

1885.

PURMÁNAND-
DÁS
JIWANDÁS
v.
JAMNÁBÁI.

house since 31st August, 1882, to be determined on execution, and to pay plaintiff his costs throughout up to the present time.

Attorneys for the appellant.—Messrs. *Little, Smith, Frere, and Nicholson.*

Attorneys for the respondents.—Messrs. *Thakordás and Dharamsi, and Messrs. Craigie, Lynch, and Owen.*

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Nánabhai Haridás, and Mr. Justice Birdwood.

VISHNU KESHAV SA'THE, IN RE THE APPLICATION OF.*

1885.
July 9.

Stamp—Certificate of sale—Practice—Ad-valorem stamp duty—Sale, subject to mortgage lien, of property in several lots—Stamp duty payable by purchaser of one lot, how calculated.

In execution of a decree, certain immoveable property was attached and sold in eight lots to different persons, subject to a mortgage. The applicant was one of the purchasers and applied for a sale certificate. A question arose whether, in computing stamp duty, the whole amount of the principal mortgage debt, or only a proportionate amount of it, was to be deemed a part of the consideration. On reference to the High Court,

Held, that the whole amount of the principal mortgage debt, and not merely a proportionate amount of it, was to be added to the price, and the total amount to form the consideration upon which an *ad-valorem* stamp duty was to be calculated, each purchaser obtaining a separate sale certificate.

THIS was a reference by Ráv Sáheb Wáman M. Bodas, Subordinate Judge of Sásvad, under section 49 of the Stamp Act I of 1879. The reference was as follows:—

“In execution of a decree of the Court of the Subordinate Judge of Poona, certain immoveable property was attached and sold by this Court, subject to a mortgage-lien for Rs. 10,000, the mortgage being accompanied with possession, and not divisible. The property consisted of 18 fields, and was sold in as many separate lots to different persons, of whom the applicant was one. In the proclamation of sale, as also in the *liláv-yádi*, all the fields together were described as subject to the mortgage-lien.

*Civil Reference, No. 7 of 1885.

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IN RE
VISHNU
KESHAV
SÁTHE.

The total price realized by the sale was Rs. 4,733-4-6, of which the applicant paid Rs. 900 for four of the fields. The applicant now applies for a certificate of sale, and the question is, whether, in making valuation for stamp duty, the whole amount of the principal mortgage-debt, or only a proportionate amount of it, is to be deemed a part of the consideration.

“As the mortgage is not divisible, the mortgagee has a right to enforce his whole lien on every portion of the mortgaged property. He can refuse to be dispossessed of any portion of his security, unless the whole and entire debt is paid. If only one of the 18 fields were attached and sold, the stamp duty for a sale certificate would probably have been calculated on the whole mortgage-debt, *plus* the price realized. These considerations tend to show that, in determining the stamp duty payable in respect of the sale certificate which the applicant has applied for, the whole mortgage money must be taken into account.

“But it seems more equitable that, as all the 18 fields were attached at one time in execution of the same decree, they must be considered as sold in one lot for the total price realized, and that the mortgage-debt must be regarded as distributed over them all. If, for its own convenience, the Court sold the whole attached property in different parcels, the purchasers should not suffer for it. I am disposed to take this view, and to hold that only the proportionate amount of the principal mortgage-debt should be deemed a part of the consideration in making valuation for stamp duty for the certificate applied for. As, however, I feel some doubt on the point, I beg to refer it for the decision of the High Court, under section 49 of Act I of 1879.”

There was no appearance for the party.

SARGENT, C. J.—The question is settled by authority. The whole amount of the principal mortgage-debt, and not merely a proportionate amount of it, is to be added to the price, and the total amount forms the consideration upon which the *ad-valorem* stamp-duty is to be calculated, as each purchaser is to obtain a separate certificate—*Pándurang Mahádev v. Baloji Ganoji*⁽¹⁾.

(1) Printed Judgments for 1884, page 98.