

APPELLATE CIVIL.

Before Mr. Jackson, Officiating Chief Justice, and Mr. Justice Tottenham.

JALLIDAR SINGH (PLAINTIFF) *v.* RAM LAL AND OTHERS (DEFENDANTS).*

1378
Sep. 16.

Hindu Law—Mitakshara—Unpartitioned Property belonging to Father and Son—Sale by Father—Decree against the Son—Purchase of Son's Interest—Suit by Purchaser for Possession under the Father's Sale.

Where property belongs to a father and son governed by the Mitakshara law, the son's interest vests at birth, and is saleable. The son may obtain a partition and separate possession of his share of ancestral property, and his share once partitioned will be liable to sale. There is, therefore, no reason why the interest of the son in the property whilst undivided should not be sold in satisfaction of his debts, but in such case the purchaser should bring a suit to obtain partition of the property.

THE facts of the case sufficiently appear from the judgment of the High Court which was delivered by

JACKSON, Offg. C. J.—The subject of this suit is a house in the City of Patna, which was the property of a Hindu named Gopi Sahu and his son Jhamak Sahu, who are governed by the Mitakshara law.

One Mussamut Rajo obtained a decree for money against Jhamak Sahu, and, in execution thereof, caused his right and interest in the property to be sold by auction. The defendant Ram Lal was the purchaser, and he obtained possession on the 21st May 1875. In the meantime, however, the plaintiff Jallidar Singh had, on the 15th of May, purchased the house from Gopi Sahu, the father, as belonging to him exclusively. He says he was dispossessed by the auction-purchaser, and sues to recover possession. It is not now contended that the house was the exclusive property of the father.

* Special Appeal, No. 2038 of 1877, against the decree of J. F. Brown, Esq., Officiating Judge of Zilla Patna, dated the 14th of June 1877, reversing the decree of Baboo Gocul Chund, Sudder Munsif of that District, dated the 31st of March 1876.

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The points urged in special appeal are, that though the son had an interest in the property, it was one that could not be transferred during his father's lifetime, and that even if saleable, the sale would not confer on the purchaser any right to possession during the lifetime of the father. The vendee of the latter, it is contended, is entitled to recover and hold possession. In support of this latter contention, the case of *Baldeo Das v. Sham Lal* (1) has been cited, in which the High Court of the North-Western Provinces held, that the son having no dominion over ancestral property during the lifetime of his father, could be ejected from occupation at the suit of the latter. There are other cases that show that a son cannot deal with his father's interest in family property, but that is a point for which authority is hardly needed. But no authority has been pointed out which goes the length of laying down that the son's own interest, vested in him from his birth, is not saleable. It is undeniable that a son may obtain a partition and separate possession of his share of ancestral property, and his share once partitioned will be liable to sale. There seems, therefore, to be no reason why the interest of the son while undivided may not be sold for his debts, and why the purchaser should not be entitled to obtain partition and possession.

In the present case, the purchaser has obtained possession of the whole property. That he is of course not entitled to keep; and, strictly speaking, perhaps the plaintiff in this suit, who purchased from the father, would be entitled to a decree, leaving the auction-purchaser to enforce his right to partition hereafter. But the simpler course seems to be to do now what will otherwise have to be done by another suit, *viz.*, to decree the plaintiff's claim to one-half of the premises in suit,—*i. e.*, to joint possession of the whole together with the defendant Ram Lal, until they mutually make some other arrangement. The name of the respondent Chedi Lal is by consent struck out of the record. The judgment of the lower Court is, therefore, set aside, and the suit is decreed in the manner indicated.

Each party will pay his own costs.

Appeal allowed.

(1) I. L. R., 1 All., 77.