

relatives, comprises the defendants Nos. 1, 2 and 4. It is unnecessary for us to enter into any discussion of the rival pretensions of male relatives of the two above-named species, as in this case there seem to be only male relatives claiming through females. We are not to be understood as holding that a daughter or sister is wholly excluded by the custom from the line of inheritance,—i.e., that, if there were not any male relatives of the deceased *bhagdar*, his *bhag* would escheat to the Crown rather than descend upon his daughter or sister. We think that the plaintiff, Bai Reva, under the circumstances existing in this case, [493] has failed to establish her right to the *bhagdari* land in dispute, or to any mesne profits in respect of such land. We vary the Subordinate Judge's decree by rejecting so much of the claim as has reference to the *bhagdari* land and its profits, and by reducing the costs awarded by the said decree in proportion to so much of the plaintiff's claim as relates to the *bhagdari* lands (as to which she has failed in this Court) and also as relates to the moveable property (as to which she has failed in the Court below);—i.e., she can only have her costs of the suit in proportion to so much of her claim as relates to the *inam* lands and the profits thereof. The appellants are to recover their costs of this appeal from the respondent.

1881
MARCH 22.
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APPEL-
LATE
CIVIL.
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5 B. 482.

5 B. 493.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Acting Chief Justice,
and Mr. Justice M. Melvill.

DUGAPPA SHETI, GRANDSON OF KRISHNAPA SHETI (*Original Defendant*), *Appellant v.* VENKATRAMNAYA, SON AND HEIR OF DECEASED MAHABLESHVARAYA BIN NADKARNI VENKATESHAYA AND OTHERS (*Original Plaintiffs*), *Respondents*.*

[19th January, 1880.]

Undivided Hindu family—Ancestral estate—Attachment and sale of the interest of one of several co-parceners—Possession.

A obtained a decree in a suit against B, and executed it by the sale of certain plots of land which B alleged belonged to him—A himself becoming the purchaser thereof. A entered into possession of the plots of land under his purchase, and remained in possession thereof for a considerable time. As a matter of fact, the plots of land belonged—part absolutely and part as to mortgagees in possession—not to B solely, but jointly to him and his father C and others, the members of an undivided Hindu family.

A suit having been brought by C to recover possession of the said plots of land from A, and for mesne profits, and for payment over of a sum of Rs. 800 paid to A by the mortgagor of the mortgaged property in redemption of his mortgage.

Held—that A was entitled to stand in B's place, and to retain possession in respect of B's share in the said land, but no further; and that he held the mesne profits, and the said sum of Rs. 800, as trustee for the other members of the said undivided family to the extent of their shares in the family property.

[494] *Babaji Lakshman v. Vasudev Vinayak* (1) and *Kallapa Girmallappa v. Venkatesh Vinayak* (2) followed.

[F., 26 B. 141=3 Bom. L.R. 598; R., 10 B. 363 (366); 8 Bom. L.R. 99; 1 S.L.R. 133; 2 S.L.R. 43 (50); Expl. & D., 5 B. 499; D., 11 C.L.J. 61=14 C.W.N. 298=5 Ind. Cas. 298.]

* Second Appeal No. 373 of 1879.

(1) 1 B. 95.

(2) 2 B. 676.

1880
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 APPEL-
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 S B. 493.

THIS was a second appeal from the decision of A. L. Spens, Judge of the District Court of Kanara, in appeal No. 108 of 1877, amending the decree of the Subordinate Judge of Honavar in original suit No. 787 of 1876.

The plaintiff Mahableshvaraya sued (1) Dugappa and (2) Subrav (plaintiff's son) for possession of four plots of land, of which he (plaintiff) alleged the first defendant was in possession—he having purchased them in execution of a money decree obtained by him (the first defendant) against Subrav (the second defendant). The plaintiff also claimed one year's produce. The plaintiff alleged that the property in dispute belonged to the plaintiff, who, however, had allowed it to stand in the name of his son, Subrav, the second defendant, who had managed the property on behalf of his father, the plaintiff; that the second defendant had deceived his father and, unknown to him, had allowed the property in question to be taken by the first defendant in execution of a decree obtained against himself, the second defendant.

The plaintiff valued the suit at Rs. 1,496-3-3. Plots 1 and 2, plaintiff stated, had been held by him merely as mortgagee—having been mortgaged to him by one Krishna Puranik: the remaining two plots he had held on a *mulgani* tenure.

