

ships held that, the family being joint, it was to be presumed that the suit was brought against the member of the family as representing the family; and they observed, looking to the substance of the cases and the decrees, "they are substantially decrees in respect of a joint debt of the family and against the representative of the family, and may be properly executed against the joint family property;" and they add: "The Court will look at the substance of the transaction in execution proceedings, and will not be disposed to set aside an execution upon mere technical grounds when they find that it is substantially right."

1830

RAM SEVA  
DAS  
v.  
RAGHUBAR  
DAS.

The case of *Deendyal Lal v. Jugdeep Narain Singh* (1) has been cited as an authority for an opposite view to the one we take. But the facts of that case may not be similar; it is not clear, for instance, from the report of that case whether the decree in the suit had been passed against property other than that which it was sought to sell in execution, and the auction-purchaser appears not to have been considered a *bonâ fide* purchaser for value under the circumstances. We dismiss the appeal with costs.

*Appeal dismissed.*

*Before Mr. Justice Pearson and Mr. Justice Oldfield.*

BEHARI BHAGAT (DEBENDANT) v. BEGAM BIBI AND OTHERS (PLAINTIFFS).\*

1880  
July 19.

*Appeal—Act X of 1877 (Civil Procedure Code), s. 540.*

The plaintiffs, the widow and son respectively of *N*, deceased, claimed immoveable property inherited from his father by *N*, and also immoveable property which had devolved upon *N* from his brother, who had predeceased him, and mesne profits of such properties. The Court of first instance, finding that the claim to the former property was admitted, and that to the latter was not denied, but resisted as barred by s. 13 of Act X of 1877, and holding it not to be so barred, made a decree returning the plaint to the plaintiffs that they might after correcting it file it either in the Revenue Court in regard to the profits of the former property, or in the Civil Court for possession of the latter property. *Held* that, although the claim of the plaintiffs was not either decreed or dismissed, yet as the right and title asserted by them to such properties was implicitly recognised by such decree, the defendants were entitled to appeal from it.

\* First Appeal, No. 15 of 1880, from a decree of Mauvi Abdul Majid Khan, Subordinate Judge of Ghazipur, dated the 16th July, 1879.

1880

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THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Munshi *Hanuman Prasad* and *Lala Lalta Prasad*, for the appellants.

*Pandit Bishambhar Nath* and *Shah Asad Ali*, for the respondents.

The judgment of the High Court (PEARSON, J., and OLDFIELD, J.) so far as it is material, was as follows :

PEARSON, J.—The suit is for proprietary possession of certain shares in certain maháls and of some sár-lands, and for mesne profits of the shares and damages in respect of the sár-lands from 1283 fasil. The plaintiffs claim the share inherited from his father by Niamat Ali, the deceased husband of the female and father of the male plaintiff, and also a share which had devolved upon Niamat Ali from his brother Torab Ali who predeceased him. The lower Court, finding that the claim to Niamat Ali's original share was admitted, and that to the share derived from Torab Ali was not denied, but resisted as barred by s. 13, Act X of 1877, and holding it not to be so barred, thought it proper to "return the plaint to the plaintiff that she may after correcting it file it either in the Revenue Court in regard to the profits of the share owned by her in her own right, or in the Civil Court only for possession of the residuary share and its mesne profits."

The anomalous nature of the lower Court's final order has raised a question as to the admissibility of the appeal preferred here by the defendant. It was contended by the respondents' pleader that the appellant was not injured by the decree and had no right to appeal from it. The claim of the plaintiffs is not indeed either decreed or dismissed in terms; but in effect the right and title asserted by them to the shares which form the subject of their claim is implicitly recognized as entitling them to sue by an amended plaint for profits or possession in the Revenue or the Civil Court. This being so, we cannot say that the present appeal is inadmissible, and we proceed to dispose of it.