagee having been let into possession. Jagannath died, leaving three sons, namely Raghunath Das, Narain Das and Mul Chand, who is described as Mul Chand No. 1. On the 29th of October, 1881, Raghunath and Narain Das sold their two-third share, that is 7½ biswas of the property, to Tulshi Ram, who thus became owner of 7½ biswas, and continued to be mortgagee of the remaining 3¾ biswas of Mul Chand No. 1. Tulshi Ram, who owned another 5 biswas in the same mahal, died, leaving a son, Mul Chand No. 2, and this Mul Chand No. 2 mortgaged the entire 16¼ biswas as full owner on the 3rd of January, 1887, to Musammat Kaunsilla and Bishan Lal. These mortgagees brought a suit upon their mortgage against Mul Chand No. 2 only, and obtained a decree for sale, and in execution of that decree the entire 16¼ biswas were sold and purchased by Musammat Kaunsilla on the 20th of June, 1895. The sale was confirmed, and possession given, on the 24th of September, 1895. On the 22nd of February, 1897, Chandar Sen, who had, on the 24th of May, 1897, purchased the 3¾ biswas to which Mul Chand No. 1 was entitled, brought a suit to eject Musammat Kaunsilla. He was given an opportunity of redeeming the mortgage, but declined to accept it. The Court of first instance dismissed the claim, but the lower appellate Court reversed the decree of the Court of first instance, and decreed the plaintiff's claim. On second appeal a Bench of this High Court reversed the decree of the lower appellate Court, and restored that of the Court of first instance. In the course of their judgment the learned Judges observe that "it is not necessary, as has been observed by the Privy Council, for an intending purchaser at a sale under a decree, to go behind the decree to see whether the decree has been rightly made."

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They then quote a part of the judgment of their Lordships of the Privy Council in the case of *Rewa Mahton* v. *Ram Kishen Singh* (1), which is as follows:—"To hold that a purchaser at a sale in execution is bound to enquire *into such matters*, would throw a great impediment in the way of purchasers under execution. If the Court has jurisdiction, a purchaser is no more bound to inquire into the correctness of an order for execution than he is as to the correctness of the judgment upon which the execution issues." The learned Judges then go on to observe:—"There seems to be no real distinction between a sale which takes place under a decree which directs a sale, as in the case of a mortgage, and a sale in execution held under an order made after a decree for money." Now I would first observe in regard to the case of *Rewa Mahton* v. *Ram Kishen Singh*, that it was not the case of a sale of immovable property, nor was the question dealt with in it one of title to any class of property. In that case the question was as to the construction of section 246 of the Civil Procedure Code, which prescribes that if cross decrees between the same parties and for the payment of money are produced to the Court, execution shall be taken out only by the holder of the decree for the larger sum, and only for the balance. The facts were shortly as follows:—Khub Lal took a lease of a village from Radheh Koeri, and paid her an advance as security for the rent. Cross suits resulted, the lessor suing for two years' rent and the lessee for a refund of the advance. The Munsif heard the suits together, recorded one judgment, but refused to set one sum off against the other before decree, and passed two decrees, one for Rs. 788 in favour of Radheh Koeri, and the other for Rs. 661 in favour of Khub Lal. Whilst proceedings in appeal were pending in regard to the execution of the decree obtained by Radheh Koeri, Khub Lal applied for the execution of his decree by the attachment and sale of Koeri's interest in a village. The Court without applying section 246 to the case, made an order for the sale of such interest, and the appellant Rewa Mahton became the purchaser. Radheh Koeri applied under section 311 of the Code to have the sale set aside, alleging that Khub Lal's decree ought not to have been executed,

(1) (1886) I. L. R., 14 Calc., 18.

