APPELLATE CIVIL.

Before Mr. Justice Pratt and Mr. Justice Mitra.

MUDIT NARAYAN SINGH

v.

RANGLAL SINGH.*

1902
June 13, 16,

Hindu Law—Mitakshara—Joint family—Junior or dependent member of family—Kurta—Mortgage of family property—Necessity—Zaripeshgi lease—Partition.

Hindu law authorizes a younger member of a Mitakshara joint Hindu family to alienate or otherwise deal with immoveable property belonging to the family, for family necessity, whenever he is put forward to the outside world by the elder members of the family, as the managing member.

The disruption of a joint family cannot be effected by an order of Court against the intention of the parties, unless it is followed by an actual conversion of the joint tenancy into a tenancy in common or an actual partition by metes and bounds.

THE plaintiffs, Mudit Narayan Singh and others, appealed to the High Court.

The plaintiffs and the *pro formâ* defendants Nos. 3 to 7 were alleged in the plaint to be members of a joint Hindu family, governed by the Mitakshara Law. Eight annas of mouzah Peota was the joint ancestral property of the family, of which six annas was mortgaged by the plaintiffs Nos. 1 and 2 to one Kishen Das Purohit. Kishen Das obtained a decree on the mortgage against the plaintiffs Nos. 1 and 2, and proceeded to sell the entire eight annas of the property. Thereupon the sons and wives of the said plaintiffs objected to the sale, and upon that objection the Court by an order dated the 16th June 1880, determined the share of the plaintiff No. 1 to be 10 dams and that of the plaintiff No. 2 to be 16 dams, and directed the sale of the said two shares only. Kishen Das then brought a suit for a declaration that the remainder of the six annas mortgaged to him was also liable to sale for the satisfaction

* Appeal from Appellate Decree, No. 881 of 1900, against the decree of H. Holmwood, Esq., District Judge of Gaya, dated the 6th of February 1900, affirming the decree of Babu Jadu Nath Dass, Subordinate Judge of that district, dated the 1st of September 1899.

1902

MUDIT NARAYAN SINGH v. RANGLAL SINGH.

of the debt. He obtained a decree on the 14th July 1882, and the result was that the whole of the six annas of mouzah Peota was sold.

After the aforesaid sales, the plaintiff No. 1, who had been the manager of the family so long, ceased to be so, and Bhairo Pershad, a son of the plaintiff No. 1, acted as manager. Then, on the 19th January 1884, Bhairo Pershad and his brother, Rukmaj Pershad, the defendant No. 3, executed an ijara deed (zaripeshgi lease) in favour of the defendant No. 1, in respect of the remaining two annas of mouzah Peota, for the sum of Rs. 1,500, Rs. 500 out of which went to pay off an earlier debt secured by an ijara executed by the plaintiff No. 1 in 1858, in favour of one Nanhu Singh. Again, in July 1892, the defendants Nos. 4 to 8, sons of the plaintiffs Nos. 1 and 2, executed a second ijara lease in respect of 15 dams 7 cowries out of the 2 annas of mouzah Peota comprised in the first ijara in favour of the defendants Nos. 1 and 2 for Rs. 1,438. This was followed by a kobala executed by the same defendants in favour of the defendant No. 1, in respect of the entire share of one anna of the aforesaid mouzah.

The present suit was instituted by the plaintiffs to recover possession of 2 annas' share of mouzah Peota, which they say was unlawfully leased to the principal defendants as stated above. Both the lower Courts held that the effect of the order of the 16th June 1880 was to separate the plaintiffs Nos. 1 and 2 from the joint family, and that therefore their interest in the property in suit altogether ceased. They therefore held that Bhairo Pershad and Rukmaj Pershad, as the then only adult male members of the family had every right to grant the zaripeshgi lease complained of. The suit was accordingly dismissed.

Babu Umakali Mukerjee for the appellants.

Babu Mahabir Sahay for the respondents.

Cur. adv. vult.

1902
June 25.

PRATT AND MITRA JJ. The plaintiffs are some of the members of a joint Hindu family governed by the Benares School of the Mitakshara system of Hindu Law, the defendants Nos 1 and 2 are the holders in zaripeshgi lease of two annas' share

of Peota out of an eight annas' share which at one time belonged to the joint family, and the other defendants are the remaining members of the joint family. The suit was instituted for the purpose of recovering possession of this two annas' share of Peota, which the plaintiffs alleged had been improperly and without right alienated from the family by Bhairo Pershad, a member since dead. The suit was dismissed by the Courts below, and the plaintiffs other than the plaintiff No. 1, who died during the pendency of the appeal in the Court of the District Judge, are the appellants in this Court.

The following are the findings of fact arrived at concurrently by the Courts below. Plaintiff No. 1, Mudit Narayan Singh, was in or about the year 1858 the managing member of the Singh family and on the 29th Aghran 1265 (1858) he borrowed money from one Nanhu Singh under a zaripeshgi lease, hypothecating the disputed two annas' share of Peota. Later on Mudit Narayan and Mod Narayan (plaintiff No. 2) jointly mortgaged the remaining six annas' share of Peota to one Kishen Das Purohit, who got on the 13th December 1879 a decree for sale of this share in a suit against the mortgagors, Mudit Narayan and Mod Narayan only. When, however, this share along with another mortgaged property was advertised for sale at the instance of Kishen Das, a claim was put in by the other members of the Singh family. It was allowed on the 16th June 1880 with this modification, that the shares of the judgment-debtors on the record ascertained on the footing of a partition taking place on that date were directed to be sold and the rest of the family share was released. But Kishen Das was not satisfied with this order, and he brought a suit for a declaration that the entire hypothecated share, *viz.*, six annas, was liable to be sold under his decree. On the 14th July 1882 a consent decree was passed in favour of Kishen Das, and the six annas' share of Peota was ultimately sold and it passed out of the family. In the meantime, the sons and wives of Mudit Narayan and Mod Narayan brought a suit to set aside the *ijara* in favour of Nanhu Singh, which resulted in its dismissal with costs. There were other debts of the family to pay, and on the 19th January 1884 Bhairo Pershad and Rukmaj Pershad, two of the sons of Mudit Narayan,

