any obligation, express or implied, to recoguize. That being so, the case comes within the observation of the Judicial Committee in the case of *Ram Tuhul Singh* v. *Biseswar Lall Sahoo* (1). The observations are in page 143. Their Lordships say :—"But even if this were true, it is not in every case in which a man has benefited by the money of another, that an obligation to repay that money arises." It was a voluntary payment. In fact the greatest difficulty would arise in apportioning, out of the whole sum, the proper amounts which had been set against this particular property. He bought an entire turruff, and by causes, no doubt beyond his control, part has gone out of his hands. The appeal must be dismissed with costs.

Appeal dismissed.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Prinsep.

RAI NARAIN DASS (DEFENDANT) *v.* NOWNIT LAL AND BUNWARI LAL (PLAINTIFF AND DEFENDANT No. 2).*

1879
March 17.

Hindu Law—Mitakshara—Execution-Sale of Interest of one Member of a Joint Family.

The principle laid down in the case of *Deendyal Lal* v. *Jugdeep Narain Singh* (2) that the right, title, and interest of a Hindu father in a joint family estate under the Mitakshara law can be attached and sold in execution of a decree obtained against him personally, is applicable to the right, title, and interest of any member of the joint family, and is not confined to the interest of the father alone.

THIS was a suit brought by the father of a joint Hindu family to stay the sale of certain property belonging to the joint family, which had been attached under a decree obtained by the defendant No. 1, in a suit brought against the plaintiff's son, the defendant No. 2, to recover certain sums of money advanced by him.

(1) L. R., 2 In. Ap., 131.

* Appeal from Original Decree, No. 312 of 1877, against the decree of Baboo Gobind Chunder Sandyal, Subordinate Judge of Patna, dated the 16th August 1876.

(2) 4 L. R., In. Ap., 247; S. C., I. L. R., 3 Calc., 198.

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The plaintiff stated that he and his son (the defendant No. 2) lived together in the same house in commensality, he the plaintiff having sole charge and management of all the affairs connected with the joint family; that his son, without his authority, borrowed from one Luckin Chand of Benares Rs. 5,000 at 3 per cent. per mensem, under a bond dated the 5th September 1873, and that Luckin Chand transferred his debt to the defendant No. 1. The plaintiff further stated that the defendant No. 1 obtained an *ex parte* decree on the bond, and took out execution against the ancestral property belonging to the joint family, and caused a four-anna share in the property to be attached. That he, the plaintiff, filed an objection to the attachment, stating that his son had no right in the property, and praying that the attachment might be removed; and on the 4th April 1876 obtained an order setting aside the auction-sale and appointing a manager to the property. That on appeal this order was reversed as far as the appointment of the manager was concerned; that defendant No. 1 again applied for execution of his decree, which was eventually allowed, and the property in question in this suit was put up for sale on 15th December 1876.

The plaintiff thereupon brought the present suit to stay the sale, contending that the property was ancestral and undivided, and, therefore, could not be sold for a debt contracted by a single member of a joint family for purposes which were not for the benefit of the joint family.

The defendant contended that all the members of the joint family ought to join in the suit; that, according to Hindu law, a son was entitled to ancestral property without the consent of the father; and that having advanced sums of money to the son for purposes of necessity, he was entitled to recover them by sale of the son's interest.

The Subordinate Judge held that the plaintiff, as manager of the joint family, had a right to bring the suit in order to save the ancestral property from sale; that the defendant No. 1 had failed to prove that the sums advanced were for the benefit of the joint family; and that before partition had been come to, it was wrong to attach a four-anna share of the property as

belonging to the defendant No. 2; he therefore gave a decree in favor of the plaintiff.

The defendant No. 1 appealed to the High Court.

The *Officiating Advocate-General* (Mr. *J. D. Bell*), Mr. *C. Gregory*, and Munshi *Mahomed Yusuff* for the appellant.—The debt was not incurred by the family, but was the personal debt of the defendant No. 2. The interest of one coparcener in the joint family property of a Hindu can be attached and sold: *Mahabalaya bin Parmaya* v. *Timaya bin Appaya* (1); see also *Udaram Setaram* v. *Ranu Panduji* (2); *Syud Tuffuzzool Hossein Khan* v. *Rughunath Pershad* (3); *Kalee Pudo Banerjee* v. *Choitun Pandah* (4); *Deendyal Lal* v. *Jugdeep Narain Singh* (5); *Girdharee Lall* v. *Kantoo Lall* (6).

