

property consists of a house—(see also Fisher on Mortgage, p. 756). Unless, therefore, the mortgage-deed expressly provided for the redemption of the son's interests on payment of a proportionate part of the debt, the mortgage must be treated as one and entire, the father's authority, according to *Girdhārīlal's* case, being to apply or charge the whole property to or with the payment of his debts not improperly incurred. We must, therefore, reverse the judgment of the District Judge, and remand the case for the District Judge to determine whether the plaintiff was a stranger to his father's suit, and to pass a fresh decision with reference to the foregoing remarks.

Plaintiff to have his costs throughout.

Judgment reversed and case remanded.

1884

TRIMBAK
BALKRISHNA
v.
NARAYAN
DAMODAR
DABHOLKAR.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

BHIKAJI RAMCHANDRA OKE AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 2), APPELLANTS, v. YASHVANTRA'V SHRIPAT KHOPKAR (ORIGINAL PLAINTIFF), RESPONDENT.*

June 20.

Hindu law—Son's liability for father's debts—Execution sale of ancestral property—Decree against father—Money decree—Purchaser at a Court sale.

By the sale of ancestral property in execution of a mere money decree against the father for his separate debt, only the right, title and interest of the father pass to the purchaser, and nothing more; and this holds good whether the purchaser is a stranger or the decree-holder himself.

A purchaser at a Court sale cannot set up the title of a *bona-fide* purchaser for value without notice.

Deendyal v. Jugdeep Nardain Singh(1), *Hurdey Nardain v. Baboo Rooder Perkash*(2) and *Muddun Thakoor v. Kantoo Lal*(3) referred to.

Lakhmichand v. Kastur(4) and *Sobhagchand Gulabchand v. Bháichand*(5) followed.

THIS was a second appeal against the decision of Khán Bahádúr M. N. Nánávti, Subordinate Judge of the first class with appellate power at Thána, reversing the decree of the Subordinate Judge of Mahád.

* Second Appeal, No. 54 of 1883.

(1) L. R., 4 Ind. Ap., p. 251.

(2) L. R., 1 Ind. Ap., 321.

(3) L. R., 11 Ind. Ap., p. 26.

(4) 9 Bom. H. C. Rep., 60.

(5) I. L. R., 6 Bom., 205.

1884

BHUKÁJI
RÁMCHANDRA
OKE
v.
YASHVANT-
RÁV SHREIPAT
KHOPKAR.

The property in dispute (a house and *anganna*—homestead) was the ancestral undivided property of the plaintiff Yashvantráo and his father Balvant, having been acquired by Pándurang, Balvant's father.

At a sale held in execution of a money decree obtained against the plaintiff's father Balvant, the property in dispute was bought by the first defendant on 8th July, 1868, who obtained possession thereof on 20th March, 1869, and sold it with possession to the second defendant. The plaintiff brought the present suit in 1878 to recover his one-sixth share in the house and one-fourth share in the *anganna*, contending that, at the time of sale, his father, having five sons including himself, he had a sixth share in the house, and that as the *anganna* was not included in the decree, he had a fourth share therein on account of the death of his father in 1869 and of his fourth brother in 1876.

The Subordinate Judge of Mahád rejected the plaintiff's claim, holding that by the Court sale the whole of the property in dispute was sold, including the plaintiff's interest therein.

The Subordinate Judge of Thána found that the debt, for which the property in dispute was sold, was a separate debt of the plaintiff's father; that the plaintiff had, long previously to the father contracting the debt that led to the auction sale, been separate from the father, and had been separate from him to the defendant's knowledge; and that the plaintiff had not been in any way benefited by the debt. He, therefore, varied the decree of the Court of first instance, and awarded possession of a sixth share in the house and the *anganna* alike, holding that the *anganna* also was included in the decree.

The defendants thereupon appealed to the High Court.

Máhádev Ohimmáji Apte for appellants.—The debt, for which the property was sold, is not shown to have been contracted by the father of the plaintiff for an immoral or illegal purpose: The son's interest, therefore, must be taken to have passed to the purchaser under the auction sale—*Náráyanácháryá v. Narso*⁽¹⁾. The fact that the son was living separate from his father at the time of the auction sale, will not exempt him from liability for

(1) I. L. R., 1 Bom., 262.

his father's debts—*Trimbal Bálkrishna v. Náráyan Dámodar Dábbholkar*⁽¹⁾.

