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Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.

RADHA KISHEN MAN (PLAINTIFF) v. BACHHAMAN AND OTHERS (DEFENDANTS).*

Hindu law—Joint undivided Hindu family—Alienation by father—Right of son—Partition—Grandmother—Appeal—Parties to suit.

B, a member of a joint undivided Hindu family consisting of himself and his son *R*, as the manager of the family, borrowed moneys for lawful purposes and executed a bond for their repayment in which he hypothecated a share of mauza *B*, such share being ancestral property, as collateral security for their repayment, with the knowledge and approbation of *R*. The obligee of such bond sued *B* thereon and obtained a decree, which directed the sale of such share, and such share was put up for sale and was purchased by *C*. *R* subsequently sued *B* and his mother for partition of the family property, including such share, claiming a one-third share of such property. *C* was made a defendant in the suit, and so was *P*, *R*'s grandmother, who claimed to share equally with the other members of the family in such property. *Held* that it must be presumed that *B* was sued on such bond, and that the decree in such suit was made against him as the head of the family, and *R* could not recover from *C* the share of mauza *B*. *Held* also that *P* was not entitled on partition to a share of the family property.

On appeal to the High Court from the decree of the Court of first instance, *R* made respondents certain persons who after the passing of that decree had purchased at execution-sales the rights and interests of *B* in portions of the landed estate of the family. *Held* that, such persons not being affected by that decree, the Court could not make any order respecting their claims, and they had been unnecessarily made parties to the appeal.

The plaintiff in this suit sued his father, Bachhman, and his mother, to establish his right, according to Hindu law, by partition, to a one-third share of the ancestral property of the family, consisting of shares of villages (including a two-anna eight-pie share in a village called Bishenpur), houses, and a garden. The plaintiff stated in his plaint that on the death of his grandfather, his father's name was recorded in the revenue register in respect of such shares, the same at that time being unincumbered; that from the time his father's name was so recorded, his father commenced to create incumbrances on such shares, without lawful necessity, and without his knowledge; and that he was entitled, according to Hindu law, to have his legal share of the family property partitioned, inasmuch as if he continued to live in coparcenery with his father such share would be wasted. On the

* First Appeal, No. 66 of 1879, from a decree of Hakim Rahat Ali, Subordinate Judge of Gorakhpur, dated the 19th March, 1879.

29th October, 1878, Pareva, the plaintiff's grandmother, preferred an application to the Subordinate Judge, praying that, under s. 32 of Act X of 1877, she might be made a defendant in the suit, as she was entitled on partition of the family property to a one-fourth share by way of maintenance. On the same day, Ram Charitra, Parmeshri, and Jangli, who had purchased the two-anna eight-pie share of Bishenpura at a sale in the execution of a decree against the defendant Bachhaman, made a similar application. On the 18th December, 1878, the Subordinate Judge made an order adding these applicants as defendants in the suit. The decree, at the sale in execution of which the defendant Ram Charitra and his co-defendants purchased the share in Bishenpura, was passed against the defendant Bachhaman on the 13th May, 1876. It was passed in a suit against him on a bond for the payment of certain moneys, dated the 4th June, 1874, in which that share was hypothecated as collateral security for the payment of such moneys, and it enforced such hypothecation. The defendant Ram Charitra and his co-defendants set up as a defence to the suit that the plaintiff's right in such share had passed to them in virtue of their auction-purchase. In their written statement dated the 17th January, 1879, they stated as follows:—"The auction-purchase of the share in Bishenpura made by the defendant is valid: the plaintiff's father borrowed money in 1874, a decree was passed for the same, and the auction-sale took place in satisfaction thereof, and the defendants became the auction-purchasers: the debt was valid; a decree having been made for it, the objection as to its illegality is utterly untenable: the objection as to its being illegal ought to have been taken when it was incurred, and not after the decree and the auction-sale in satisfaction of a lawful debt: the claim of a son for the property sold by auction is by no means tenable: all the rights were conveyed by the sale in satisfaction of a just debt." In her written statement of the same date the defendant Pareva denied the plaintiff's right to a one-third share of the family property. She stated therein as follows:—"The defendant is the own grandmother of the plaintiff: the property sought to be divided by the plaintiff is ancestral: the right of plaintiff's grandmother to it is equal to that of the plaintiff's mother: the plaintiff claims one-third, but after deducting this defendant's share, the plaintiff can

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be entitled to a quarter thereof : according to the rules of the Hindu law, this defendant is entitled to her maintenance out of the ancestral property, which cannot be divided without paying her maintenance : in lieu of her maintenance, a share ought to be assigned to her like that assigned by the plaintiff to his mother."

The Subordinate Judge gave the plaintiff a decree in respect of one-fourth of the family property, with the exception of the share in Bishenpura, holding, with reference to that share, that it had been sold in satisfaction of a family debt, and the plaintiff could not claim any right in it; and, with reference to the claim of the defendant Pareva, that the whole family should be supported out of the family property, and she was therefore entitled to a one-fourth share of it.

