

APPELLATE CIVIL.

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Melvill.

1882
March 22.

SADASHIV DINKAR JOSHI AND MORESHWAR DINKAR JOSHI
(ORIGINAL PLAINTIFFS), APPELLANTS, v. DINKAR NARAYAN JOSHI
AND MAHADEV VINAYAK MAYADEV (ORIGINAL DEFENDANTS),
RESPONDENTS.*

Hindu law—Ancestral property—Undivided Hindu family—Alienation of ancestral property by father—Liability of estate for debts of father and grandfather—Son's interest in ancestral estate—Debt incurred for immoral or illegal purposes—Evidence—Burden of proof.

Subject to certain limited exceptions (as, for instance, debts contracted for immoral or illegal purposes), the whole of the estate of a Hindu undivided family is, in the hands of sons or grandsons, liable to the debts of the father or grandfather.

In 1865, certain lands, the ancestral property of D., were sold under a decree passed against D., and were bought by J. These lands had been mortgaged, in 1863, by D. to N., in which transaction D. had been principal and J. his surety. In 1866, N. sued on his mortgage, and on the 21st January, 1863, a decree was made, directing the sale of the lands. Under that decree the right, title, and interest of J. were sold on the 1st April, 1869, to C., and C. afterwards sold the lands to M. In the present suit the plaintiffs (D's sons) sued D. and M. for possession of their two-third shares, alleging that the land was ancestral, and that the whole of it had been illegally sold under the decree of the 21st January, 1863. Both the lower Courts held that the land was ancestral; that the plaintiffs were united in interest with their father D. when the mortgage debt was contracted by the latter; that the burden lay upon them (plaintiffs) to prove that the debt had been incurred for immoral or illegal purposes, and they failed to discharge it; that they were, therefore, bound by the sale. The lower Courts, accordingly, dismissed the plaintiffs' claim.

On second appeal the High Court affirmed the decrees of the Courts below, on the grounds mentioned above.

Suraj Bhusi Koer v. Shev Prasad Singh (1) referred to.

THIS was a second appeal from the decision of C. E. G. Crawford, Assistant Judge at Thana, affirming the decree of B. K. Phadke, Second Class Subordinate Judge at Alibag.

The facts of the case are briefly mentioned in the head-note above, and will be found fully stated in the judgment of the High Court.

*Second Appeal, No. 19 of 1880.

(1) L. R., 6 Ind. Apps., 88, 106.

The first point in the memorandum of second appeal preferred by the plaintiffs was—(1) The lower Appellate Court ought to have held that, as the decree, in execution of which the land in dispute was sold, was a decree against Dinkar (defendant No. 1) personally, nothing beyond his share could pass by the Court sale.

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Ghanasham Nilkanth Nadkarni for the appellants.

The Hon. Rao Saheb *V. N. Mandlik* for the respondents.

The following is the judgment of the Court :—

WESTROPP, C. J.—The plaintiffs, who are the sons of Dinkar Narayan Joshi, the first defendant, brought this suit to recover, as their respective shares, two-thirds of certain ancestral lands. The first defendant did not appear. The second defendant claimed to be the purchaser of the lands, and alleged that the first defendant and his sons, the plaintiffs, were acting in collusion to defeat the second defendant's claim. The facts established were as follows:—The lands were ancestral, having been inherited by the first defendant, Dinkar, from his grandfather. In a suit brought by Balkrishna Narayan Bodas, in 1863, against Dinkar Narayan Joshi (the present first defendant), the lands were sold on the 17th August, 1865, to Janardhan Trimbak Devdhar for Rs. 200. The certificate of that sale (exhibit 8) was dated 14th July, 1879. Possession does not appear to have been given to Janardhan Trimbak Devdhar. In a suit, brought in 1866 by Narayan Antaji Datar against the present first defendant, Dinkar Narayan Joshi, and Janardhan Trimbak, upon a mortgage bond of the same lands, dated 26th November, 1863, (1 Kartik Vad, Shake 1785), in which transaction Dinkar Narayan Joshi apparently was principal and Janardhan Trimbak Devdhar was surety, a decree (exhibit 39), dated the 21st January 1868, was made by the District Judge of Thana, directing the sale of the lands in satisfaction of the amount due on the mortgage together with interest, and that the balance (if any) should be paid personally by the defendants in that suit. Under that decree the right, title, and interest of the defendant, Janardhan Trimbak Devdhar, in the lands were sold by public auction on

