

1873.
September 12.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 180 of 1873.

KALYAN'BHA'I, SON AND HEIR OF DÍP-
CHAND, deceased.....*Defendant and Appellant.*
MOTIRA'M JAMNA'DA'S*Plaintiff and Respondent.*

Court Sale—Partnership Property.

A suit was brought by *C* against “*A*, as manager of a firm, and also against the firm itself;” and a decree was passed accordingly. *A* was one of two partners in the firm. The other partner (*B*) was not named in the plaint. In execution of the decree, the right, title, and interest of *A* in a stable, which in fact belonged to the firm, was sold to the plaintiff. A suit is now brought by the plaintiff against *B*, the other partner in the firm, to recover possession of the property:—

Held, that the plaintiff is in no better position than a purchaser at a sale of partnership property made in execution of a decree against a single partner, and that he cannot be allowed to effect a partial partition, which the judgment-debtor, to whose right he succeeds, would not have been entitled to obtain. All that the plaintiff can do is to bring a suit for an account and settlement of the whole concerns of the firm, and claim that interest in the property, which, upon a final settlement, may be ascertained to belong to his judgment-debtor.

THIS was a special appeal from the decision of W. H. Newnham, Acting Judge of the District of Surat, confirming the decree of the Subordinate Judge of that station.

The appeal was heard by MELVILL and PINHEY, JJ.

Shivshankar Govindrám for appellant.

Girdharlál Dayáldás for *Dhirajlál Mathurádás*, Government Pleader, for respondent.

The facts sufficiently appear from the following:—

PER CURIAM.—The plaintiff is purchaser of a stable at a court sale. The suit, in which the decree was obtained, was, in accordance with an irregular practice too common in the mofussil, brought against Dhulabhái, as manager of a certain firm, and against the firm itself, without any specification of the names of the partners. Dhulabhái and Dípchand, the defendant in the present suit, appear to have been partners; but Dípchand was not formally made a party to the suit.

The decree was passed, in terms similar to those of the
 plaint, against Dhulabhái, as manager of the firm, and against
 the firm itself.

1873.

KALYAN'BHA'I
 v.
 MOTIRAM
 JAMNADA'S.

On an application for execution, the Subordinate Judge made an order that the right, title, and interest of Dhulabhái only should be sold, and in the certificate of sale, given to the plaintiff, that right, title, and interest, and nothing more, are specified. The District Judge was of opinion that it was intended to convey the whole right, title, and interest of the firm, though the name of the firm was by mistake omitted in the certificate; and, accordingly, as he found that the stable was the property of the firm, he awarded possession to the plaintiff. But we think that it is impossible for us to hold that the plaintiff acquired anything more than was ordered to be sold, and than was specified in his certificate of sale. If the certificate was defective, it was his own fault that he did not have it corrected. But we cannot say that the Subordinate Judge's order, that the interest of Dhulabhái only should be sold, was necessarily a mistake. It may have occurred to the Subordinate Judge that, in consequence of the non-joinder of any other partner in the suit otherwise than by the vague description of "the firm," the decree did not really bind any other person than Dhulabhái, and that therefore only Dhulabhái's interest could be sold. However this may be, we must hold that the plaintiff is in no better position than the purchaser at a sale of partnership property, made in execution of a decree against a single partner.

Regarding the position of such a purchaser, there can, we think, be no doubt. It is fully discussed by Mr. Justice Story in his *Equity Jurisprudence*, Secs. 677, 678, and in his work on *Partnership*, Secs. 261, 262. The purchaser takes only the same interest in the property purchased, which the judgment-debtor would have upon the final settlement of all the accounts of the partnership. He becomes a tenant-in-common of the property, but without any power to take

1873.

 KALYAN'BHAI
 v.
 MOTIRAM
 JAMNADA'S.

any portion of it out of the possession of the other partners. All that he can do is to bring a suit for an account and settlement of the partnership concerns, and thus entitle himself to that interest in the property, which, upon a final settlement, may be ascertained to belong to the execution partner.

We may no doubt be pressed by the argument that it is the practice of our Courts, in the case of a united Hindu family, to allow the creditor of a single coparcener to attach and sell not only his debtor's share in the entire family property, but his share in a particular portion of the property, such as a house or a field, and that the purchaser at the sale is allowed to have actual partition of the house or the field. The condition of a united Hindu family is not identical with that of a mercantile firm : but it must be admitted that the principle, which ought to regulate the seizure of the joint property for a separate debt of one of the coparceners, is theoretically very much the same, and that it is somewhat anomalous to allow an auction-purchaser to effect a partial partition, which the judgment-debtor, to whose rights he succeeds, would not have been entitled to obtain. But the law on this subject must be considered to be settled for this Presidency by the judgments in *Vásudev Bhat v. Venkatesh* (a) and the Full Bench case *Fakiráppá v. Chanáppá* (b). In those cases, we avowedly proceeded rather on the ground of long established precedent than of abstract principle ; and we are in no way constrained to initiate a similar practice, for which there is no precedent, in dealing with the joint property of a mercantile firm.

We reverse the decrees of the Courts below, and disallow the claim. The plaintiff must bear all costs in the Court of first instance ; but, under the circumstances, we order that the parties bear their own costs in appeal and special appeal.

Decree reversed and claim disallowed.

(a) Ante p. 139.

(b) Ante p. 162.