inasmuch as she had a decree standing against him for a larger amount. The application was rejected, and thereupon she brought a suit to have the sale set aside. The Subordinate Judge dismissed the suit, but upon appeal to the High Court the decree of the Subordinate Judge was set aside, and the claim of the plaintiff decreed. Their Lordships of the Privy Council on appeal to them set aside the judgment of the High Court, holding that where property sold in execution of a valid decree under the order of a competent Court was purchased *bonâ fide*, and for fair value, the mere existence of a cross decree for a higher amount in favour of the judgment-debtor, without any question of fraud, would not support a suit by the latter against the purchaser to have the sale set aside. Sir Barnes Peacock, in delivering the judgment of their Lordships, observed that "a purchaser under a sale in execution is not bound to enquire whether the judgment-debtor had a cross-judgment of a higher amount, any more than he would be bound in an ordinary case to enquire whether a judgment upon which an execution issues has been satisfied or not. These are questions to be determined by the Court issuing the execution. To hold that a purchaser at a sale in execution is bound to enquire *into such matters* would throw a great impediment in the way of purchases under executions." The facts of that case seem to me to bear little resemblance to the case before this High Court to which I have referred or to the case before us. There was in it no question as to the title of Radheh Koeri to the property which was sold. That property admittedly belonged to her. What their Lordships determined was that a purchaser of property sold in execution of a decree was under no obligation to enquire whether the judgment-debtor had a cross-judgment of a higher amount than the amount of the judgment in execution of which sale was about to take place. The learned Judges who decided the case of *Kaunsilla* v. *Chandar Sen* appear to me, with all deference to them, to have extended the operation of the ruling of their Lordships to a case outside and beyond its scope. Following that ruling, the learned Judge who heard the appeal which is now under consideration held that there was no duty imposed on auction purchasers purchasing at a sale held under the orders

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of a competent Court of enquiring whether the decree under which the sale was being made was a decree which the Court ought or ought not to have passed, and accordingly he dismissed the plaintiff's suit. This view cannot, in my opinion, be supported. An auction purchaser at a sale in execution of a decree gets no better title and no greater interest than the title and interest which the judgment-debtor could convey. The Court gives no warranty of title, and the rule *caveat emptor* applies. If this were not so, we might have such a case as the following:—*A* brings a collusive suit against *B* upon a sham mortgage for the sale of the property of *C*, who has no knowledge of the proceedings; a decree is obtained, and a sale in execution is had, and the property is purchased by a stranger. Could it for a moment be contended that *C* is thereby deprived of his property? Clearly not. This is perhaps an extravagant illustration; it is not the less I think a legitimate test of the soundness of the rule laid down in the case of *Kaunsilla* v. *Chandar Sen*. For these reasons it appears to me that the ground upon which the appeal in this case was decided cannot be supported.

But there is another aspect of the case which has been laid before us in argument which must be dealt with. The plaintiffs and their father Jia Ram, the mortgagor, were members of a joint Hindu family when the mortgages in respect of which the suit by Tulsi Ram was brought were executed. The sole ground of their claim in this suit is *that they were not impleaded in the former suit*. They do not deny that the money expressed to be secured by the mortgages was lent to their father Jia Ram, nor do they allege that the debts so contracted were incurred for immoral or impious purposes. Unless the debts so incurred were tainted with immorality, the plaintiffs by reason of their pious duty as Hindu sons were liable to satisfy them out of the ancestral property in which they had an interest. In the case of *Nanomi Babuasin* v. *Modhun Mohun* (1), their Lordships of the Privy Council said:—"The decisions have for some time established the principle that the sons cannot set up their rights against their father's alienation for an antecedent debt *or against*

(1) (1885) I. L. R., 13 Calc., 21.

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the creditors' remedies for their debts if not tainted with immorality." Again their Lordships observe:—"It appears to their Lordships that sufficient care has not always been taken to distinguish between the question how far the entirety of the joint estate is liable to answer the father's debt, *and the question how far the sons can be precluded by proceedings taken by or against the father alone from disputing the liability.* If his debt was of a nature to support a sale of the entirety, he might legally have sold it without suit, *or the creditor might legally procure a sale of it by suit.* All the sons can claim is that not being parties to the sale or execution proceedings they ought not to be barred from trying the fact or the nature of the debt in a suit of their own." It is indisputable that an alienation of ancestral property by a father in order to satisfy debts which are not tainted with immorality is binding on his sons; and it is also clear that what the father could himself have done the Court is empowered to do for him at the instance of a creditor, unless it be that the Transfer of Property Act has modified the operation of the ruling of their Lordships to which I have referred. Has this section of the Transfer of Property Act such a far-reaching effect? It provides that, subject to the provisions of the Code of Civil Procedure, section 437, all persons having an interest in the property comprised in a mortgage, must be joined as parties to any suit relating to such mortgage, provided that the plaintiff has notice of such interest. In this inquiry we are met at the outset with the decision of the majority of a Full Bench of this Court in the case of *Bhawani Prasad* v. *Kallu* (1). In that case it was held by Sir John Edge, C. J., Knox, Blair, Burkitt and Aikman, JJ. (Banerji, J., dissenting) that where a mortgagee instituted a suit for sale under section 88 of the Transfer of Property Act against his mortgagor, who was the father of sons in an undivided Hindu family governed by the Mitakshara law, without joining as parties to the suit such sons, although he had notice of their interest, and obtained a decree and an order for sale against the father only, the sons could successfully sue for a declaration that the mortgagee decree-holder was not entitled to sell in

