

## APPELLATE CIVIL.

*Before Mr. Justice Melvill and Mr. Justice Pinhey.*

MARUTI NARAYAN (ORIGINAL PLAINTIFF), APPELLANT, v. LILACHAND  
(ORIGINAL DEFENDANT), RESPONDENT.\*

1882  
April.

*Hindu law—Minor—Mortgage by manager—Decree against manager—Sale—  
Suit by minor for cancelment of sale.*

G., the brother of the plaintiff, executed a mortgage to the defendant during the plaintiff's minority. The deed recited that the money was borrowed to pay off a family debt, and to defray family expenses. The defendant sued G. on the mortgage, and obtained a decree. A house, which was part of the family property, was sold in execution, and was purchased by the defendant himself. The plaintiff sued to have the sale set aside, and to recover his half share in the house.

*Held* that the defendant was not entitled to hold the plaintiff's share in the property by virtue of the sale to him under the decree obtained against G. alone.

*Held* also that the plaintiff was entitled to be put into possession of the whole house, the defendant being left to his remedy by a suit for partition. The plaintiff, however, having claimed only the restoration of his half share, the decree was limited accordingly.

*Held*, also, that it was not competent for the Court in this suit to go into the question whether the mortgage by G. was binding on the minor plaintiff.

THIS was a second appeal from the decision of M. B. Baker, Judge of Ahmednagar, reversing the decree of the Subordinate Judge of Ahmednagar.

On the 26th of January, 1873, one Ganu valad Narayan, brother of the minor plaintiff, mortgaged to Lilachand, the defendant, the whole of a house situated in the city of Ahmednagar and forming part of the two brothers' ancestral property, for a sum of Rs. 200. The deed of mortgage recited that Rs. 53 were required to pay a family debt, and Rs. 143 were borrowed to defray family expenses. The plaintiff was then, and also at the date of this suit, a minor member of the family. Lilachand subsequently sued Ganu, and obtaining a decree against him, put up the house for sale, and himself became the purchaser on 24th of November, 1876. The minor plaintiff, through his representative, Dhondi, had objected to the sale, but the objection had been overruled. The present suit was brought to set aside the sale and to recover the plaintiff's half share in the house.

\* Second Appeal, No. 371 of 1881.

The defendant contended that Ganu executed the deed of mortgage in order to pay an ancestral debt, and to defray the expenses of the joint family; that the sale was therefore for the benefit of the joint family, and the minor plaintiff was estopped from disputing it and from claiming a half share in the house, the whole of which passed to the defendant under the judicial sale. The Subordinate Judge decided in favor of the plaintiff; the District Judge reversed the decree and gave judgment for the defendant. The Judge, in appeal, laid down the issue whether the mortgage by Ganu was binding on the minor plaintiff. He held that the two brothers were joint, and that their family property had never been divided; that Ganu was the managing member of the family, and the purchaser from him was only bound to inquire whether the money had been borrowed for a legitimate purpose, and, if satisfied that it was, he would be entitled to protection against the claim of any member of the family who was a minor when the transaction took place. The Judge further held that it was under necessity that Ganu had executed the mortgage, and that, therefore, the minor plaintiff was bound by it.

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The plaintiff appealed to the High Court.

*Ghanasham Nilkanth Nadkarni* for the appellant.—The defendant's mortgage was executed by Ganu alone, and the decree obtained by him alone. Under that decree no more than Ganu's interest could be sold. That interest amounted to a half share, and the sale of more than that share should be set aside. The inquiry into the nature of the debt owned by the family, and whether the minor plaintiff was bound by the mortgage which the debt necessitated, was immaterial: *Deendayal Lal v. Gug-deep Narain Sing* (1), which has been followed in a number of cases by the High Court at Bombay. To allow the defendant to take the interest of the plaintiff is to extend the operation of his decree: *Pandurang Kamti v. Venktesh Pai* (2).

*Pandurang Balibhadra* for the respondent.—The Judge has found as a fact that the debt was contracted for family purposes and in consequence of a family necessity. The plaintiff must, therefore, be held to have been bound by it. To hold otherwise would be to open a door to fraud.

(1) I. L. E. 3 Cal. 198.

(2) Printed Judgments for 1879, p. 135.

