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Nov. 28

Special Appeal No. 384 *of* 1866.

MA'DHAVRA'V RA'GHAVENDRA.....*Appellant.*
BA'LKRISHNA RA'GHAVENDRA *et al.* .....*Respondents.*

Usage—Family Custom—Hindú Law.

Evidence of the acts of a single family repugnant or antagonistic to the general law will not establish a valid custom or usage enforceable in a Court of Justice.

Tara Chand v. *Reeb Ram* (3 Mad. H. C. Rep. 50) followed.

THIS was a Special Appeal against the decision of W. Sandwith, Joint Judge of the District of Dhárwár, in Appeal Suit No. 476 of 1865, confirming the decision of the Munsif of Chikodí.

The plaintiff, Mádhavráv, brought this suit to obtain possession of a portion of an ancestral house in the possession of the defendants, alleging that by the custom of their family he as the eldest brother was entitled to the whole of it.

The defendants denied the family custom, and asserted that the case was governed by the general principles of Hindú law.

The Joint Judge considered that the Hindú law should take precedence of the custom of the country, according to Sec. 26 of Reg. IV. of 1827, and under this view confirmed the Munsif's decree.

PER CURIAM (TUCKER and GIBBS, JJ.):—The Court are of opinion that the Joint Judge has ruled incorrectly in declaring that under Reg. IV. of 1827, Sec. 26, the written Hindú law should have the effect of British statute law, and take precedence of the usage of the country; but in the present case no usage of the country has been asserted.

The plea urged by the plaintiff was in reality that there was a *special family* custom, which is admittedly opposed both to Hindú law and the ordinary custom among persons bound by that law, of which he sought to take advantage. We concur in the opinion expressed on the point by the High Court of Madras in *Tara Chand* v. *Reeb Ram* (*a*),

(*a*) 3 Mad. H. C. Rep. 50.

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and consider that no evidence of the acts of a single family repugnant or antagonistic to the general law, will establish a valid custom or usage which can be enforced by a Court of Justice, and we hold consequently that the court of first instance decided correctly in refusing to inquire into the existence of such special family custom. We, therefore, affirm the decree of the lower courts: costs on the special appellants.

Decrees affirmed.

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March 21.

Special Appeal No. 46 *of* 1867.

DHONDU' MATHURA'DA'S NA'IK.....*Appellant.*
RA'MJI valad HANMANTA' KA'KDA'.....*Respondent.*

Sale—Sheriff's Sale — Immoveable Property — Warranty — Caveat Emptor.

In a sale of immoveable property made by a Civil Court in execution of a decree, there is no implied warranty by the execution creditor of the title of the judgment debtor—the maxim "*caveat emptor*" applying.

THIS was a Special Appeal from the decision of A. Richardson, District Judge of Ahmednagar, in Appeal Suit No. 359 of 1866, confirming the decree of the Munsif of Sinnar.

The case was argued before TUCKER and GIBBS, JJ.

Shántárám Náráyan and *Pándurang Balibhadra* for the special appellant.

Ganesh Hari Patvardhan for the special respondent.

The facts of the case, so far as material, appear from the following judgments, delivered this day:—

GIBBS, J.:—This is a suit brought by Rámji against Dhondú to recover damages which, he alleged, had accrued by Dhondú having attached, and the Court having sold, certain land as the property of Dhondú's judgment debtor, Ráma, but which was subsequently decided by decree of the Court, in a suit, "*Rámji* v. *Ráma*," not to belong to that person.

The Munsif held that it was incumbent on Dhondú to prove that the land belonged to his judgment debtor, and