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

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execution of his decree the interests of the sons in the mortgaged property, although the sole ground of their suit was that they were not impleaded in the suit by the mortgagees. Now, whatever may be our individual views upon the correctness of this ruling, we are bound not merely to respect, but to follow it loyally in any case which comes within its operation. On behalf of the plaintiffs it is contended that this ruling governs the present case, while on the part of the respondents the facts of the two cases are sought to be distinguished. It has been strenuously argued on behalf of the respondents that the ruling does not govern a case in which a sale in execution of a mortgage decree has *actually taken place*, and that where such a sale has taken place the Court cannot treat the decree and sale in execution as mere nullities, and award proprietary possession to the appellants of the share in dispute upon the sole ground that they were not made parties to the suit by the mortgagees. It is not suggested by the plaintiffs-appellants that the debt of their father in respect of which the property in dispute has been sold, was tainted with immorality. They merely rely on the fact that they were not impleaded in the suit brought by the respondent against their father. In the case of *Suraj Bunsi Koer* v. *Sheo Proshad Singh* (1) their Lordships of the Privy Council, referring to their decision in *Girdharee Lall* v. *Kantoo Lall* (2), observe :—"This case, then, which is a decision of this tribunal, is undoubtedly an authority for these propositions—1*st*, where 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 for the father's debt, his sons, by reason of their duty to pay their father's debt, 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; and 2*ndly*, that the purchasers at an execution sale being strangers to the suit, if they have not notice that the debts were so contracted, are not bound to make inquiry beyond what appears on the face of the proceedings." It is thus

(1) (1879) L. R., 6 I. A., 88. (2) (1874) L. R., 1 I. A., 321.

clear that before the passing of the Transfer of Property Act, the plaintiffs could not have set up their rights in the joint family property against their father's creditors' vendees for their debt, if not tainted with immorality. But it is said that having regard to section 85 of the Transfer of Property Act, the mortgagees having failed to implead in their suit the appellants, of whose interests in the mortgaged property they had notice, could only obtain a decree for sale against the interest of Jia Ram, and that the decree passed and sale had in execution of that decree must be treated as having no effect upon the interest of the appellants; that the sale so far as regards the appellants' interest was in fact a nullity and must be treated as such. If this argument be well founded there can be no question but that the rulings of their Lordships of the Privy Council to which I have referred met with scant approval from the framers of the Transfer of Property Act. If the appellants had interposed before a sale had taken place, and established that the mortgagees had notice of their interests, they could no doubt, under the ruling in *Bhawani Prasad* v. *Kallu*, have obtained a declaration from the Court that the decree-holders were not entitled to sell in execution of their decree the appellants' interests in the mortgaged property. They have not done so, however, but have wittingly or unwittingly allowed the joint property to be sold by the Court to strangers whom they now seek to oust from the property with the assistance of the Court. If the purchasers at the sale in execution had purchased the property from Jia Ram and not through the Court, it is clear that the appellants could not upset the sale unless they were in a position to prove that the debt in respect of which the sale was effected was a debt tainted with immorality. The Court has done only what Jia Ram could himself have done. Are the purchasers under the judicial sale to be in a worse position than that which they would have occupied if they had purchased the property from Jia Ram? I think not. It would be a matter for regret if such were the legal effect of section 85 of the Act to which I have referred. In this connection I may allude to some observations of their Lordships of the Privy Council in the case of *Malkarjun* v.