1902

MUDIT NARAYAN SINGH v. RANGLAL SINGH.

who were then adults and were put forward as managing members of the family superseding their father and uncle (Mudit Narayan and Mod Narayan), executed in favour of defendant No. 1 a zaripeshgi deed of the two annas' share of Pecta already dealt with in 1858. With the money thus obtained Nanhu Singh was paid off and other family debts were discharged. The family, including Mudit Narayan and Mod Narayan, was benefited by the transaction. There was a subsequent zaripeshgi lease executed by defendants Nos. 4 to 8 in favour of defendants Nos. 1 and 2 on the 20th July 1892 for a share of 15 dams 7 cowries out of this two-annas' share. It was followed by a sale on the 12th October 1897 by defendants Nos. 4 to 8 of one-anna share out of the two annas to defendant No. 1. The family of the Singhs, however, including Mudit Narayan and Mod Narayan, continued joint in food, worship and estate, so far as it was practicable under the circumstances.

The Courts below have held that the effect of the order passed on the 16th June 1880 in the suit of Kishen Das was to cause a separation of the family. But the Lower Appellate Court has added a limit to the separation, and has held that the effect of the definition of the shares of Mudit Narayan and Mod Narayan was to separate them from the joint-family property, and that the extinction of their interest by the sale was followed by the younger members of the family remaining joint under the management of Bhairo Pershad. In this view the Courts below have held that the alienation by Bhairo Pershad by the first zaripeshgi lease effected for legal necessity was valid and binding on all the members of the family, except Mudit Narayan and Mod Narayan, who had lost all interest in Peota, and had no existing right to assert in the present suit.

We think the decree of the Courts below dismissing the plaintiff's suit is right, though we do not concur in their views as to the effect of the order of the 16th June 1880. That order was made on a petition of the subordinate members of the Singh family asking for the release of the entire mortgaged share, on the ground of the family being joint and the property ancestral. The Court made an order which they did not ask for, which was

ultimately set aside in a suit by the opposite party, the decree-holder. The members of the Singh family had no intention to separate, and in fact there was no separation amongst them, either by division of the family property by metes and bounds or by division of profits. The status of the family as that of joint co-parceners never ceased. The disruption of a joint family cannot be effected by an order of Court against the intention of the parties, unless it is followed by an actual conversion of the joint tenancy into a tenancy in common, or an actual partition by metes and bounds. In this particular case the order of the 16th June 1880 was itself nullified by the subsequent decree of the 14th July 1882, and the only effect of the sale in execution of Kishen Das's decree was to take away from the family the mortgaged share of six annas of Peota. The sale was not followed by a separation of the members of the family or a division of the remainder of the family property.

The question then arises—had Bhairo Pershad either acting alone or jointly with Rukmaj Pershad, for the benefit of the family, the authority to bind the other members. The position of Mudit Narayan and Mod Narayan as heads of the family was not affected in law by the proceedings in the case of Kishen Das. But Bhairo Pershad and Rukmaj Pershad were put forward to the outside world as managing members superseding their father and uncle. They were allowed by the elder members of the family to deal with the family property, as if the power of these elder members as kurtas was gone. They had, therefore, authority, as at that time they were the only accredited agents of the family, to alienate property belonging to themselves and the other members, including the *de jure kartas*, whenever the necessities of the family required such an alienation. The touchstone of their authority is *necessity*, and if they acted as prudent owners borrowing for the benefit of the family, as has been found in this case, the other members are bound by their acts.

The power of a younger member of a joint Hindu family to deal with immoveable property belonging to it under circumstances such as we find to exist in this case is amply borne out by the texts of Hindu law. The text of Vrihaspati quoted in the Mitakshara, Ch. I, s. 1, v. 28, is—"even a single individual

1902

MUDIT NARAYAN SINGH v. RANGLAL SINGH.

may conclude a donation, mortgage, or sale of immoveable property during a season of distress for the sake of the family." Vijnanesvara's commentary on the text is: "Even one person who is capable may conclude a gift, hypothecation or sale of immoveable property, if a calamity affecting the whole family require it or the support of the family render it necessary." (Ch. I, s. I, v. 29.) Harita says: "While the father lives the sons are not independent in respect of the receipt, alienation and recovery of wealth, but if he be prodigal, absent in a remote country or afflicted with disease, let the eldest son manage the affairs." (Vivada Ratnakar, Ch. I, p. 4.) Sankha and Likhita also say "If the father be incapable, let the eldest manage the affairs of the family; or, with his consent, a younger conversant with business." (Vivada Ratnakar, Ch. I, p. 4.)

The power of a dependent member of a joint family, who is for some reason or other entrusted with the management of the joint estate, must be such as would enable him to deal with it for the benefit of the co-parceners in cases of need. The assent of the other members, including that of the father or grandfather, if they be alive, would be implied. Vrihaspati, quoted in the Viramitrodya, says: "Should even a dependent member enter into a transaction for the need of the family, the head of the family should not set it aside."

The Courts below have not expressed any opinion as to the necessities of the zaripeshgi lease, and the sale effected by the defendants Nos. 4 to 8, and the question of the validity of those transactions is, therefore, left open. But the suit of the plaintiffs must fail on the findings as to the necessity of the loan covered by the zaripeshgi of the 19th January 1884.

This appeal is accordingly dismissed with costs.

Appeal dismissed.

M. N. R.