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below as the proportionate share which the ex-proprietary rights should bear to the mortgage debt is erroneous. We dismiss the appeal with costs.

Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Griffin.
KEHRI SINGH AND OTHERS (PLAINTIFFS), v. CHUNNI LAL AND ANOTHER (DEPENDANTS).*

Hindu law—Mitakshara—Joint family property—Mortgage by father—Sons not made parties to suit for sale on mortgage—Sale under the decree—Suit by sons to redeem their interests.

Where ancestral property belonging to a joint Hindu family has been sold in execution of a decree for sale on a mortgage executed by the father, the sons cannot maintain a suit for redemption of their interests in the property sold upon the ground solely that they had not been made parties to the suit of the mortgagee, nor is their position affected by the fact that the auction purchaser is the mortgagee. *Debi Singh v. Jia Ram* (1), *Lal Singh v. Palandar Singh* (2) and *Balwant Singh v. Aman Singh* (3) followed. *Ram Prasad v. Man Mohan* (4) dissented from. *Ram Nath Rai v. Lachhman Rai* (5) referred to.

THE facts of this case were as follows:—

One Man Singh executed a usufructuary mortgage of certain property on the 15th of February, 1864, in favour of one Bhim Sen, who was the ancestor of the respondents. Subsequently, on the 10th of February, 1878, he executed a simple mortgage of the same property in favour of Bhim Sen. Again, on the 11th of February, 1878, he executed a simple mortgage in favour of one Bijai Pal Singh. Bijai Pal Singh instituted a suit on foot of his mortgage and obtained a decree for sale against the sons and widows of Man Singh on the 29th of February, 1884. In execution of this decree the property was sold on the 20th of December, 1888, to Ram Lal, a son of Bhim Sen. The sons of Bhim Sen obtained a decree for sale on foot of their mortgage of the 10th of February, 1878, on the 9th of June, 1885, and at a sale held in execution of that decree purchased the property. The suit out of which this appeal has arisen, was instituted by the

* Second Appeal No. 700 of 1908, from a decree of H. J. Bell, District Judge of Aligarh, dated the 9th of April, 1908, confirming a decree of Muhammad Shafi, Subordinate Judge of Aligarh, dated the 2nd of September, 1907.

(1) (1902) I. L. R., 25 All., 214. (3) (1910) I. L. R., 31 All., 7.
(2) (1905) I. L. R., 28 All., 182. (4) (1908) I. L. R., 30 All., 255.
(5) Weekly Notes, 1899, p. 27.

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plaintiffs appellants, who are the grandsons and one great-grandson of Man Singh for redemption of the mortgage of the 15th of February, 1864. In their plaint the plaintiffs refer also to the mortgage of the 10th of February, 1878. They do not anywhere allege that Bijai Pal Singh, who obtained a decree on foot of the mortgage of the 10th of February, 1878, had any notice of the interests of the plaintiffs at the time of the institution of the suits by them for sale on foot of their mortgage.

Both the lower courts dismissed the suit. The plaintiffs thereupon appealed to the High Court.

Munshi *Gulzari Lal*, for the appellants.

Mr. B. E. O'Conor and Munshi *Gokul Prasad*, for the respondents.

STANLEY, C. J., and GRIFFIN, J.—The weight of authority militates against this appeal. The facts are these:—One Man Singh executed a usufructuary mortgage of certain property on the 15th of February, 1864, in favour of one Bhim Sen, who is the ancestor of the respondents. Subsequently, on the 10th of February, 1878, he executed a simple mortgage of the same property in favour of Bhim Sen. Again, on the 11th of February, 1878, he executed a simple mortgage in favour of one Bijai Pal Singh. Bijai Pal Singh instituted a suit on foot of his mortgage and obtained a decree for sale against the sons and widows of Man Singh on the 29th of February, 1884. In execution of this decree the property was sold on the 20th of December, 1888, to Ram Lal, a son of Bhim Sen. The sons of Bhim Sen obtained a decree for sale on foot of their mortgage of the 10th of February, 1878, on the 9th of June, 1885, and at a sale held in execution of that decree purchased the property. The suit out of which this appeal has arisen, was instituted by the plaintiffs appellants, who are the grandsons and one great-grandson of Man Singh for redemption of the mortgage of the 15th of February, 1864. In their plaint the plaintiffs refer also to the mortgage of the 10th of February, 1878. They do not anywhere allege that Bijai Pal Singh, who obtained a decree on foot of the mortgage of the 10th of February, 1878, had any notice of the interests of the plaintiffs at the time of the institution of the suits by them for sale on foot of their mortgage.

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Both the lower courts have dismissed the plaintiffs' claim. This appeal has, therefore, been preferred, and the contention of the learned vakil for the appellants is that in view of the decision of this Court in *Ram Prasad v. Man Mohan* (1), they are entitled to maintain their suit. Mr. O'Connor, on behalf of the respondent, referred us to several decisions of this Court which are inconsistent with the ruling in the case of *Ram Prasad v. Man Mohan*.

In *Debi Singh v. Jia Ram* (2) a Full Bench of this Court, of which one of us was a member, held that 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 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 that their suit must be based upon some ground which under the Hindu law would free them from liability, as sons of a Hindu joint family, to pay their father's debts and that, 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.