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Narhari (1). 'In that case the plaintiffs were the daughters of one Nagappa, who had mortgaged certain property to the defendant's father on the 28th of March, 1877. Subsequently, on the 27th of June, 1877, one Hanmant Vithal obtained a money decree against Nagappa, but before it was executed Nagappa died, having by his will bequeathed all his property to the plaintiffs. After Nagappa's death Hanmant Vithal, on the 22nd November, 1878, applied for execution of his decree "against defendant Nagappa, deceased, by his heir and nephew Ramalinga." Ramalinga informed the Court that he was not Nagappa's heir, but that the plaintiffs were Nagappa's heirs. Notwithstanding this notice, the Court decided that he was to be treated as such representative, and allowed the property to be attached and sold in execution of Hanmant Vithal's decree. At the sale the mortgagee purchased the property. In a suit by the plaintiffs for an account and redemption of the mortgage, it was held by their Lordships that the judicial sale was not a nullity, and could not be treated as invalid, notwithstanding the irregularity in not giving due notice of it to the legal representatives of the mortgagor, the jurisdiction of the Court to execute the decree having been complete throughout. The suit was accordingly dismissed. Their Lordships in their judgment observe :— "The real complaint here is, that the execution Court construed the Code (*i. e.* the Civil Procedure Code) erroneously. Acting in its duty to make the estate of Nagappa available for payment of his debt, it served with notice a person who did not legally represent the estate, and on objection decided that he did represent it. But to treat such an error as destroying the jurisdiction of the Court is calculated to introduce great confusion into the administration of the law. Their Lordships agree with the view of the learned Chief Justice, that a purchaser cannot possibly judge of such matters, even if he knows the fact, and that if he is to be held bound to enquire into the accuracy of the Court's conduct of its own business no purchaser at a Court sale would be safe. Strangers to a suit are justified in believing that the Court has done that which by the directions of the Code it ought to do." Their Lordships

(1) (1900) I. L. R., 25 Bom., 373.

further observe in the course of their judgment that it was "necessary for the plaintiffs to set aside the sale in order to clear the ground for redemption of the mortgage. There can be no question that omission to serve notice on the legal representative is a serious irregularity, sufficient by itself to entitle the plaintiffs to vitiate the sale. But there may be defences to such a proceeding, and justice cannot be done unless these defences are examined by legal method." It seems to me not inappropriate to quote these weighty observations of their Lordships, even though it may be held that the case before them was not in its facts similar to that before us. It may be argued that in that case the Court had jurisdiction to pass the decree which it did, establishing the debtor's liability, and that therefore the irregularity in working out that decree against the debtor's estate did not vitiate the judicial sale ultimately held, but that the Court, by reason of section 85 of the Transfer of Property Act, had not jurisdiction to sell the interests in the property of the appellants, and so the sale in process of execution of such interests had nothing to rest upon and was void. An answer to such an argument, if it was put forward, is that the Court had in a suit properly framed jurisdiction to sell the interest of the appellants, except in the single case that the debt of Jia Ram, for the payment of which the sale was ordered by the Court, was a debt tainted with immorality, and that this the appellants have not attempted to show. It seems to me that to hold that the sons of a Hindu father constituting with such father a joint family could impeach a judicial sale made to an innocent stranger (there is no suggestion that the purchasers in this case had any notice of any flaw in the proceedings), merely on the ground that they had not been impleaded in the suit, would be fraught with grave inconvenience and injustice. If such were the law, one can well imagine cases in which the sons would stand by until the sale had been completed, and the moneys of the purchaser had been applied in payment of the father's debt, and in ease of their own liability, and afterwards put forward their claim and deprive the purchaser of the full benefit of his purchase. Section 85 of the Transfer of Property Act was never, I am satisfied, intended to so

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operate. So long as a sale has not been carried out in favour of a stranger it may not be unreasonable to allow the sons under such circumstances to impeach the proceedings, and obtain from the Court a declaration that their interests are not saleable in execution, but so soon as the property of the joint family has been sold to an innocent purchaser, justice seems to me to require that the sons shall be called upon to satisfy the Court that their interests in the purchased property were not in any event liable to be sold in execution before they can call upon the Court to declare a sale null and void as against them. For these reasons I am of opinion that the appeal cannot be supported. I would therefore dismiss it.

KNOX, J.—I have had the opportunity of reading the judgment of the learned Chief Justice. I have nothing further to add to what has been said therein, and would dismiss the appeal.

