

1896.

PURSHOTAM.
DAS
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BAI MANI.

in his house and to supply her with food and raiment. On this undertaking being given, which should be embodied in the decree, we reverse the decree of the District Judge and restore the decree of the Subordinate Judge. Each party to bear his and her own costs throughout.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ranade.

BHANA (ORIGINAL PLAINTIFF), APPELLANT, v. CHINDHU (ORIGINAL DEFENDANT NO. 1), RESPONDENT.*

1896,
February 3.

Hindu law—Joint family—Family debt—Liability of family property—Manager—Decree against a manager—Execution sale—Auction-purchaser.

Where family property is sold in execution of a decree, obtained against a brother as manager of a joint Hindu family, for a family debt contracted by his father and himself and a brother, the interest of all the members of the family passes to the auction-purchaser though they have not been joined as parties to the suit or to the execution proceedings.

SECOND appeal from the decision of Ráo Bahádur Chunilal Maneklal, First Class Subordinate Judge with appellate powers at Dhulia.

Ramsing Megha, and Meherchand and Ramdas, two of his five sons, borrowed money from Chindhu, the defendant, and passed an acknowledgment (kháta) for the amount.

Ramsing died and Ramdas being absent, Chindhu sued Meherchand on the kháta and obtained a decree against him. In execution of this decree Chindhu attached and sold certain fields which were the ancestral property of Meherchand and his four brothers. The property was sold as Meherchand's.

Ramdas, the absent brother, subsequently sold his interest and that of his three minor brothers in these fields to the plaintiff, who brought this suit against Chindhu to recover $\frac{4}{5}$ ths of the fields in question which Chindhu had bought at the execution sale.

Both the lower Courts rejected the plaintiff's claim. They found that Meherchand was manager of the joint family, and

* Second Appeal, No. 1 of 1895.

1896.

BHANA
v.
CHINDHU.

that the debt for which Chindhu's decree was passed was a joint family debt.

The plaintiff preferred a second appeal to the High Court.

S. S. Setlur (with him *Trimbeck R. Kotwal*) for the appellant:—In this case only one of five brothers was sued. Three of them were not parties in the transaction which gave rise to the claim. The decree has been passed against one brother individually and not as manager of the family, and the property sold in execution was stated to be his property. Under such circumstances the Court will not hold the family property liable—Mayne's Hindu Law, section 290; *Deendayal's case*⁽¹⁾.

Macpherson (with him *M. R. Bodas*) for the respondent:—The case of *Daulat Ram v. Mehr Chand*⁽²⁾ has been interpreted in *Vishnu v. Venkatrao*⁽³⁾. It has been found by both the Courts below that the father and his two adult sons borrowed for family purposes. On Ramsing's death his eldest son Meherchand became the new manager. *Jankibai v. Mahadev*⁽⁴⁾ is a much stronger case.

JARDINE, J.:—On the facts found, and in the absence of other special circumstances, I am of opinion that the decree should be confirmed with costs. See *Maruti v. Babaji*⁽⁵⁾, *Vishnu v. Venkatrav*⁽⁶⁾, *Pandu v. Maniklal*⁽⁷⁾, *Basaya v. Fakirgavda*⁽⁸⁾ and *Jankibai v. Mahadev*⁽⁴⁾.

RANADE, J.:—The only point in dispute between the parties is the extent of the interest which the auction-purchaser, who in this case is also the judgment-creditor, acquired under his certificate of sale. The acknowledgment (*ruju khate*) was passed by the father and two of his sons, and the father being dead, and one of the sons being absent, the suit was brought against the other son Meherchand, and in execution of the decree the property in dispute was sold as Meherchand's.

The absent brother subsequently sold his own right and the rights of three minor brothers to the appellant, and on the strength of this purchase-deed, the present suit was brought to

(1) L. R., 4 I. A., 247.

(5) I. L. R., 15 Bom., 87.

(2) I. L. R., 15 Cal., 70.

(6) P. J., 1889, p. 248.

(3) P. J., 1889, p. 248.

(7) P. J., 1891, p. 124.

(4) I. L. R., 18 Bom., 147.

(8) P. J., 1892, p. 141.

1896.

