

FULL BENCH

Before Sir John Thom, Chief Justice, Mr. Justice Collister
and Mr. Justice Ganga Nath

1939
March, 27

THAKUR DIN AND ANOTHER (PLAINTIFFS) *v.* SITA RAM
AND ANOTHER (DEFENDANTS)*

Res judicata—Civil Procedure Code, section 60(1)(c)—House of agriculturist—Sale in execution of decree—Objection to attachment and sale raised by judgment-debtor—Dismissed for default—Subsequent suit by minor sons alleging joint ancestral property and that sale was illegal—Maintainability—Hindu law—Representation of family by father or manager—Civil Procedure Code, section 11, explanation VI.

In execution of a decree a house of the judgment-debtor was attached, and he raised an objection that he was an agriculturist and his house was, under section 60(1)(c) of the Civil Procedure Code, not liable to be attached and sold. This objection was ultimately dismissed for default and the house was sold. Thereafter two minor sons of the judgment-debtor, —the three constituting a joint Hindu family—brought a suit on the grounds that the house was joint ancestral property and its sale was illegal under section 60(1)(c) of the Civil Procedure Code.

Held, that in resisting the execution proceedings against the joint family property the father of the joint Hindu family must be deemed to have represented the interest of all members of the joint family, and the dismissal of the objection raised by him was binding on the sons as being *res judicata* in view of explanation VI of section 11 of the Civil Procedure Code; the suit by the sons was accordingly barred.

It is well settled that the karta or head of a joint Hindu family represents the interests of all the members of the family in a litigation in which an interest of the family is involved and that no representation order is necessary to make absent members of the joint family liable under the decree passed against the head of the family.

Aidal Singh v. Khazan Singh (1), overruled.

Mr. *Mukhtar Ahmad*, for the appellants.

Mr. *H. P. Sen*, for the respondents.

*Second Appeal No. 423 of 1937, from a decree of B. L. Mathur, Additional Civil Judge of Azamgarh, dated the 26th of November, 1936, reversing a decree of Anand Behari Lal, City Munsif of Azamgarh, dated the 9th of December, 1935.

(1) [1930] A.L.J. 1244.

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THOM, C.J., COLLISTER and GANGA NATH, JJ. :— This is a plaintiffs' appeal arising out of a suit in which the plaintiffs sought an injunction restraining the defendants Sita Ram and Ram Chait from interfering with their possession of a certain house. The house had been sold by Sita Ram in execution of a decree for money which he had obtained against Paltu the father of the appellants.

Sita Ram having obtained this decree sought in execution thereof to sell the house, which has been held by the learned Civil Judge in the lower appellate court to be ancestral property. Paltu preferred an objection to the sale of the house under section 60(1)(c) of the Code of Civil Procedure. He alleged that he was an agriculturist and that therefore the ancestral house was not liable to sale in execution of the decree against him. This objection was ultimately dismissed for default and the house was sold by the decree-holder. In these circumstances the appellants, the sons of Paltu, have brought the suit out of which this appeal arises to restrain the defendants from interfering with their possession of the house.

The learned Munsif decreed the suit. The learned Civil Judge in the lower appellate court recalled the order of the learned Munsif and dismissed the suit. He held that the decree obtained against the father and executed by the decree-holder and the dismissal of the father's objection under section 60(1)(c) of the Code of Civil Procedure were binding upon the appellants.

As to whether in such circumstances a sale can be challenged by the minor sons of the judgment-debtor is a question upon which there has been in the past a divergence of judicial opinion in this Court. In the case of *Aidal Singh v. Khazan Singh* (1), a Bench of this Court held that "The provisions of section 60 of the Civil Procedure Code are imperative and prohibit the attachment and sale of the property of an agriculturist in execution

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of a decree"; that "an order dismissing an objection of the judgment-debtor that his property could not be attached and sold as he was an agriculturist cannot operate as *res judicata* in a subsequent suit by the sons of the judgment-debtor impugning the sale and attachment on the ground that the property was ancestral"; and further that the principle that "in a joint Hindu family, a father, when he sues or is sued, represents his sons in the litigation, is not applicable to such a case." This decision is directly in point and supports the plaintiffs' contention.

In *Sabha Ram v. Kishan Singh* (1) another Bench of this Court took the directly opposite view of the law. In that case it was held that "Where a house belonging to an agriculturist passes out of his hands by reason of an execution sale, there having been no intervention on his part at the time when the house was attached, he cannot challenge the validity of the sale at a later stage by a separate suit. The sons do not possess a higher right than the father, because the debt was binding upon them and they are bound by the consequences of the execution proceedings, in which the father must be deemed to have represented the entire family consisting of himself and his sons; a separate suit by the sons is not, therefore, maintainable."

In our judgment the law upon the question raised has been clearly expounded in the Privy Council decision in the case of *Lingangowda v. Basangowda* (2). In the course of their judgment in that case the Board observed (page 453): "In the case of an Hindu family where all have rights, it is impossible to allow each member of the family to litigate the same point over and over again, and each infant to wait till he becomes of age, and then bring an action, or bring an action by his guardian before; and in each of these cases, therefore, the court looks to the explanation VI of section 11 of the Code of Civil Procedure to see whether or not the leading

(1) (1930) I.L.R. 52 All. 1027.

(2) (1927) I.L.R. 51 Bom. 450.

member of the family has been acting either on behalf of minors in their interest, or if they are majors, with the assent of the majors."

Now in the present case there can be no doubt whatever that in the execution proceedings which were initiated by Sita Ram an interest of the joint family was directly involved, namely the ancestral house. The father, Paltu, therefore in opposing the sale of the house in execution of the decree against him must be held to have represented not only his own interest but the interest of the other members of the joint family. The family consists of the father, Paltu, and the two appellants, his sons, Thakur Din and Chatur Din who are minors.

So far as the father, Paltu, is concerned, he is clearly barred by section 11 of the Code of Civil Procedure from challenging the sale. He had an opportunity to object to the sale. He did prefer an objection and allowed his objection to go by default. It is true that the merits of the objection were not investigated by the courts but in view of explanation IV to section 11 of the Code of Civil Procedure this fact does not help appellants. They were represented in the execution proceedings by their father. The decision in these proceedings binds them therefore as much as their father.

Learned counsel for the appellants contended that the law as laid down by the Judicial Committee in *Lingangowda v. Basangowda* (1) has subsequently been modified by their decision in *Effuah Amissah v. Effuah Krabah* (2). The latter case was a case which came up to the Privy Council from the Gold Coast Colony and it concerned property which belonged to a Muhammadan family. The Board held that "An action by or on behalf of a family may result in a *res judicata*, but such an action, if it is to bind absent or future members of the family, must be so constituted according to the local rules of procedure or by a representation order or in some other way that all such members can be regarded

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as represented before the court." Learned counsel relied upon this decision and maintained that in view of the terms of order I, rule 8 of the Code of Civil Procedure the appellants could not be regarded as having been represented before the court in the execution proceedings.

We are satisfied that this decision has no bearing upon the present question. It is well settled that the karta or head of a joint Hindu family represents the interests of all the members of the family in a litigation in which an interest of the family is involved and that no representation order is necessary to make absent members of the joint family liable under the decree passed against the head of the family.

In our judgment the case of *Aidal Singh v. Khazan Singh* (1) was wrongly decided.

In the result we hold that the sale in execution of the decree against Paltu the father of the appellants is binding upon the appellants and that their suit is not maintainable.

The appeal is accordingly dismissed with costs.

(1) [1930] A.L.J. 1244.