

*Special Appeal No. 404 of 1869.*

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Dec. 17.

Tukaram Ambaidas... .. *Appellant.*

Ramchandra valad Bhimanna Dhtigi... .. *Respondent.*

*Hindu law—Sale of undivided property*

On this side of India a member of an undivided Hindu family can without the consent of his coparcener, sell his shares in the undivided property.

This was a Special Appeal from the decision of S. H. Phillpots, Senior Assistant Judge at Solapur, in Appeal Suit No. 21 of 1868, amending the decree of the Munsif of Solapur.

The plaintiff, Tukaram, brought this action to recover a house sold to him under a deed of sale made in 1857 by Bhimanna, deceased, the father of Vithoba, also deceased, and of Ramchandra. The house was subsequently let by the plaintiff to Vithoba and Ramchandra, who the plaintiff alleged, executed a rent note. The defendant, Ramchandra, set up a claim to occupy the house in his own right, and not as a tenant, and the plaintiff therefore prayed that the house might be awarded to him as the owner thereof.

The mother and guardian of Vithoba's minor son did not appear.

The defendant, Ramchandra, answered that he occupied the house in his own right, and not on behalf of the plaintiff; that the house being ancestral family property, his father had no right to sell without his consent his half share in the house; and, lastly, that he did not execute either the alleged deed of sale or the rent-note.

The Munsif of Solapur found that Tukaram was owner of the house, and that the defendant occupied the house as his tenant, and accordingly decreed for the plaintiff.

The defendant appealed to the Assistant Judge of Solapur, who reversed the Munsif's decree, and remanded the suit for trial on two new issues framed by him: 1st, whether the property was or was not ancestral; and, 2ndly, whether the

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brothers Vithoba and Ramchandra were divided in interest at the time of the sale, and had separate shares.

The Sadr Amin of Solapur, before whom the suit came to be tried on remand, decreed for the plaintiff, holding that the house was not ancestral property, and that the consent of the sons was not necessary to a valid sale by their father Bhimanna; and on the second issue that the two brothers were not divided in interest; and that the defendant, Ramchandra, did not live separate from his father, and had no separate share.

The defendant again appealed to the District Court; and the Senior Assistant Judge, S. H. Phillips, held that the house was not shown to be self-acquired; and as Ramchandra Vithoba, and Bhimanna were members of an undivided family, Bhimanna, the father, could not sell, in the absence of any proof of common family necessity, his son Ramchandra's share of the ancestral property. Vithoba and Ramchandra were brothers, and as Vithoba acquiesced in the sale made by his father, and Ramchandra did not consent, and did not execute the deed or the rent-note, the Assistant Judge held that the sale of Ramchandra's half share in the house, being without his consent, was invalid, and accordingly amended the Sadr Amin's decree.

From this decision the plaintiff appealed, and the appeal was heard before WARDEN and MELVILL, JJ.

*Nanabhai Haridas* for the appellant:—Ramchandra was living with his father Bhimanna, and his brother Vithoba. The actual execution by one of, and the acquiescence by the other in, the deed of sale and rent-note are admitted. Ramchandra therefore lived as a tenant in the house. The sale by the father is valid to the extent of his own share: *Palanivelappa Kaundan v. Mannaru Nukan* (a); and Vithoba, one of the brothers, was a consenting party. The appellant is therefore entitled to two-thirds of the house.

*Dhirajlal Mathuradas* for the respondent:—It has been ruled by this Court in *Gangubai v. Ramnana* (b) that a

(a) 2 Mad. H. C. Rep. 416.

(b) 3 Bom. H. C. Rep. A. C. J. 66.

member of an undivided Hindu family cannot, without the consent of his coparceners, make a gift of his share in the undivided property, or dispose of it by will. The sale by the father was therefore invalid, even to the extent of his own share.

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*Nanabhai Haridas*, in reply, cited *Gundo Mahadev v. Rambhat bin Bhaubhat (c)*, and *Damodhar Vithal v. Damodhar Hari (d)*.

PER CURIAM:—The facts found by the District Judge are that Bhimanna and his sons Vithoba and Ramchandra were an undivided family, and that Bhimanna with the consent or acquiescence of Vithoba, but without Ramchandra's consent, sold the family house to the plaintiff. Under these circumstances the Judge has awarded a half share of the house to the plaintiff, who appeals, on the ground that he is entitled to the whole house. On the other hand it is contended for the respondent that the sale was invalid, since, a member of an undivided family cannot, without the consent of his co-sharers, alienate even his own share of the family property. The authority relied upon in support of this proposition is the case of *Gangubai v. Ramanna (supra)*. We think that the decision in that case went no further than to declare that a member of an undivided family cannot, without consent of coparceners make a gift of his share, and that it in no way affected the previous decision of this Court that a member of an undivided Hindu family can sell his own share of the family property: *Damodhar Vithal v. Damodhar Hari (supra)*. We hold, therefore, that the sale to the plaintiff is valid as regards the share of Bhimanna, and invalid as regards the share of Ramchandra. We accordingly amend the decree, by decreeing two thirds of the house to the appellant.

*Decree amended.*

(c) I Bom. H. C. Rep. 39. (d) Ibid 182.