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the nine classes of *bandhus* mentioned in the Mitakshara. Mr. Mulla also in his work on Hindu Law cannot point to any authority to support the learned Judge's conclusion. We may take it then as settled law, as far as the present case is concerned, that female *bandhus* are still excluded from being treated on an equality with male *bandhus*.

The result is that the appeal is allowed and the plaintiff can only be entitled to the half share of Appa in the plaint property subject to the mortgage of the defendants Nos. 3 and 4.

It is true that he sues for possession although the properties are in the possession of the mortgagees until the mortgages are paid off. But it is just as well that in order that there should be no dispute in the future we should hold him entitled to that half share of Appa subject to his having to pay off the mortgages together with the costs and further charges if any before he gets possession.

Plaintiff to pay costs throughout.

The cross-objections are dismissed with costs.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

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VISHNU DHONDDEV PALKAR (ORIGINAL PLAINTIFF), APPLICANT *v.* RAMPRATAP DAULATRAM MARWADI (ORIGINAL DEFENDANT), OPPONENT *.

Civil Procedure Code (Act V of 1908), section 115—Attachment before judgment at the instance of petitioner—Sale proceeds paid into Court—Opponent withdrawing the proceeds in execution of a decree—Notice of payment not given to the petitioner—Petitioner's suit for rateable distribution—Dismissal of suit—No material irregularity.

* Civil Application No. 279 of 1919 under Extraordinary Jurisdiction.

The petitioner filed Suit No. 71 of 1916 against one Koudanmal and applied for attachment before judgment. The property attached was sold and the sale proceeds were paid into Court to the credit of the suit. Eventually a decree was passed in the suit on the 10th April 1916. On the 7th April 1916, the opponent who had previously got a decree against Kondanmal applied for execution and asked that the sale proceeds which were lying in Court to the credit of the petitioner's suit be attached. His application was heard and the money in Court was paid to him on the 19th April 1916 without any notice to the petitioner. The petitioner who could not then apply for execution as he had not obtained a copy of the decree in his suit, brought the present Suit No. 779 of 1916 against the opponent to recover an amount which he could have got out of the moneys attached if there had been rateable distribution. Both the lower Courts dismissed the suit. The petitioner having applied to the High Court under its extraordinary jurisdiction,

Held, that there was no material irregularity which would entitle the Court to interfere under section 115, Civil Procedure Code, 1908, although the attaching Court, before it paid out the proceeds of the petitioner's attachment to the opponent, ought to have given the petitioner notice as a matter of equity.

APPLICATION under extraordinary jurisdiction praying for reversal of the order passed by W. Baker, District Judge of Satara, in Miscellaneous Application No. 71 of 1917.

Suit to recover money.

The petitioner filed Suit No. 71 of 1916 in the Subordinate Judge's Court at Satara against one Kondanmal and applied for attachment before judgment of his property. The attachment before judgment was granted and the property being of a perishable nature was sold and the sale proceeds, viz., Rs. 420, were paid into Court to the credit of the suit. The suit having been heard a decree was passed in favour of the plaintiff on the 20th April 1916.

Prior to this date, the opponent had obtained a decree in Suit No. 419 of 1915 against the said Kondanmal on the 13th March 1916 and presented a Darkhast for execution on the 30th March 1916.

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On the 7th April 1916, the opponent made an application in execution that the sale proceeds obtained in the petitioner's suit should be attached. They were accordingy attached on the 12th April 1916. On the 19th April 1916, the opponent, without any notice to the petitioner, obtained an order for payment and the money was paid to him. The petitioner had not then applied for execution of his decree as he had not got a copy of the decree.

The petitioner, therefore, brought the present suit, being Suit No. 779 of 1916 to recover the amount of Rs. 174-5-0 which he would have got out of the moneys attached if there had been rateable distribution.

The Subordinate Judge held that on the 19th April 1916 when the defendant removed the money from the Court, the plaintiff had no sort of right to the assets then in Court nor had he any lien on them created by virtue of his attachment before judgment (vide section 73, Civil Procedure Code, 1908, and I. L. R. 12 Bom. 400 and I. L. R. 34 Mad. 25). He, therefore, dismissed the suit.

The plaintiff preferred an application to the District Judge who dismissed the application.

The plaintiff thereupon made an application to the High Court under its extraordinary jurisdiction.

Nilkant Atmaram, for the applicant.

K. N. Koyajee, for the opponent.

MACLEOD, C. J. :—The petitioner filed Suit No. 71 of 1916 in the Subordinate Judge's Court at Satara against one Kondanmal and applied for attachment before judgment. The attachment before judgment was granted and the property being of a perishable nature

was sold and the sale proceeds, viz., Rs. 420, were paid into Court to the credit of the suit. Eventually a decree was passed in the suit on the 10th of April 1916. The plaintiff should then have applied for execution, but it was not necessary to apply for a re-attachment of the property, because after the decree was passed the property remained in detention. Then the opponent, who had previously got a decree against the same defendant, applied for execution on the 7th of April and asked that the sale proceeds, which were lying in Court to the credit of the petitioner's suit, be attached. That he could do under Rule 10 of Order XXXVIII. The opponent's application for attachment was heard on the 12th of April and an order was made for attachment. On the 19th of April the opponent obtained an order for payment and the money was paid to him. The petitioner meanwhile had not applied for the execution of his decree as he had not got a copy of the decree. Then he brought Suit No. 779 of 1916 against the opponent to recover the amount of Rs. 174-5-0 which he said he would have got out of the moneys attached if there had been rateable distribution. His suit has been dismissed by the learned Subordinate Judge and also by the District Judge in appeal.

The question before us is, whether there has been any material irregularity which would entitle us to interfere in revision. No doubt on the face of it, it seems a very hard case, and if the attaching Court had clearly done what it ought not to have done or left undone what it ought to have done, and the lower Courts in the present suit filed by the petitioner had failed in their duty to observe that, then it might be said that there was a material irregularity which would entitle us to interfere. But although it may be said that the attaching Court, before it paid out the proceeds of the petitioner's attachment to the opponent, ought to have

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given the petitioner notice as a matter of equity, still I cannot see anything in the Code which makes it necessary for the attaching Court to give such notice. Until the petitioner applied for attachment, no doubt the money was lying in Court, detained for his benefit, but still available for any decree-holder of the same defendant. If a decree-holder applied for attachment of those moneys which were being detained, the Court was bound to grant such an application. If the Court had given notice to the petitioner, and he had made an application for the execution of his decree, the Court might then have said that he was entitled to rateable distribution. It seems to me that the petitioner, having got his decree, failed to observe that there was a risk of his losing the fruits of his attachment. He did not apply to the Court at once to confirm the previous attachment, in other words, he did not apply for the execution of the decree so as to make his position secure. I cannot say, therefore, that there has been any material irregularity in the proceedings of the lower Courts in dismissing the petitioner's suit.

The rule, therefore, will be discharged with costs.

FAWCETT, J. :—I agree. But I think the case suggests the advisability of a rule being made under the powers conferred on the High Court, requiring a Court in such a case to issue notice to the person at whose instance the property sought to be attached is already under attachment before judgment, prior to directing a disposal of such property in execution of a decree.

Rule discharged.

J. G. R.