

APPELLATE CIVIL.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Chandavarkar.

1901.
August 13.

DAHYABHAI (PLAINTIFF), APPELLANT, v. BAPALAL AND ANOTHER
(ORIGINAL DEFENDANTS), RESPONDENTS.*

Execution—Decree restraining defendant in user of land—Sale of land in execution of another decree—Purchaser at such sale in possession—No execution granted of former decree.

The plaintiff obtained a decree restraining the defendant in his user of certain land and applied for execution. Meanwhile the land had been sold in execution of another decree against the defendant and the purchaser at the Court sale obtained possession. The plaintiff thereupon applied that the purchaser should be made a party to the execution proceedings and that execution should go against him as well as against the defendant.

Held, that no order for execution could be made. It could not go against the defendant as all his interest in the land had been sold in execution of a decree, and it could not go against the purchaser as an injunction does not run with the land.

SECOND appeal from the decision of F. X. DeSouza, Joint Judge of Ahmedabad, confirming the order of Ráo Sáheb Karpurram M. Mehta, Additional Joint First Class Subordinate Judge, in an execution proceeding.

The plaintiff obtained a decree restraining the defendant in his user of certain land and applied for execution.

Meanwhile, however, the land had been sold in execution of another decree against the same defendant, and had been purchased by one Jivanlal Amritlal, who again sold it to Fulbhai Hemchand and Keshavlal Nagindas, who took possession.

The plaintiff now applied that the said Fulbhai and Keshavlal should be made parties to the execution proceeding, and that execution should go against them as well as against the defendant.

The Subordinate Judge refused the application, and on appeal the Judge confirmed the order of refusal.

The plaintiff preferred a second appeal.

Lallubhai A. Shah for the appellant.

* Second Appeal No. 245 of 1901.

K. M. Javeri for the respondent.

1901.

DAHYABHAI
v.
BAPALAL.

JENKINS, C.J.:—This is an application by a plaintiff for execution of a decree restraining the defendant in his user of a piece of land.

The application is made against the defendant and a purchaser of the land. But as against the defendant it must fail, as all his interest in the property has been sold in execution of a decree against him. Nor can execution go against the purchaser, as an injunction does not run with the land: *Attorney-General v. Birmingham Tame & Co. Drainage Board* ⁽¹⁾

Appeal dismissed.

(1) (1881) 17 Ch. D. 685.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Chandavarkar.

NARANBHAI VAGHJIBHAI (ORIGINAL PLAINTIFF), APPELLANT, v.
RANCHOD PREMCHAND AND ANOTHER (ORIGINAL DEFENDANTS),
RESPONDENTS.*

1901.

August 19.

Hindu Law—Coparcener—Possession—Suit by coparcener for exclusive possession—Failure to prove right to exclusive possession, but right to joint possession proved—Decree for joint possession.

The plaintiff sued for exclusive possession of certain land alleging it to be his property, and complaining that defendants Nos. 1 and 2 had taken possession of it alleging that they had purchased it from defendants Nos. 3 to 8. On appeal the Judge concurred with the lower Court in holding that the plaintiff had failed to prove his right to exclusive possession, but, without going into the question of the plaintiff's right as coparcener, reversed the decree and dismissed the suit, holding that the plaintiff's remedy was a suit for partition.

Held, that the lower Court ought to have considered the plaintiff's right as coparcener in this suit, and, if it found that right proved, ought to have confirmed the decree for joint possession, notwithstanding that the plaintiff's claim in the plaint was only for exclusive possession.

SECOND appeal from the decision of Ráo Bahádur Lalshankar Umashankar, Additional First Class Subordinate Judge of

* Second Appeal No. 168 of 1901.