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that no order affecting a party should be made without notice to him calling upon him to show cause why the order should not be made; and the present case is an example to prove that a party may be seriously injured by non-observance of this rule. We reverse the order of the lower appellate Court, and remand the case to be disposed of according to law.

Appeal allowed.

1883
 February 20.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

MUHAMMAD LATIF (PLAINTIFF) v. GOBIND SINGH AND OTHERS (DEFENDANTS)*

Pre-emption—Bad title of vendor as to part of property—Pre-emptor and preferential pre-emptor—Purchase-money.

Certain persons sold an eight-anna share of a village. *G* sued the vendors and purchasers of the share to enforce his right of pre-emption in respect of the sale, and obtained a decree. *M*, claiming one anna four pies of the share as his property, sued the vendors and purchasers of the share, and *G*, for such one anna four pies, and obtained a decree. He then sued the same parties to enforce his right of pre-emption in respect of the remainder of the share, that is, six annas eight pies, claiming to pay only a proportionate amount of the price paid for the whole share. *Held* that *M* was not bound to pay the price paid for the whole share, but only the proportionate amount of such price.

THIS was a suit to enforce the right of pre-emption in respect of the sale of an eight-anna share in a certain village. The plaintiff's grandmother died leaving as heirs to the eight-anna share in question two sons and two daughters. The plaintiff was the son of one of the daughters. His mother's share of the eight annas as an heir to her mother was one anna and four pies. On his mother's death this one anna and four pies devolved on the plaintiff. On the 7th August, 1880, the plaintiff's mother being dead, the plaintiff's uncles and aunt sold the eight-anna share to persons called Mansab Ali and Wali Muhammad for Rs. 2,000. Thereupon certain co-sharers in the village, Gobind Singh and Ajaib Singh, sued the vendors and purchasers of the share to enforce their right of pre-emption in respect of the sale, and obtained a decree on the 10th November, 1880. The plaintiff then instituted a suit against the vendors and purchasers of the eight-anna share, and the persons who had obtained a decree for that share

* Second Appeal No. 819 of 1882, from a decree of H. D. Willock, Esq., Judge of Azamgarh, dated the 12th May, 1882, affirming a decree of Pardit Soti Behari Lal, Subordinate Judge of Azamgarh, dated the 6th January, 1882.

by right of pre-emption, Gobind Singh and Ajaib Singh, for one anna and four pies, claiming as heir to his mother. He obtained a decree in this suit on the 17th June, 1881. He then brought the present suit against the vendors and purchasers of the eight-anna share, and Gobind Singh and Ajaib Singh, in which he claimed six annas eight pies of the eight annas, by right of pre-emption, on payment of Rs. 1,666-10-8, the sum proportionate to the price paid for the eight annas, *viz.*, Rs. 2,000. Both the lower Courts decided that the plaintiff was entitled to the six annas eight pies, by right of pre-emption, but held that he was bound to pay Rs. 2,000 for the property, as the defendants Gobind Singh and Ajaib Singh had paid that amount.

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In second appeal it was contended on the plaintiff's behalf that he was not bound, in equity, to pay for the six annas and eight pies more than the proportionate amount of the price paid for the eight annas.

Mr. *Spankie* and *Munshi Kashi Prasad*, for the appellant.

Shah Asad Ali, for the respondents (Gobind Singh and Ajaib Singh).

The High Court (STRAIGHT and BRODHPURST, JJ.) delivered the following judgment:—

STRAIGHT, J.—The purchase by the defendants vendees, which was successfully impeached by the defendants pre-emptors, must, now that the plaintiff-appellant has established his right by inheritance to the one-anna four-pie share, be regarded as one of six annas eight pies and no more. Of any defect that has since turned out to exist in the title of the original vendors, not only the vendees but the pre-emptors must take the consequences, and it would be most inequitable to hold that the plaintiff is bound to pay not only for what the vendors had power to sell, subject to the right of pre-emption, but also for what they had not power to sell by reason of its belonging to himself. We think that the appeal should prevail, in so far that the judgments of the lower Courts will be modified to this extent, that the plaintiff will be declared entitled to possession of the six annas eight pies on payment of Rs. 1,666-10-8. The respondents will pay costs in all the Courts. The Rs. 1,668-10-8 must be

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paid into the Court of the Subordinate Judge within one month from the date of the receipt of the decree of this Court, otherwise the suit will stand dismissed.

Appeal allowed.

1883
 February 26.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

RAMA NAND SINGH AND ANOTHER (DEFENDANTS) v. GOBIND
 SINGH AND ANOTHER (PLAINTIFFS).*

Hindu Law—Mitakshara—Joint Hindu family—Joint family property—Alienation by a member of his share.

One member of a joint and undivided Hindu family, governed by the law of the Mitakshara, cannot mortgage or sell his share of the family property without the consent, express or implied, of the other members. *Chamaili Kuar v. Ram Prasad* (1) followed. *Deendyal Lal v. Jugdeep Narain Singh* (2) and *Suraj Bunsî Koer v. Sheo Prasad Singh* (3) referred to.

THE plaintiffs in this suit claimed to set aside a mortgage by the defendant Raghunandan Singh of his interest in certain zamindari estates to the other defendants, dated the 24th August, 1880. They alleged that they and Raghunandan Singh were members of a joint undivided Hindu family; that the zamindari estates in question were joint ancestral property; and that the mortgage by Raghunandan Singh of his interest therein was void, under Hindu Law, having been made without their consent. The defendants set up as a defence to the suit that Raghunandan Singh was not a member of a joint undivided family together with the plaintiffs, but was separated from them, and was in separate possession of the mortgaged property, and was, therefore, competent to make the mortgage. The Court of first instance decided that the plaintiffs and Raghunandan Singh were members of a joint Hindu family; that the mortgaged property was a portion of the ancestral family estate; and that according to Hindu Law the mortgage was void, as it had been made without the consent of all the members of the family; and it gave the plaintiffs a decree setting aside the mortgage. On appeal by the defendants it was contended on their behalf, *inter alia*, that, notwithstanding the

* Second Appeal No. 376 of 1882, from a decree of Pandit Soti Bohari Lal, Subordinate Judge of Azamgarh, dated the 18th December, 1881, affirming a decree of Mirza Kamar-ud-din Ahmad, Munsif of Azamgarh, dated the 5th September, 1881.

(1) I. L. R., 2 All. 267. (2) I. L. R., 3 Calc. 198.

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