1899.

VITHALRAO v. RAMRAO.

was one-third share, and claimed to succeed as heir to the moveable property of Bhagwantrao and the arrears due to him—Exhibit 80. This consistent conduct and declaration of the defendant makes it clear that his contention about his having been joint in interest with Bhagwantrao is without any foundation. The partitions of 1884 were all accepted and acted upon by all the parties as final. The mere postponement of the actual division till 1889 did not alter the status of the parties, and did not convert what was intended and treated by the parties to be a tenancy in common into a joint tenancy. The parties treated each other and the deceased Bhagwantrao as divided in status throughout. If defendant has any claim for arrears not paid to him or the price of moveables not made over to him by Bhagwantrao, he must resort to any remedy the law allows him, but he cannot set up the plea of union of interest, and claim to be heir on the ground of survivorship. The contention was, therefore, very properly disallowed by the lower Courts. Both the issues in appeal must be thus decided against the parties raising them, and I would accordingly dismiss both the appeals and confirm the decree.

Decree confirmed.

APPELLATE CIVIL.

**Before Mr. Justice Parsons and Mr. Justice Ranade.*

JOHARMAL (ORIGINAL PLAINTIFF), APPELLANT, *v.* EKNATH AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

1899.
November 27.

Hindu law—Son's liability for father's debt—Decree against father—Execution sale—Son's interests when not affected by such sale.

When ancestral property is sold in execution of a decree against a Hindu father, there are only two cases in which the son's interests do not pass under the sale: *first*, when they are not sold; *second*, when the debt is not binding upon the sons by reason of its having been contracted for an illegal or immoral purpose.

APPEAL from the decision of Ráo Bahádur Jaysatyabodhrao Tirmalrao, Subordinate Judge, First Class, at Násik.

One Nana was the owner of a house at Yeola,

* Appeal, No. 17 of 1898.

1899.

JOHARMAL v. EKNATH.

Nana died leaving two sons, Gopal and Govind.

In accordance with a decree for partition, a moiety of the house fell to Gopal's share, and the other moiety to Govind's share.

The plaintiff obtained a money-decree against Govind and in execution put up to sale Govind's share of the house in dispute. At the Court-sale plaintiff himself purchased Govind's share.

Plaintiff was obstructed in taking possession by Govind's sons Eknath and Rangnath.

Thereupon plaintiff filed the present suit to have the obstruction removed.

Defendants Eknath and Rangnath pleaded (*inter alia*) that the house in dispute was their ancestral property; that they were not bound by the decree passed against their father; that their father's interest alone passed to the plaintiff at the execution sale; and that the plaintiff had no right to oust the defendants from their share of the ancestral property.

The Subordinate Judge held that the decree against Govind did not bind his sons Eknath and Rangnath; that their interests in the property did not pass at the auction sale; and that the plaintiff acquired only Govind's one-third share in the moiety of the house. He, therefore, passed a decree awarding to the plaintiff one-sixth share of the house in dispute.

Against this decision plaintiff appealed to the High Court.

D. A. Khare for appellant.

N. G. Chandavarkar for respondent.

PARSONS, J. :—It is difficult to understand from the judgment of the Subordinate Judge the ground on which he decided that the sons' interests in the ancestral property did not pass under the sale. There are only two cases in which these interests would not pass. First when they were not sold; illustrations of which will be found in the cases of *Bhikaji* v. *Yashvantrav* [1], *Maruti* v. *Babaji* [2], and *Pandu* v. *Maniklal* [3]. Second, when the debt was not binding upon the sons by reason of its having been contracted for an illegal or immoral purpose, illustrations of which

(1) (1884) 8 Bom., 489. (2) (1890) 15 Bom., 87.

(3) P. J. for 1898, p. 124.

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will be found in the cases of *Narayanacharya* v. *Narso*[1] and *Chintamanrav* v. *Kashinath*[2]. It does not appear under which of these the Subordinate Judge placed the present case. Moreover, he has not alluded to a circumstance now mentioned before us that the sons were not in existence at the time of the suit and decree. We do not know whether this is so or not, but it can easily be ascertained in the further enquiry we are obliged to order. We ask the Subordinate Judge to take evidence and find on the following issue :—

Whether the interests that Eknath and Rangnath now claim in the ancestral property passed to the plaintiff under the execution sale or not?

and certify his finding to this Court within two months.

Issue sent down.

(1) (1876) 1 Bom., 262. (2) (1889) 14 Bom., 320.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, Kt., Chief Justice, and Mr. Justice Candy.

1899.
November 30.

NARAYAN GOVIND MANIK (ORIGINAL DEFENDANT No. 1), APPELLANT, *v.* SONO SADASHIV, DECEASED, BY HIS HEIRS AND SONS VINAYAK AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Civil Procedure Code (Act XIV of 1882), *Secs.* 211 *and* 331—*Limitation Act (XV of* 1877), *Sch. II, Art.* 178—*Decree for possession with mesne profits till delivery of possession—Darkhást for execution—Obstruction—Application for removal of obstruction—Application registered as a suit—Disposal of the darkhást—Decree in the suit—Execution—Limitation—Mesne profits for three years subsequent to the suit.*

The plaintiffs having obtained a decree for possession of certain lands with mesne profits till delivery of possession, applied for execution. An obstruction having been caused to the execution, plaintiffs applied for the removal of the obstruction, and their application was registered as a suit under section 331 of the Civil Procedure Code (Act XIV of 1882), and their darkhást for execution was disposed of by the Court. The suit was decided in plaintiffs' favour, and they having applied for execution it was contended that the application was

* Second Appeal, No. 547 of 1899.