

REG. V. BAHIRJI BIN KRISHNA'JI.

1863.
Aug. 12.*Fine—Imprisonment and Fine—Ind. Pen. Code—Sec. 344.*

Fine alone is not a legal sentence for a prisoner convicted under Sec. 344 of the Indian Penal Code.

THE prisoner in this case having been charged, under Sec. 344 of the Indian Penal Code, before J. MacFarlan, F. P. Magistrate, with having kept a man in wrongful confinement for ten or more days, and having been convicted of the offence, was sentenced to pay a fine of fifty rupees, or in default to suffer one month's rigorous imprisonment.

The case was called for by the High Court on the Magistrate's Monthly Return, and the following order passed therein:—

PER CURIAM (NEWTON and TUCKER, JJ.):—The sentence is annulled, and the case remanded in order that a legal sentence may be passed, including imprisonment, of which a momentary term will satisfy the requirements of the law.

Sentence annulled.

Special Appeal No. 92 of 1863.

Aug. 18.

GUNDO MAHA'DEV *Appellant.*

RA'MBHAT BIN BHA'U BHAT *Respondent.*

Hindú Law—Mortgage of Undivided Share of Family Estate—Manager's Power to mortgage Family Estate.

A member of an undivided Hindú family has a right to mortgage his own share of the family estate, and, if he be acting as representative and manager of the undivided family, to mortgage the interests of the other members of the family therein on any common family necessity, or for the common benefit and use of the undivided family.

THIS was an action by Gundo Mahádev to recover the sum of Rs. 267-7-6, alleged to be due on a mortgage bond dated 9th January 1860, and executed by Narsi Bhat, a member of an undivided Hindú family. The property mortgaged consisted of a house, and the money sued for was sought to be realised by the sale of the mortgaged property, and, if the proceeds proved inadequate for that purpose, from Narsi Bhat personally. The action in the first instance was against Narsi Bhat alone, but Rám Bhat was afterwards made a defendant.

1908.
 GUNDO
 MARA'DEV
 v.
 NARSI BHAT
 BHAT.

Narsi Bhat admitted the execution of the mortgage deed in question, but denied the receipt of any consideration. Rám Bhat contended that the suit was a collusive one; that Narsi had no right to the house in dispute, which had been acquired by Bháú Bhat, the father of Rám Bhat and Narsi Bhat.

The Munsif of Belgaum, A'zam Shrinivásráv Krishn, considered the mortgage deed established, and gave a verdict for plaintiff Gundo for the amount sued for, to be realised by sale of the house in question, one-fourth of the proceeds of which, forming Narsi's share, was adjudged to the plaintiff, and any balance thereafter unliquidated to be realised from Narsi personally.

Against this decision Rám Bhat alone appealed, on the ground that Narsi Bhat had no interest in the house in dispute, so as to give him a title to alienate it in any way; that he, Rám Bhat, was no party to the mortgage, and there was proof that the house in dispute was a portion of the ancestral family estate.

The Judge of Dhárwár, F. Lloyd, held that, Narsi Bhat and Rám Bhat being undivided in interest, Narsi Bhat had no power without the consent of his brother to mortgage the house in dispute; and he varied the Munsif's decree by throwing out the plaintiff Gundo's claim against the house, confirming it as to the personal liability of Narsi.

A special appeal was thereupon preferred against this decision, on the ground that it was competent to one member of an undivided Hindú family to mortgage his own share in the family property, without the consent of the other members of the family, and that under certain circumstances he was competent to mortgage the whole of the same without the consent of the others.

The appeal was heard before FORBES and TUCKER, JJ.

Dhirajlál Mathurádas for the appellant.

The Court delivered the following judgment:—We hold that Narsi Bhat had power to mortgage his own interest in the house, although the family was undivided, and that, if he were acting as representative and manager of the undivided family, he had power to mortgage the whole of the house upon any common family necessity, or for the common benefit and use of the undivided family. We, therefore, reverse the decree of the Court below, and remand the case,

in order that the Judge may determine whether the plaintiff can show that Narsi acted as representative of the family, and executed the mortgage under any common family necessity, or for their common benefit, and may pass a new decision in conformity with our view of the law.

1863.
GUNDO
MAHA'DEV.
v.
RA'MBHAT
BHA'UBHAT.

The second defendant, Rám Bhat, to be at liberty to prove that Narsi Bhat was not acting as manager, or that there was collusion between Gundo Bhat and Narsi.

Decree reversed.

Special Appeal No. 249 of 1863.

Aug. 24.

SÁLU kom RA'GHUJI *Appellant.*
RA'VJI bin RA'MJI and MAHA'DJI..... *Respondents.*

Limitation—Mirás' Land—Reg. V. of 1827, Sec. I.

The law of limitation contained in Sec. I. of Reg. V. of 1827 applies to Mirás land as well as to all other descriptions of immoveable property.

Special Appeals No. 2520 of 1850 (Morris's Selected Decisions, Pt. I., p. 51), and No. 3064 (Morris, S. D. A. Rep., Vol. II., p. 189), overruled.

THIS was an action brought by Rámji and Mahádji to recover possession of a *mirás* field which had been taken up by the defendant, Sálu, after they had left the country on account of poverty (*parágandá*). Sálu denied the plaintiffs' title to the land, and contended that her family had held it for fifty or sixty years from Government, and that the plaintiffs had never occupied it.

The case was tried by Khán Sáheb Ghulám Mohiuddin, Šadr Amín of Puná, who threw out the claim, on the ground that the plaintiffs had not produced sufficient evidence to warrant their ousting the defendant, Sálu.

On appeal, the Assistant Judge, F. D. Melvill, reversed the Šadr Amín's decree. He found that in the revenue records the land was entered as the plaintiffs' *mirás*, and although oral evidence proved that the defendant had cultivated it for some twenty or thirty years, and the plaintiff Rávji himself admitted not only that he had never cultivated the land, but that he knew nothing about his father ever having done so, yet the defendant, Sálu, had not produced proof to show that the land was not the plaintiffs' *mirás*. The Assistant Judge, in accordance with numerous rulings