

proceedings that the person was convicted of the offence of being in possession of false weights, the same being in excess of the authorised weights, and sentenced, on the 3rd of November 1863, by the Deputy Collector of Khedá, to pay a fine of Rs. 5, commutable to four days' simple imprisonment.

1864.

REG.

v.

DA'MODHAR

DA'LJI.

PER CURIAM (COUCH and TUCKER, JJ.):—The Court reverses the conviction and sentence, and orders the fine, if levied, to be restored, as no fraudulent intention was either charged or proved.

Conviction reversed.

Special Appeal No. 609 of 1863.

DA'MODHAR VITHAL KHARE *Appellant.*

March 4.

DA'MODHAR HARI SOMAN *Respondent.*

Hindú Law—Manager of Undivided Hindú Family.

The manager of an undivided Hindú family, if acting in his individual capacity, can sell his own share of the family property only.

THIS was a Special Appeal against the decision of the Acting Senior Assistant Judge at Ratnágiri, A. T. Crawford. It appeared that Dámódhar Khare preferred his plaint, on the 14th of November 1859, in the Court of the Munsif of Harnai, stating that the defendant had obstructed his enjoyment of a certain *thikán* purchased by him of Mahádáji Soman, a brother of the defendant, by preventing him from receiving the rent thereof. The defendant replied that the sale under which the plaintiff claimed was fictitious, and that he was in possession.

The Munsif threw out the claim, on the ground that Mahádáji (the seller) was not in possession, and was, moreover, incompetent to sell the said *thikán* without the consent of his two brothers, to whose share it had fallen on a division of the family property; that the plaintiff's averments and occupation were not proved; and that the deed was of a very doubtful character. On appeal by the plaintiff, the acting Senior Assistant Judge found that the *thikán* was bought by

1864
 DA'MODHAR
 V.
 KHARE
 V.
 DA'MODHAR
 H. SOMAN.

the father of Soman and his two other brothers; that they (the Somans), being undivided, Mahádáji had no power to sell the *thikán* to the plaintiff; and that the defendant was, moreover, in possession of, and paid the Government assessment on, the *thikán*. He, therefore, confirmed the Munsif's decree with costs.

Against this decision a special appeal was preferred. It was argued before FORBES and ERSKINE, JJ.

Dhirajlál Mathurádás for the appellant.

Ganesh Hari Patvardhan, for the respondent, contended that the sale by Mahádáji in his character of manager of an undivided Hindú family was valid, if made for necessary purposes; and that the Judge should at all events have awarded the property to the extent of Mahádáji's share, he having held the family to be undivided.

PER CURIAM :—This is in effect a suit to restrain the defendant from interfering with the plaintiff in his dealing with the *thikán* and the rents of it; and the Acting Senior Assistant Judge has held that the *thikán* is family property; that the family is undivided, and that the *thikán* has been sold by Mahádáji to Dámodhar, the plaintiff; but has neglected to decide whether, when Mahádáji sold it, he was acting as the manager of the undivided family in a matter of common benefit or necessity, or whether he was merely acting in his individual capacity, in which latter case he would be entitled to sell his own share in the property only. The Acting Senior Assistant Judge should decide this point, and should pronounce, if necessary, what the amount of Mahádáji's share in the *thikán* may be, and for these purposes he should cause Mahádáji and his brother Báláji to be made parties to this suit. The Court reverses the decree of the Acting Senior Assistant Judge, and remands the case, in order that the above instructions may be attended to, and a new decree passed on the merits, awarding costs.

Decree reversed.