APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1898. *August 8.*

SAKHARAM AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* DEVJI AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Hindu law—Joint family—Manager—Debt contracted by a manager for family purposes—Decree against the managing member alone—Sale in execution of such decree—Effect of such sale.

Where a debt is incurred by a Hindu as manager of the family for family purposes, the other members of the family, though not parties to the suit, will be bound by the decree passed against him in respect of the debt; and if in execution of the decree any joint property is sold, the interest of the whole family in such property will pass by the sale.

SECOND appeal from the decision of C. H. Jopp, District Judge, Ahmednagar.

Suit for redemption. The plaintiffs were three brothers living together as members of a Joint Hindu family. Devji Antoba (plaintiff No. 1) was the manager.

The land in question was family property. In 1867, Devji as manager of the family mortgaged it with possession to Kakaji for family purposes.

In 1873, Kakaji sued Devji alone and obtained a money decree against him in respect of another debt, in execution of which his right, title and interest in the mortgaged lands was put up to sale in 1876, and was purchased by Kakaji himself.

Kakaji remained in possession of the lands till his death in 1885, when it passed into the possession of his brothers, defendants Nos. 2 and 3, and of his nephew, defendant No. 4.

In 1896, plaintiffs filed the present suit to redeem the lands from the mortgage of 1867.

Defendant No. 1, the widow of Kakaji, did not defend the suit, nor did defendant No. 3.

Kakaji's brother and nephew (defendants Nos. 2 and 4) contended that the whole interest of the family in the land had passed to Kakaji by the sale in execution, and that the plaintiffs had no right to redeem.

* Second Appeal, No. 89 of 1898.

The Subordinate Judge held that the mortgage-debt had been satisfied out of the rents and profits of the mortgaged lands, and that the effect of the Court sale was to pass Devji's interest in the land to the purchaser Kakaji. But he held that the shares of Devji's two brothers (plaintiffs Nos. 2 and 3) were not affected by the execution sale, and as the mortgage-debt had been already satisfied, he awarded them possession of their two-thirds share jointly with defendants Nos. 2 and 4.

In appeal, the District Judge held that plaintiffs Nos. 2 and 3 as owners of two-thirds of the equity of redemption were entitled to redeem the whole of the property, even though the mortgagee (Kakaji) had acquired a share in the equity of redemption; and as the mortgage-debt had been satisfied, he passed a decree awarding possession of the whole of the lands in dispute to plaintiffs Nos 2 and 3. His reasons were as follows:—

"I do not decide whether the plaintiffs' family remained joint at the date of the decree and of the auction-sale, whether Devji (plaintiff No. 1) was then manager, or whether the debt was one for family purposes, and binding on all the members of the joint family. Even if these points are decided in favour of defendants, Kakaji would still have acquired the share of Devji only in the lands by his auction-purchase. If Kakaji had wished to make the shares of all the members of the joint family liable for the debt, he should in the suit of 1873 have joined all the members of the family as parties to the suit, or at any rate he should have sued Devji as representative of the family. It must, therefore, be concluded that Devji was not so sued, and as Kakaji chose to sue Devji alone and not as the representative of the family, the execution of his decree took place against Devji only, the decree could not be, and was not, enforced against the other members of the family, and Devji's interest alone passed to Kakaji under the auction-sale—Mayne's Hindu Law, para. 324; *Deendyal* v. *Jugdeep* (1); *Maruti* v. *Lilachand* (2); *Kisansing* v. *Moreshwar*(3). *Bhana* v. *Chindhu*(4) does not apply, for the debt in that case was contracted by the father as well as by the other members of the family. I find that Kakaji purchased Devji plaintiff No. 1's interest only at the auction sale."

Against this decision defendants preferred a second appeal to the High Court.

N. G. Chandavarkar for appellants.

M. B. Chaubal for respondents.

(1) (1877) 4 Ind. Ap., 247.
(2) (1882) 6 Bom., 564.
(3) (1882) 7 Bom., 91.
(4) (1896) 21 Bom., 616.

1898.

SAKHARAM v. DEVJI.

RANADE, J.:—The District Judge has refused to enquire "whether the plaintiffs' family remained joint at the date of the decree and of the auction-sale, whether Devji was then the manager, or whether the debt was one for family purposes, and binding on all the members of the joint family," because he thinks that, as the suit on the bond was brought against no other member of the family than Devji, and he even was not sued as the representative or manager of the family, the decree could not be enforced against the other members of the family, and that Devji's interest alone passsed to Kakaji under the auction-sale. No doubt Mayne in his work on Hindu Law, section 324, does lay down this proposition: "If the managing member of the family executes a document which would bind the other members, the proper course is to sue them all. If the creditor chooses, he may only sue the person who executed the document. But if he adopts this course, his execution will only take effect upon the share of the execution debtor. He cannot enforce it against the other members (not being the sons of the debtor) merely by proving that the transaction was entered into for the benefit of the family." Numerous cases decided by this Court, however, show that the statement is not now quite accurate, and that there seems to be no difference between the case of sons and that of other members of the family. In *Hari* v. *Jairam*[1] the plaintiffs were brothers one of whom alone had been sued, yet the contention of the others, that they were not bound by the Court-sale as they were not parties to the suit, was held to be untenable on the authority of the Privy Council decision in *Daulat Ram* v. *Mehr Chand*[2]. In *Vishnu* v. *Venkatrav*[3] it was decided also, on the authority of *Daulat Ram's* case, that if the debt was incurred by Sankraji and Harji as the managers of the family, and for a family purpose, the interest of Venkatrav, their brother, might pass, although he was not a party to the suit. In *Vasudev* v. *Krishna*[4] the interests of a brother again were at stake, and it was held that the decision depended upon whether the decree obtained by the plaintiff against Thána Náik was for a debt incurred by Thána Náik as manager of the family for the pur-

(1) (1890) 14 Bom., 597.
(2) (1887) 15 Cal., 70.
(3) P. J. for 1889, p. 248.
(4) P. J. for 1891, p. 18.

poses of the family. To the same effect is the decision of the Calcutta High Court in *Sheo Pershad Singh* v. *Sahib Lal*[1], in which the head-note runs thus: "the sale having been under a decree in respect of a joint debt of the family, the whole interest of the family in the properties in dispute passed at the sale, although L and S only out of the members of the family were sued." We, therefore, frame these issues—

(1) Whether the debt for which the decree was passed was contracted by Devji as the manager of the family and for a family purpose?

(2) Whether the interests of the plaintiffs Nos. 2 and 3 were attached and sold in execution of the decrees? and

(3) If so, whether it is open to the defendant in the present suit to contend that he is still possessed of their interests?

(This last issue, we may remark, is framed at the request of the pleader for the respondent in relation to point 3 in Appeal No. 109 of 1897.)

We ask the Judge to certify his findings on the above issues within two months.

[1] (1892) 20 Cal, 453.

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Fulton.

KOTRABASSAPPAYA (ORIGINAL DEFENDANT), APPELLANT, *v.* CHENVIRAPPAYA AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1898. *August* 11.

Specific Relief Act (I of 1877), Sec. 39—Limitation Act (XV of 1877), Sch. II, Art. 91—Suit to cancel a void or voidable instrument—Reasonable apprehension of serious injury—Limitation.

Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it cancelled. The test is "reasonable apprehension of serious injury." Whether that exists or not, depends upon the circumstances of each case. It cannot be laid down, as a rule of law, that in no case can a man, who has parted with the property in respect of which a void or voidable instrument exists, sue to have such instrument cancelled.

* Second Appeal, No. 172 of 1898.