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MELVILL, J.—It was not competent to the Court below in this suit to go into the question whether the mortgage by Ganu was binding on the minor plaintiff. The defendant obtained a decree against Ganu alone, and in execution of that decree he purchased only the right, title, and interest of Ganu. In *Deendayal's Case*(1) the Privy Council refused, under somewhat similar circumstances, to consider the question whether there was legal necessity for the loan, in respect to which the decree had been obtained. Their Lordships said: "This issue seems to their Lordships to be immaterial in the present suit, because, whatever may have been the nature of the debt, the appellant cannot be taken to have acquired by the execution sale more than the right, title, and interest of the judgment-debtor. If he had sought to go further, and to enforce his debt against the whole property, and the co-sharers therein who were not parties to the bond, he ought to have framed his suit accordingly, and have made those co-sharers parties to it. By the proceedings which he took he could not get more than was seized and sold in execution, viz., the right, title, and interest of the father. If any authority be required for this proposition, it is sufficient to refer to the cases of *Najenderchunder Ghose v. Srimutty Ramanee Dossee* (2) and *Baijn Doobey v. Brij Bhookun Lall Aiwusti*(3)". There may be some difficulty in reconciling the view here expressed as to the effect of the sale of a father's right, title, and interest, with the decision of the Judicial Committee in *Girdharee Lall's Case*(4); but there has never, so far as we know, been any difference of opinion as to the effect of a sale under a decree obtained against the manager of a Hindu undivided family alone, when that manager is not the father of the other co-sharer or co-sharers. We may refer on this point to the decision of this Court in *Pandurang Kamti v. Venkatesh Pai*(5) which, we believe, has been followed in several other cases.

For these reasons we must hold that the defendant cannot claim to hold the plaintiff's share in the property by virtue of the sale to him under the decree obtained against Ganu alone. No doubt, according to the decision in *Deendayal's Case*, the

(1) I. L. R. 3 Calc. 198.

(4) L. R. 1 I. A. 321.

(2) 11 Moore's Ind. App. 241.

(5) Printed Judgments for 1879,

(3) I. L. R. 1 Calc. 133.

plaintiff might have claimed to be put in possession of the whole of the property sold, leaving the defendant to his remedy by a suit for partition (see also *Ram Sahye Bhukkut v. Lalla Laljee*(1)). But as the plaintiff has only asked for restoration of his half share, it will be sufficient if we reverse the decree of the District Court and restore that of the Subordinate Judge. The defendant to bear the costs of appeal and second appeal.

*Decree reversed.*

(1) I. L. R.S Calc. 149.

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### APPELLATE CIVIL.

*Before Mr. Justice Pinhey and Mr. Justice Nanabhai Haridas.*

April 26.

PARVATI (ORIGINAL DEFENDANT), APPELLANT, v. KISANSING  
(ORIGINAL PLAINTIFF), RESPONDENT.\*

*Decree—Sale pendente lite—Prior attachment—Lis pendens.*

On the 29th June, 1876, the plaintiff obtained a money decree by consent against Ramapa, the father-in-law of the defendant.

On the 24th of July, 1876, the plaintiff attached a house of Ramapa.

On the 12th October, 1876, the defendant sued Ramapa for maintenance, and alleged that the house in question was the property of her deceased husband and Ramapa, and she claimed the right to continue to live in it.

On the 10th of November, 1876, and during the pendency of the defendant's suit against Ramapa, the house was sold under the plaintiff's decree against Ramapa, and the plaintiff himself became the purchaser.

On the 20th of June, 1877, the defendant obtained a decree against Ramapa in terms of the prayer of her plaint.

On the 27th of August, 1879, the plaintiff brought the present suit to eject the defendant from the house.

*Held* that what the plaintiff bought from Ramapa was his right, title and interest in the house, which, being subject to the decree in the defendant's pending suit, the plaintiff's purchase was likewise subject to the same, and the circumstance that the plaintiff had placed a prior attachment on the house made no difference. The plaintiff therefore could not eject the defendant during her lifetime.

This was an appeal from the decision of C. F. H. Shaw, Judge of Belgaum, reversing the decree of R. S. Chinto Narayan, Joint Subordinate Judge of Belgaum.

This was a suit in ejectment. The plaintiff, Kisansing, alleged that he purchased a house at Belgaum at a court sale, but that

\*Second Appeal, No. 351 of 1881.