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Beaumont v. *Reeve* (*o*). See also 3 Bos. and P. 249—note *to* *Wennall* v. *Adney*, adopted in *Eastwood* v. *Kenyon*.

On these grounds, we affirm the decree of the District Judge with costs, and with a declaration that only the right, title, and interest of the second defendant, Munjnáth Bhat, can be sold under the attachment of the three houses mentioned in the plaint.*

Decree affirmed.

June 24.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 313 *of* 1872.

FAKIRA'PA' BIN SATYA'PA' .....*Appellant.*

CHANA'PA' BIN CHANMALA'PA' .....*Respondent.*

Hindu Law—Alienation by a coparcener of his share in the undivided family property.

Held by a Full Bench, following the doctrine laid down in the preceding case, *Vasudev Bhat* v. *Venkatesh Sanbháv*, that a Hindu parcener may, without the consent of his coparceners, alienate his share in undivided family property.

Tukaram v. *Ramchandra* (6 Bom. H. C. Rep. A. C. J. 247) approved and adopted.

Bajee v. *Pandoorung* (Morris Part II. 93) disapproved.

THIS was a special appeal from the decision of Baron Larpent, District Judge of Dharwar, affirming the decree of the Principal Sudr Amin.

Chanápá brought this suit to establish his right to a house purchased by Fakirápá at an auction sale in execution of a decree against the plaintiff's son, Báslingápá. The plaintiff alleged that he had turned out Báslingápá on account of

(*o*) 8 Q. B. 483.

* See the next case.

misconduct, and that the house in dispute belonged exclusively to himself. Both the Lower Courts decreed in the plaintiff's favour.

On special appeal, GIBBS and KEMBALL, JJ., remanded the case for trial of the issue:—"Whether the plaintiff has proved that he built the house wholly and entirely with his own self-acquired means, irrespective of family resources" with the following remarks:—

"The District Judge has not found sufficient facts to enable this Court to apply the Hindu law to the case. It is necessary that the party, alleging that the house he built was built from his own self-acquired funds, should prove his assertion: *Bái Manchá* v. *Narotamdas* (*a*). It is alleged that the site was ancestral; that an old ancestral house was removed. If this be so, it could hardly be said to have been built solely from the self-acquired means of Fakirápá. We think that the only question that arises in the case is whether Baslingápá has a share in the house. He would have a share, if it were ordinary ancestral property; and in accordance with a ruling of this Court, he could dispose of such share, even though no partition of the family estate had been made: *Tukárám* v. *Rámchandra* (*b*).

On the District Judge's finding, to the effect that the house was not built by the plaintiff with his own self-acquired means, the Division Court made a reference to the Full Bench with the following remarks:—

"The question decided in the case of *Tukárám* v. *Ramchandra (supra)* having arisen in this case, we are not prepared to follow that precedent. We consider that the question should be re-considered with reference to *Gangubái* v. *Ramanná* (*c*), *Sadabart Prasad Sahu* v. *Foolbash Koer* (*d*), *Appovier* v. *Rama Subba Aiyan* (*e*).

(*a*) 6 Bom. H. C. Rep. A. C. J. 1. (*b*) Ibid. 247.
(*c*) 3 Bom. H. C. Rep. A. C. J. 66. (*d*) 3 Beng. L. R., F. B., 31.
(*e*) 11 Moo. Ind. App. 75.

1873.

FAKIRA'PA' BIN SATYA'PA' *v.* CHANA'PA' BIN CHANMALA'PA'.

The special appeal was heard by WESTROPP, C.J., MELVILL, WEST, and NANABHAI, JJ., on the 24th June 1873.

Shántárám Náráyan (with him *Ghanashám Nilkant*) for the appellant referred to *Vasudev Bhat* v. *Venktesh Sánbhav* *

Fakirápá Lingápá, contra cited *Ballojee* v. *Venkapa (f)* *Bajee* v. *Pandoorung (g)*.

WESTROPP, C.J.:—This Court is of opinion that the case of *Tukárám* v. *Rámchandra* (*supra*) was rightly decided. The question as to the right of a coparcener to alienate, for valuable consideration, his share in Hindu family property before partition, has been lately so fully considered in *Vasudev Bhat* v. *Venkatesh Sanbhav*, that we deem it unnecessary to discuss in detail the authorities upon that question. We adopt the view there taken by the Division Court, in which *Tukárám* v. *Rámchandra* was then cited and approved. The only case in point cited for the respondent and not there mentioned is *Bajee* v. *Pandoorung* (*supra*), in which the Sudr Adalut held that one of two brothers, undivided in estate, could not sell his share in Hindu family estate, without the consent of the other. The Munsif, however, had ruled the contrary. The Assistant Judge, upon the opinion of the Shástri of the Zillah Court, reversed the Munsif's decree. Mr. Simson, the sitting Judge in the Sudr Adalut, after consulting the Shástri of that Court, admitted a special appeal against the decree of the Assistant Judge, being of opinion "that there was reason to suppose that the facts of the case had not been explicitly laid before the Shástri of the Zilla Court." Mr. Bell, the single Judge, however, when the case was called on for hearing, decided that there was no room for such a supposition, and under this view dismissed the appeal with costs. On examination of the opinion of the Zilla Shástri, it will be seen that there is an inconsistency in it.

* *Supra*, page 282.

(*f*) Sel. Rep. S. D. A. 216. (*g*) Morris, Part II. p. 93.

He says, "neither brother can sell his share before separation;" and yet he adds, "the part of the house containing the cookroom and place of worship belongs to the elder brother and the other half of the house to the younger"—a dictum at variance with the doctrine in *Appovier* v. *Rama Subba* (*supra*). Moreover, there does not appear to have been any reference to decided cases in *Bajee* v. *Pandoorung*. For these reasons, it does not appear to this Court to be an authority of any weight.

The case of *Tukárám* v. *Rámchandra* was followed by MELVILL and KEMBALL, JJ., in Special Appeals 33 and 34 of 1871, decided 14th June 1871, and in Special Appeal 503 of 1870 decided by the same Judges on the 6th November 1871, and in several other cases.

In replying to the question here referred to us by GIBBS and KEMBALL, JJ., that we consider *Tukárám* v. *Rámchandra* to have been rightly decided, and to be in accordance with the settled law of this Presidency, we must not be understood as indicating the extent to which that case is applicable under such circumstances as those of the present special appeal.

We remand this cause for final decision to the first Division Court.

The Division Court held the plaintiff, on behalf of himself and four of his coparceners, entitled to recover five-sixths of the house, and the defendant, as alienee of Baslingápá, entitled to the remaining sixth part.