BANERJI, J.—I have arrived at the same conclusion as the learned Chief Justice. The suit was brought by Hindu sons governed by the Mitakshara law to recover possession of their share of certain joint ancestral property which had been sold by auction in execution of a decree obtained against their father under a mortgage-deed executed by him. The only ground of their claim was, that they had not been made parties to the suit in which the decree was obtained. They did not allege that the debt had not been contracted by their father, or that the nature of the debt was such that it was not their pious duty as Hindu sons to pay it. The learned single Judge of this Court before whom the case came in second appeal dismissed the suit on the ground that as the purchasers were not the mortgagees, but third parties, "there was no duty imposed on them of enquiring whether the decree under which the sale was being made was a decree which the Court ought or ought not to have passed," and that consequently the suit was not maintainable against them. In so holding he followed the ruling in *Kaunsilla* v. *Chandar Sen* (1). With great deference I am unable to agree with that ruling, and my reasons are the same as those set forth in his judgment by the learned Chief Justice. It is needless to point out that no title is guaranteed to an auction

(1) (1900) I. L. R., 22 All., 377.

purchaser except this that he should have all the rights and interests of the judgment-debtor in the property sold, whatever they might be. An auction sale cannot affect the rights of persons who were not parties to the suit or the execution proceeding which resulted in the sale. Therefore in the case of Hindu sons who were not parties to the proceedings under which the sale took place, the mere fact of the sale having been held and confirmed does not preclude them from questioning the validity of it upon grounds which under the Hindu law would relieve them of the obligation which that law imposes on them to pay their father's debts. In this connection I may refer to the following observations of their Lordships of the Privy Council in the well known case of *Nanomi Babuasin* v. *Modhun Mohun* (1):—"It appears to their Lordships that sufficient care has not always been taken to distinguish between the question how far the entirety of the joint estate is liable to answer the father's debt, and the question how far the sons can be precluded by proceedings taken by or against the father alone from disputing the liability. If his debt was of a nature to support a sale of the entirety, he might legally have sold it without suit, or the creditor might legally procure a sale of it by suit. All that the sons can claim is that, not being parties to the sale or execution proceedings, they ought not to be debarred from trying the fact or the nature of the debt in a suit of their own." The same view was held by their Lordships in the later case of *Bhagbut Pershad Singh* v. *Girja Koer* (2). These pronouncements of the Lords of the Privy Council are clear authority for holding that even after a sale has taken place it is competent to the sons to bring a suit against the purchaser to recover their share of the property sold. We have next to consider whether the sons are entitled to succeed in such a suit simply on the ground that the mortgagee at whose instance the property was sold had notice of their interests, and had omitted to join them as parties to the suit brought by him under his mortgage. This question is untouched by the decision of the majority of the Full Bench in the case of *Bhawani Prasad* v. *Kallu* (3).

(1) (1885) I. L. R., 13 Calc., 21. (2) (1888) I. L. R., 15 Calc., 717.
(3) (1895) I. L. R., 17 All., 537.

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All that was held in that case was, that before a sale has actually taken place the sons can prevent the sale of their interests on the ground mentioned above. The question is therefore *res integra*, and must be decided upon general principles. On this point also I am in full accord with the learned Chief Justice. It is not disputed that if the father had sold the family property, including the interests of the sons, for the payment of the amount of the decree obtained by the mortgagee, the sons could not have recovered from the purchaser their shares in the property unless they were able to show that the debt was tainted with immorality. The Court in selling the property at auction does that which the judgment-debtor himself might or ought to have done. Therefore after auction sale the sons of the judgment-debtor cannot, any more than in the case of a private sale by their father, avoid the operation of that sale upon their interests otherwise than by proving that the debt was not of such a nature as to justify a sale of those interests also. A Hindu son stands on a different footing from other persons, and this circumstance distinguishes the present case from that of *Hargu Lal Singh* v. *Gobind Rai* (1) to which the learned vakil for the appellants referred. As in the present case the plaintiffs do not even allege that the debt incurred by their father was tainted with immorality, the sale which has been held for the realization of that debt is binding on them, and they are not entitled to recover their share of the property comprised in the sale. Their suit has therefore been rightly dismissed, and this appeal must be dismissed with costs. In this view it is not necessary to consider the question of limitation raised on behalf of the respondents.

BY THE COURT.—The order of the Court is, for the reasons stated in the judgments, that the appeal be dismissed with costs.

Appeal dismissed.

(1) (1897) I. L. R., 19 All., 541.