BHANA
v.
CHINDHU.

recover $\frac{4}{5}$ ths share of the property which the judgment-creditor had purchased, and of which he obtained possession through Court unopposed.

Both Courts have found it as a fact that Meherchand was manager of the joint family of the five brothers, that the debt was a joint family debt, and that the two adult sons joined with their father in executing the ruju khate. They also found that the sale was intended to be of the whole house, and not of Meherchand's share only therein.

It is contended, however, before us that as the four brothers were not parties, their interests could not be affected by the execution proceedings. It was suggested by Mr. Setlur, counsel for the appellant, that the general rule being that nobody should be prejudicially affected by the proceedings to which he was not a party, the Courts should be cautious not to extend the operation of such decrees to cases like the present, if they are not expressly covered by the rulings referred to as authorities on respondent's behalf. Mr. Mayne, however, has, after discussing all the decisions of the Privy Council on the point, summed them up by laying down six propositions in all, and the third of these propositions states, on the authority of *Deendayal's case*⁽¹⁾, as also of two later cases, *Baboo Hurdey Narain v. Pandit Rooder Perkash Misser*⁽²⁾, *Nanomi Babuasin v. Modun Mohun*⁽³⁾, "that a creditor may enforce payment of the personal debt of a father, not being illegal or immoral, by seizure and sale of the entire interest of father and son, and it is not absolutely necessary that the sons should be parties to the suit" or to the execution proceedings. Of course the words "right, title and interest" of the judgment-debtor are themselves ambiguous, and it is a mixed question of law and fact to determine what the Court intended to sell, and what the purchaser expected to buy—*Appaji v. Keshav*⁽⁴⁾ and *Jankibai v. Mahadev*⁽⁵⁾. In the absence of special circumstances showing a larger intention, only the interest of the judgment-debtor passes by the sale—*Maruti v. Babaji*⁽⁶⁾. The special circumstances must be such as those found

(1) L. R., 4 I. A., 247.

(2) L. R., 11 I. A., 26.

(3) L. R., 13 I. A., 1.

(4) I. L. R., 15 Bom., 13.

(5) I. L. R., 18 Bom., 147.

(6) I. L. R., 15 Bom., 87.

in *Nanomi Babuasin v. Modun Mohun*⁽¹⁾, *Meenakshi Naidu v. Immudi Kanaka*⁽²⁾ and *Mahabir Pershad v. Moheswar Nath*⁽³⁾. As a representative case of the absence of such special circumstances, Sargent, C. J., referred to *Baboo Hurdey Narain v. Pandit Rooder Perkash Misser*⁽⁴⁾.

In the present case the debt was one in which the two adult sons joined with the father. There was no concealment in the plaint why the father and the other brother were not joined as parties. It is found as a fact that the son sued was manager of the joint family. The debt was a family debt. The sale realized the full price of the house, and the creditor obtained possession unopposed. The appellant's deed of purchase was executed *pendent lite*, and after the attempt to raise the attachment had failed. There is thus no reason shown why the decree of the lower Court should be disturbed. We dismiss the appeal and confirm the decree. All costs on appellant.

Decree confirmed.

(1) L. R., 13 I. A., 1.

(3) L. R., 17 Cal., 589.

(2) L. R., 16 I. A., 1.

(4) L. R., 11 I. A., 26.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ranade.

NARAYAN AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, v. GANPAT AND OTHERS (ORIGINAL DEFENDANTS, NOS. 1 TO 9), RESPONDENTS, *

AND

GANPAT AND OTHERS (ORIGINAL DEFENDANTS NOS. 1, 2, 3 AND 9), APPELLANTS, v. NARAYAN AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Mortgage—Mortgage by joint owner—Mortgagee becoming purchaser of part of mortgaged property—Redemption—Redemption of part of mortgaged property—Apportionment of mortgage-debt—Right of mortgagee to keep security entire—Right of purchaser of mortgagee's interest to sue for partition—Joint possession—Practice.

When a mortgagee acquires by purchase the interest of some of the mortgagors, he acquires only a right to sue for partition after the redemption of the entire security has been effected. He must first surrender or restore the mortgage security and then urge what title he may have acquired by the purchase.

* Cross Second Appeals, Nos. 575 and 625 of 1893.

1896.

BHANA
v.
CHINDU.

1896.

February 3.