Baboo *Chunder Madhub Ghose* and Baboo *Pran Nath Pundit* for the respondents.—If a son in a joint Hindu family could borrow money on the security of the family property, it would encourage extravagance,—it is contrary to the Mitakshara. [GARTH, C. J.—Look at the other side; they could cheat all their separate creditors; under the Mitakshara, the members of a joint family have an interest, but no share till partition.] The whole scope of the Mitakshara law points out that a son's rights cannot be sold. The position of a father under the Mitakshara is, that he has sole dominion over the family property, he can contract debts, and these are binding unless proved immoral; creditors have an equity against the son; the Privy Council case, *Girdharee Lall* v. *Kantoo Lall* (6), cited by Mr. Bell, shows the reasons for this. The position of a son in the Mitakshara family is, that he acquires a right in the property at birth, but he has no dominion before partition. The son's position is, therefore, entirely different to that of his father. He cannot even, except under exceptional circumstances, be entitled to partition as against his father; he has no independent dominion — *Baldeo Das* v. *Sham Lal* (7). Does the property

(1) 12 Bom., 138.
(2) 11 Bom., 76.
(3) 14 Moore's I. A., 40.
(4) 22 W. R., 214.
(5) 4 L. R, In. Ap., 247; S. C., I. L. R., 3 Calc., 198.
(6) 22 W. R., 56.
(7) I. L. R., 1 All., 77.

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come under s. 266 of Act X of 1877, so as to be liable to attachment? The creditor only really attached a right to sue for partition, for he could not attach any specific share as being the son's—*E. J. Drury* v. *Harradhun Bhuttacharjee* (1). Here not the right and interest of the judgment-debtor in the property were attached, but a four-anna share of certain property belonging to the joint family; there can therefore be no sale.

The *Officiating Advocate-General* (Mr. *J. D. Bell*) was not called on to reply.

The judgment of the Court was delivered by

GARTH, C. J. (PRINSEP, J., concurring).—We think that this case is quite undistinguishable in principle from that of *Deendyal Lal* v. *Jugdeep Narain Singh* (2). It was there held by the Privy Council that, where a decree has been obtained against the father of a joint Hindu family governed by Mitakshara law, his interest in the family property could be sold under the decree, and that what the purchaser bought under such a sale was the right which the father had as a member of the family to a partition, by means of which the extent of his share would be ascertained, and that share would then become the purchaser's property.

The only difference between that case and the present is, that here the member of the joint family against whom the decree has been obtained, is not the father of the family, but a son; and an attempt has been made by Baboo Chunder Madhub Ghose to show that the son is not in the same position as the father, because he would not, except under certain circumstances, be entitled to a partition as against the father. But it has been held by a Full Bench of this Court (3) that a son is entitled to a partition against his father.

There is nothing in the judgment of the Privy Council which leads us to think, that the principle which their Lord-

(1) 3 W. R., Misc., 18.

(2) 4 L. R., In. Ap., 247; S. C., I. L. R., 3 Calc., 198.

(3) 8 W. R., 15.

ships lay down is not applicable to the case of any member of the joint family; and our attention has been called to a case in this Court, which does not appear to have been reported (1), in which it was decided by Mr. Justice Jackson and Mr. Justice Tottenham, that where the facts were precisely similar to those of the present case, the interest of the son would pass to the purchaser by a sale under the decree.

Then another point has been raised in this appeal, *viz.*, that as the subject-matter of the attachment was a four-anna share of certain property belonging to the joint family, and not merely the right, title, and interest of the judgment-debtor (the son) in that property, the Court is bound to prevent the sale.

But as we understand the facts, the judgment-creditor (whatever the form of the attachment may have been) only proposes to sell the right, title, and interest of the judgment-debtor; and we find that the third issue raised in the Court below was, "Has the defendant No. 2 such an interest in the joint family property, that it is liable to sale in execution of the decree against him?"

The parties, therefore, evidently meant to raise the question, whether the right and interest of the judgment-debtor could be sold; and as the object of this suit was to prevent the sale not only of the entire property, which may have been attached, but also of any interest in it, we think that we ought not to interfere to prevent the sale of such right, title, and interest as the judgment-debtor has.

The judgment of the lower Court will, therefore, be reversed, and the plaintiff's suit will be dismissed with costs in both Courts.

Appeal allowed.

(1) Special Appeal, No. 2038 of 1877.