

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice
Nánábhái Haridás.*

1886.
June 30

SAKHA'RA'MSHET AND ANOTHER, (ORIGINAL DEFENDANTS), APPELLANTS,
v. SITA'RA'MSHET, (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Purchaser at a sale in execution of a decree directing sale of the whole right, title, and interest of grandfather—Assignment by grandsons of the same property subsequently to such sale, effect of.

In 1858, Sadshet mortgaged certain ancestral property to the first defendant for a term of nine years. In 1864, Sadshet being then dead, the defendant sued Rágho, the son of Sadshet, to recover the money debt, and obtained a decree against the estate of the deceased. The land in question was thereupon attached and sold on the 13th August, 1873, subject to defendant's mortgage lien, and was purchased for the defendant by his cousin. The certificate of sale was drawn up in accordance with the decree, and recited that the purchaser bought the whole right, title, and interest of Sadshet. On the 3rd August, 1882, the plaintiff purchased, from Rágho's sons, the share of Rágho in Sadshet's estate. The plaintiff sued the defendant to redeem the property. The Court of first instance rejected his claim. On appeal, the lower Appellate Court reversed that decree, and remanded the case for retrial. Against this order of remand, the defendant appealed to the High Court.

Held, restoring the decree of the Court of first instance, that the language of the decree showed that the intention was to make the land itself liable for the debt, and not merely Sadshet's interest. By his purchase the defendant was to be regarded as having bargained for, and purchased the entire interest in, the land.

Nanomi Bábudsin v. Modhun Mohun⁽¹⁾ followed.

THIS was an appeal from an order passed by E. T. Candy, Acting Judge of Ratnágiri, in Appeal No. 368 of 1884.

The property in dispute, consisting of land and a house, was the ancestral property of one Sadshet, who, in 1858, mortgaged it, with possession, to the first defendant for a loan of Rs. 43, of which Rs. 18 were to be payable as a simple money debt by instalments, the remainder being advanced on the security of the property for a term of nine years.

In 1864, the first defendant sued Rágho, the son of Sadshet, as his representative—Sadshet being then dead—to recover the sum

* Appeal, No. 8 of 1885, from order.

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of Rs. 18, with interest. On the 12th July, 1865, he obtained a decree against the estate of the deceased for the amount due, with interest and costs.

In execution of this decree the property was put up to sale, subject to the first defendant's mortgage lien, and was purchased, for the first defendant, by his cousin.

The certificate of sale, after describing the property, expressly stated that the "whole of the right, title, and interest therein of Sadshet" was sold to the purchaser.

On the 3rd August, 1882, the plaintiff purchased, under a registered deed, Rágho's share in the said property from the two sons of Rágho and his widow—Rágho being then dead.

The plaintiff brought the present suit, as assignee of the sons of Rágho, to redeem the whole property.

The defendants contended (*inter alia*) that by the sale, in execution of their decree against Sadshet, the whole interest of Sadshet was sold, and that no interest in the property remained in his grandsons, the assignors of the plaintiff.

The Court of first instance rejected the plaintiff's claim.

The plaintiff appealed to the District Judge, who reversed the lower Court's decree, and made an order remanding the case for retrial.

From this order the defendants preferred an appeal to the High Court.

Mahádev Ohinnáji A'pte for the appellants :—The decree against Sadshet directed the sale of his entire right, title, and interest in the property, and the appellant bought the whole, leaving nothing for the son or grandson : see *Nanomi Bábuásin v. Modhun Mohun*⁽¹⁾. According to this ruling, the defendant must be taken to have bargained for and purchased the entire estate.

Yashvant Vásudev A'thlyé for the respondent :—It has been the established principle of the Hindu law, that a decree against the father alone does not affect the interests of his sons. Here the father was sued in his individual capacity, and his right, title, and interest

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alone was sold: see *Bhikáji v. Yeshvantráo*⁽¹⁾. *Nanomi Bábuásin v. Modhun Mohun* does not show that the right of survivorship is to be affected by the decree against the father alone. The vendors of the plaintiff were the grandsons of Sadshet, and at birth took an interest in the property of their grandfather, Sadshet, and though their father was a party to the suit they could not be bound. This was a sale in execution of a money decree. The case of *Ponnáppá v. Pappuwayyengar*⁽²⁾ draws a distinction between a sale under a money decree and one a mortgage. The decree ordering sale to enforce a mortgage professes to sell whatever interest the mortgagor was competent to create at the date of the mortgage, while a money decree only what is available at the date of attachment. A decree executed after the death of the judgment-debtor must set forth, in the sale notification, that what is sold is the right, title, and interest of the representative, for it is he who is defendant, and not the deceased: see *Náthá Hari v. Jánni*⁽³⁾. Such was not the case here, and Rágho's interest remained unaffected.

SARGENT, C. J.:—We think the language of the decree of the 12th July, 1865, shows that the intention was to make the land itself liable for the debt, and not merely Sadshet's interest in it, and that, therefore, the defendant must be taken "to have bargained for and purchased the entire interest in the land," which is the test, according to the recent ruling of the Privy Council in *Nanomi Bábuásin v. Modhun Mohun*⁽⁴⁾, to be applied in these cases. We must, therefore, reverse the remand order of the District Judge, and restore the decree of the Subordinate Judge.

Respondent to bear the costs here and in the Court below.

Order reversed.

(1) I. L. R., 8 Bom., 489.

(3) 8 Bom. H. C. Rep., 37, A. C. J.

(2) I. L. R., 4 Mad., at p. 65.

(4) I. L. R., 13 Calc., 21.