Again, in *Lal Singh v. Palundar Singh* (3) a Bench of this Court, of which one of us was also a member, held that where ancestral property of a joint Hindu family has been sold in execution of a decree upon a mortgage executed by the father, no suit for redemption of their interest is maintainable by the sons upon the mere ground that they were not made parties to the suit under the decree in which the ancestral property was sold.

Again, in the case of *Balwant Singh v. Aman Singh* (4), our brothers TUDBALL and CHAMIER held, following the ruling in *Debi Singh v. Jia Ram* (5), that after a sale of joint family property in execution of a decree passed upon a mortgage executed by a father his sons are not entitled to sue to recover

(1) (1908) I. L. R., 30 All., 256. (3) (1905) I. L. R., 28 All., 182.

(2) (1902) I. L. R., 25 All., 214. (4) (1910) I. L. R., 33 All., 7.

(5) (1904) I. L. R., 26 All., 214.

their shares in the property merely on the ground that they were not parties to the suit brought by the mortgagee. In this case, CHAMIER, J., in his judgement observes that "until December, 1907, there was an undisturbed current of authority to the effect that after a sale of joint family property has taken place in execution of a decree passed upon a mortgage made by a father, the sons are not entitled to sue to recover their shares in the property" upon the ground mentioned above, and that "they cannot sue to redeem the property or their interest in the property merely upon that ground." The learned Judge further remarks that the same rule was followed "whether the auction purchaser was a stranger or was the mortgagee."

The only case to which we have been referred which lends colour to the contention of the learned vakil for the appellants is the case of *Ram Prasad v. Man Mohan* (1). In that case AIKMAN and KARAMAT HUSAIN, JJ., in a suit in which the mortgagees under a mortgage of joint family property, executed by the father alone had sued for and obtained a decree for foreclosure, the sons and grandsons not having been made parties to the suit, although the mortgagees had knowledge at the time of the institution of the suit that there were sons and grandsons jointly interested with the mortgagor in the mortgaged property, held that the sons and grandsons were not precluded from instituting a suit for redemption. The learned Judges, in commenting upon the decision of the Full Bench in *Debi Singh v. Jia Ram* (2), directed attention to the fact that in that case the sons sued to get back from innocent purchasers their share of the family estate, and they refer to passages in the judgements as showing that stress was laid upon the fact that the plaintiff wished to oust innocent strangers.

It appears to us that the fact that the defendants in that case were strangers was not a governing factor in the case. It seems to us to be immaterial whether the purchaser at a sale is a stranger, or is the mortgagee himself. We may point out also that the learned Judges who decided *Ram Prasad v. Man Mohan* (3) laid stress on the fact the defendants had knowledge

(1) (1908) I. L. R., 30 All., 256. (2) (1902) I. L. R., 25 All., 214.

(3) (1908) I. L. R., 30 All., 256.

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of the plaintiffs' interest and did not make them parties to the suit for foreclosure. As to this we may observe that it lay upon the plaintiffs seeking to redeem to allege and prove that the defendants who purchased at a sale in execution of a decree, had notice of the plaintiffs' interest.

In *Ram Nath Rai v. Lachhman Rai* (1) it was held by STRACHEY, C. J., and KNOX, J., that where sons in a joint Hindu family come into court seeking to get rid of the effect as against their interests in the joint family property of a decree on a mortgage executed by their father obtained in a suit to which they were not made parties, *the burden of proof lies on them to establish that the mortgagee, when he brought the suit, had notice of their interests in the mortgaged property.* In the present case the mortgagors do not allege that the debt contracted by their ancestor, Man Singh, was a debt contracted for any immoral or illegal purpose. They do not allege that the plaintiffs in the mortgage suits in which the property was sold had notice of their interests, and there was no evidence adduced to establish that they had any such notice. Under these circumstances and view of the weight of the authorities of this Court we think that there is no force in this appeal. We dismiss it with costs.

Appeal dismissed.

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Before Mr. Justice Sir George Knox and Mr. Justice Banerji.
TIRBENI SAHAI AND OTHERS (DEFENDANTS) v. GOKUL PRASAD AND
ANOTHER (PLAINTIFFS)*

Act (Local) No. III of 1901 (United Provinces Land Revenue Act), section 233(k)—Partition—Land belonging to plaintiffs' mahal allotted to defendants and a different plot to plaintiffs—Civil and Revenue Courts—Jurisdiction.

By a mistake of a partition amin a plot belonging to the defendants was allotted to the plaintiff and two plots belonging to the plaintiff were allotted to the defendant. *Held* that no suit would lie in a civil court to rectify this error. *Kishan Prasad v. Kadher Mal* (?) distinguished.

THE facts of this case were as follows:—

The plaintiffs brought a suit for a declaration that they were the owners and in possession of certain plots numbered $\frac{4}{3}$ and $\frac{4}{4}$.

* First Appeal No. 92 of 1910 from an order of Banke Behari Lal, Subordinate Judge of Mainpuri, dated the 31st of August, 1910.

(1) Weekly Notes, 1899, p. 27. (2) Weekly Notes, 1900, p. 11.