The plaintiff appealed to the High Court, making respondents in addition to the persons who had been defendants in the suit in the Court of first instance, certain persons who had purchased at execution-sales the right, title, and interest of the defendant Bachhaman in other villages comprised in the family property subsequently to the passing of the decree of the Court of first instance. It was contended on behalf of the plaintiff that the debt in satisfaction of which the share in Bishenpura had been sold had been contracted by his father for immoral purposes; that his father's right, title, and interest only had passed to the auction-purchasers; and that his grandmother, the defendant Pareva, was not entitled to a specific share of the family property, but only to be maintained therefrom.

Lala Lalta Prasad and *Maulvi Mehdi Hasan*, for the appellant.

The *Senior Government Pleader* (*Lala Juala Prasad*) and *Pandit Ajudhia Nath*, for the respondents.

The judgment of the Court (STUART, C. J., and OLDFIELD, J.) was delivered by

OLDFIELD, J.—The property in suit belonged to one Khem Narain Man; the plaintiff is his grandson, and defendants Nos. 1, 2, and 3 are respectively his son and father of plaintiff, his widow, and mother. The plaintiff seeks to recover by partition one-third as his legal share of his grandfather's estate, comprising shares in

nine villages, two houses, and one grove. The defendants Nos. 4, 5, and 6 are auction-purchasers of the share in Bishenpura, one of the villages, which they bought before this suit was instituted in execution of a decree against Bachhama, defendant, plaintiff's father; and they urge that the sale conveyed to them all the rights in the property, including the plaintiff's. The respondents Nos. 7 to 11 are purchasers of some of the property, but they made the purchase after the decree of the lower Court in this suit was passed, and the plaintiff has joined them in this appeal as respondents, but no question respecting them arose or was determined before the lower Court. The lower Court has found that the business of plaintiff and his father Bachhama was joint; the latter borrowed on account of both, and the property purchased by defendants Nos. 4, 5, and 6 should be excluded from this claim, because the debt in satisfaction of which it was sold was incurred to meet expenses of the plaintiff as well as his father when they carried on business jointly, and plaintiff benefited thereby; and it holds that in consequence the decree in execution of which the sale took place does affect the plaintiff; and the Court excludes Bishenpura from the claim, and decrees in favor of plaintiff to the extent of one-fourth in respect of the rest of the property. The second to the fifth objections taken in appeal are invalid. This case is distinguishable from that of *Deendyal Lal v. Jugdeep Narain Singh* (1) by the circumstances that in this case the respondents, auction-purchasers, were no parties to the bond or the decree in execution of which they became auction-purchasers: and this case, on the other hand, is similar to that of *Muddun Thakoor v. Kantoo Lal* (2), which is an authority, as their Lordships have pointed out in *Suraj Bansi Koer v. Sheo Persad Singh* (3), for the following propositions:—

(i) That, 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 debts, cannot recover that property, unless they show

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(1) I. L. R., 3 Calc., 198.

(2) L. R., 1 Ind. Ap., 321; 14 B. L. R., 187.

(3) I. L. R., 5 Calc., 148.

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that the debts were contracted for immoral purposes, and that the purchasers had notice that they were so contracted; and (ii) that purchasers at an execution-sale, being strangers to the suit, if they have not had notice that the debts were so contracted, are not bound to make inquiry beyond what appears on the face of the proceedings.

In the case before us, it is clear from the evidence that the father, Bachhaman, was acting as manager of the joint family when he executed the bond, the same being known to and approved by the plaintiff, and that the debt was incurred for necessary purposes; and it is presumable that Bachhaman was sued and the decree passed against him in his representative capacity on the bond. The plaintiff cannot, under these circumstances, recover from the auction-purchasers the share in Bishenpura which has passed to them under the auction-sale.

But the lower Court is wrong in giving the plaintiff's grandmother a share on partition. The plaintiff is entitled to a one-third share of the property with the exception of Bishenpura. So far the decree will be modified. The plaintiff will pay the costs of respondents Nos. 4, 5, 6, 7, 8, 9, 10, and 11, and his own costs of this appeal.

This Court can make no order as to any claim on the part of those respondents who became purchasers of some of the property after the decree was passed in this suit by the Court below; they are not affected by the decree, and were unnecessarily made respondents and must have their costs.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

PUSI (DEFENDANT) v. MAHADEO PRASAD AND ANOTHER (PLAINTIFFS).*

Husband and wife—Liability of husband for wife's debts.

A husband (Hindu) is not liable for a debt contracted by his wife, except where it has been contracted under his express authority, or under circumstances of such pressing necessity that his authority may be implied.

* Second Appeal, No. 389 of 1880, from a decree of Babu Aubinash Chandar Banarji, Subordinate Judge of Farukhabad, dated the 26th January, 1880, modifying a decree of Pandit Gopal Sahai, Munsif of Farukhabad, dated the 30th September, 1879.

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