Dugappa, the first defendant, answered, *inter alia*, that the plots belonged to, and were in the possession of Subrav, the second defendant, when he (Dugappa) purchased them in execution of a decree which he obtained against Subrav; that he (Dugappa) had received 53 muras of rice on account of a year's produce of the land; that plots 1 and 2 had been redeemed by Krishna Puranik under a decree in a redemption suit brought by him against the first and second defendants. Subrav, the second defendant, did not appear. Krishna Puranik was then, on plaintiff's application, made a party to the suit as a third defendant; and Krishna pleaded, *inter alia*, that he had redeemed plots 1 and 2 on payment of Rs. 800 to Dugappa, and that neither he nor the property redeemed by him, was liable for the plaintiff's claim.

The Subordinate Judge found that the plaintiff had failed to [495] prove that his son, the second defendant, had been merely his agent in respect of the property in question, and he, therefore, dismissed the plaintiff's suit.

In appeal the District Judge found that the plaintiff and his son, the second defendant, were members of a joint Hindu family, and, as such, had had a joint interest in the property in question. He amended the decree of the first Court by directing the first defendant to deliver up plots 3 and 4 to the plaintiff, and pay him the Rs. 800 which he, the first defendant, had received from the third defendant, Krishna; also that plaintiff should receive from the first defendant the value of 53 muras of rice (16th June 1879).

On the 22nd September, 1879, Dugappa, the first defendant, appealed to the High Court.

Pandurang Balibhadra, for the appellant.—The District Judge has found that the plaintiff and the second defendant, who are father and son, are undivided in interest. The appellant therefore has acquired a right in the property equal to the share of the second defendant—his judgment-debtor, and is entitled, in respect thereof, to joint possession with the plaintiff of the property in question under the rulings of this Court. The lower Courts ought to have allowed the appellant's claim, at least to this extent, and not to have rejected it altogether.

Shamrav Vithal appeared for the respondents.
The following is the judgment of the Court:—

JUDGMENT.

SARGENT, A.C.J.—As the Judge has found that the plaintiff and second defendant are members of a joint family, the first defendant is entitled to stand in the place of the second defendant. This Court, therefore, reverses the decree of the Court below; and following the decisions in *Babaji Lakshman and another v. Vasudev Vinayak* (1) and *Kallapa bin Girmallapa v. Venkatesh Vinayak* (2), directs that plaintiff be put into joint possession with the first defendant of plots 3 and 4, and declares that the first defendant is a trustee of the 800 rupees and the value of the 53 muras of rice mentioned in the decree of the Court below so far as the members of the joint family, other than the second defendant, are interested in the same. Parties to bear their own costs throughout.

5 B. 496.

[496] APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice,
and Mr. Justice F. D. Melvill.

KRISHNAJI LAKSHMAN RAJVADE (*Original Plaintiff*), Appellant v.
SITARAM MURARRAV JAKHI AND OTHERS (*Original Defendants*), Respondents.* [12th July, 1880.]

Undivided Hindu family—Ancestral estate—Mortgage by one co-parcener of a portion of the undivided estate—Mortgagee affected by acts of mortgagor—Partition—Possession—Res judicata—Amendment of plaint.

A mortgagor's acts prior to the date of the mortgage bind the mortgagee; but his subsequent acts do not bind the latter, unless they are done by the mortgagor as agent for the mortgagee.

A. one of three members of an undivided Hindu family, mortgaged his share in the immoveable family property to B. The mortgage recited that the money was raised in order to enable A to sue his co-parceners for partition of the family property and possession of his share therein. A subsequently did bring a suit with that object against his co-parceners, but allowed it to be dismissed against him for default. B now brought a suit against A and his co-parceners for possession of A's share in such family property.

Held—that as it was not made out that A, in bringing his suit, had acted as the agent of B and at B's request, B's suit was not barred by the dismissal of A's suit.

Held, also, that B's suit being a suit for possession, was wrongly framed and was not maintainable, there never having been any partition of the joint family property. Leave, however, was given to B, on certain terms, to amend his plaint, so as to make his suit a suit for partition.

[F., 5 B. 499; R., 21 B. 570; 5 Bom. L.R. 314 (317).]

THIS was a second appeal from the decision of C. B. Izon, District Judge of Ratnagiri, in appeal No. 291 of 1878, affirming the decree of the Second Class Subordinate Judge of Sangameshvar.

The plaintiff Krishnaji brought this suit against (1) Sitaram Murar, (2) Chimnaji Ravji, and (3) Mahadji Ravji for possession of a one-anna share in a certain village mortgaged to him by the first defendant (Sitaram)

* Second Appeal No. 447 of 1879.

(1) 1 B. 95.

(2) 2 B. 676.