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the 1st of April, 1869, to Chinto Bhaskar Dandekar for Rs. 630, as appears by the certificate of sale (exhibit 10), dated 15th June, 1869. He, subsequently, sold the lands to the second defendant in the present suit, Mahadev Vinayak Mayadev, as appears from the deed, dated 13th October, 1874 (exhibit 9).

The Subordinate Judge held that, inasmuch as the plaintiffs and their father were united in estate at the time the mortgage debt to Narayan Antaji Datar was incurred, and that the plaintiffs were unable to show that it was incurred for immoral or illegal purposes, they were bound by the sale.

The plaintiffs appealed to the District Court; but the decree of the Subordinate Judge was, by the Assistant Judge, affirmed with costs.

The plaintiffs then filed the present second appeal to the High Court. Their first point of appeal is a mistake, inasmuch as the decree (exhibit 39), so far as it affects the lands, is not a decree against the defendant, Dinkar Narayan Joshi, personally only, but directs the sale of the lands; and he, being a party to the suit in which that decree was made, is bound by the direction for sale (founded on the mortgage) in that decree, and by the proceedings under it, whether or not there was any irregularity in the lateness of the issuing of the certificate of sale (exhibit 8) to Janardhan Trimbak Devdhar in the previous suit of Balkrishna Narayan Bodas, or weakness in his title thereunder for want of possession. He made no objection to the lands being described at the sale as those of Janardhan Trimbak Devdhar, and did not deny that they had passed to him by the previous sale.

Subject to certain limited exceptions (as, for instance, debts contracted for immoral or illegal purposes), the whole of the estate of a Hindu undivided family would be, when in the hands of sons or grandsons, liable to the debts of the father or grandfather: *Digest*, Bk. 1, chap. v, pl. clxvii; *Girdharilall v. Kuntoolall*⁽¹⁾; *Udaram Sitaram v. Ranu Panduji* (2); *Narayanacharya v. Narsa Krishna*⁽³⁾. The true scope of the decision of the Privy Council in *Girdharilall v. Kuntoolall* has been explained by their

(1) L. R. 1 Ind. App., 321.

(2) 11 Bom. H. C. Rep., 83.

(3) I. L. R., 1 Bom. 262.

Lordships themselves in the subsequent case, *Suraj Bansi Koer v. Shev Prasad Singh*(1) thus: "This case, then, which is a decision of this tribunal (the Privy Council), is an authority for these propositions: 1st, That where joint ancestral property has passed out of the joint family, either under a conveyance executed by a father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they show that the debts were contracted for immoral purposes, and that the purchaser had notice that they were so contracted; and, 2ndly, that the purchasers at an execution sale, being strangers to the suit, if they have not notice that the debts were so contracted, are not bound to make inquiry beyond what appears on the face of the proceedings."

Hence it appears that the burden of proof that the mortgage debt was for an illegal or immoral purpose lay upon the plaintiffs, the sons of the first defendant, Dinkar Narayan Joshi. The District Judge has found that the plaintiffs have not proved anything beyond the fact that their father kept a mistress, and have not proved any connection between that act and the debt in question. That finding of fact by the District Judge binds this Court. Hence we must affirm, with costs of this appeal, the decrees of the Courts below.

Decree affirmed.

(1) L. R., 6 Ind. App. 88, 106.

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