Vishnu K. Bhatavadekar (with him *Shivrám S. Wagle*) for the respondent.—The decree, in execution of which the sale has taken place, in the present case was a mere money decree. Therefore, what passed to the purchaser was only the father's right, title and interest—*Deendyál v. Jugdeep Náráin Singh*⁽²⁾; *Hurdey Náráin v. Báboo Rooder Perakash*⁽³⁾. [SARGENT, C. J.—In those cases the auction-purchaser was the decree-holder himself. In the present case the auction-purchaser is a stranger.] That circumstance is not material, and was not referred to in *Deendyál's* case. It was mentioned in *Hurdey Náráin's* case, but the decision is not based upon that circumstance. Moreover, the auction-purchaser, though a stranger to the decree, was not a stranger to the transaction which led to the decree and the auction sale. Further, the son was living separate from his father at the time the debt was contracted by the latter; and of this the auction-purchaser had notice. The cases of *Girdhárilal v. Kantoo Lal* and *Muddun Thakoor v. Kantoo Lal*⁽⁴⁾ do not apply to the present case—West and Bühler (3rd ed.), pp. 621-624 and 646.

Máhádev Chimnáji Apte in reply.—Under a sale in execution of a decree against the father the undivided property passes to the purchaser, whether it is a mortgage decree or a simple money decree—*Suraj Bunsae Koer v. Sheo Persad Singh*⁽⁵⁾; *Muddun Thakoor v. Kantoo Lal*⁽⁴⁾. When the purchaser is a stranger, *Deendyál* and *Hurdey Náráin's* cases do not apply.

The following is the judgment of the Court delivered by

SARGENT, C. J.—The first defendant was the purchaser at auction sale in execution of a money decree against the plaintiff's father Shripatráv Balvant. All that was offered for sale was the "right, title and interest" of the father, and, according to the decision in *Deendyál's* case, it was that interest, and nothing more, that the purchaser took by his purchase. In the recent case of *Baboo*

(1) *Supra*, p. 481.

(2) L. R., 4 Ind. Ap., 247.

(3) L. R., 11 Ind. Ap., 26.

(4) L. R., 1 Ind. Ap., 321.

(5) L. R., 6 Ind. Ap., 88.

1884

BEIKÁJI
RÁMCHANDRA
OKE
v.
YASHVANT-
RÁV SHRIPAT
KHOPKAR.

1884

BHIKÁJI
RÁMOHANDRA
OKE
v.
YÁSHVANT-
RÁV SHRIPAT
KHOPKAR.

Hurdey Nárain v. Baboo Rooder Perkash⁽¹⁾ their Lordships of the Privy Council, referring to *Deendyál's* case, point out the distinction between, as in that case, a mere money decree against the father and a decree in mortgage suit as was the case in *Muddun Thakoor's* case. It has been urged that both in *Deendyál's* case and in *Baboo Hurdey Nárain v. Baboo Rooder Perkash* the purchaser was also the judgment-creditor, and not, as here, a stranger to the suit, and that that circumstance is alluded to in the judgment of the Privy Council in the latter case. Nothing, however, turned upon it in the judgment in *Deendyál's* case, nor in the judgment in the latter case is any stress laid on it. It appears to have been mentioned solely with the object of emphasizing the complete identity between the circumstances of the case before the Privy Council with those in *Deendyál's* case. However, as to whether a purchaser at an auction sale can set up the title of a purchaser for value without notice, it has been already decided in the negative in *Lakhmichand v. Kastur*⁽²⁾ and the Full Bench decision in *Sobhágchand Gulábchand v. Bháichand*⁽³⁾. We are, therefore, of opinion that plaintiff's share in the ancestral house did not pass to the first defendant by the auction sale.

Lastly, with respect to the plaintiff's objection, that the *anganna*, or compound, was not included in the first defendant's purchase, we agree with the conclusion, already come to by the Court in Suit 133 of 1876 between the first defendant and a brother of the plaintiff, that, upon a reasonable construction of the somewhat inartificial language of the certificate of sale, it must be deemed to be included. The decree must, therefore, be confirmed, with costs of appeal.

Decree confirmed.

(1) L. R., 11. Ind. Ap., 26.

(2) 9 Bom. H. C. Rep., p. 60.

(3) I. L. R., 6 Bom., 205.