

1887

DINKAR
PARSHARÁM
v.
VINÁYEK
MORESHWAR

this order not being passed if the respondent appears in person or by pleader or duly authorized agent on the "day fixed for the hearing," where it is plain, from the reason of the thing, that the expression must mean the day on which the hearing actually takes place, which may be either the day "so fixed," *i. e.* fixed in the notice, or any other day to which the hearing may be adjourned. This section appears to us to show that the "day fixed" is carefully distinguished from the day "so fixed," *i. e.*, the day fixed in the notice. The "day fixed for the hearing" is the expression used in section 561, and should have the same meaning given it as it undoubtedly must have in section 557, *i. e.*, the day on which the hearing commences, and includes both that day and the day to which the hearing may be adjourned. In giving this meaning to the expression in section 561, we shall be giving adequate effect to what must be supposed to be the purpose of the section, *viz.*, to give the appellant timely intimation of the proposed objections. This would appear to be the view taken by West and Nánabhái Haridás, JJ., in *Rangildás v. Báí Girja* (1). We must, therefore, send the case back for the Appellate Court to record a finding on the following issue:—

Whether the defendant was liable to pay two maunds of *thal* rent on the *thikan* *Moda urf Jai?*, and to transmit the finding to this Court within three months.

All other grounds of appeal reserved until the return of the above finding.

(1) I. L. R., 8 Bom., 559.

APPELLATE CIVIL.

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

1886.
July 2.

LAKSHMAN VENKATESH, (ORIGINAL PLAINTIFF), APPELLANT, v.
KA'SHINATH AND ANOTHER, (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu law—Manager, decree against—Sale in execution of such decree passing his interest only—Such sale does not affect interest of the co-parceners not parties to the suit—Parties.

A sale under a decree obtained against the manager of a Hindu family only passes the right, title, and interest of those who are parties to the suit.

* Second Appeal, No. 553 of 1884.

Accordingly, where, in execution of a decree obtained against two of the brothers of the plaintiff as managers in a suit to which the plaintiff was not a party, the house, which was the family property, was sold,

Held, that the sale was void as against the plaintiff's share in the house.

Máruti Náráyan v. Lálchand⁽¹⁾ referred to and followed.

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THIS was a second appeal from a decision of M. B. Baker, District Judge of Násik.

The plaintiff and his four brothers were members of an undivided family. The defendant No. 1 obtained a decree against two of the brothers (Abáji and Gopál) for debts alleged to have been contracted by them for family purposes, and in execution of his decree sold half of the family house, and it was purchased by the defendant No. 2. The plaintiff, claiming the house under an alleged deed of gift by his paternal aunt, brought the present suit for a declaration of his right to it.

The defendant denied the gift, and (*inter alia*) contended that the plaintiff's brothers having been sued as managers, the plaintiff's interest was bound by the decree obtained against it.

Both the lower Courts rejected the plaintiff's claim.

The plaintiff preferred a second appeal to the High Court.

Dáji A'báji Khare for the plaintiff:—The plaintiff was not a party to the suit against his brothers, and cannot be bound by the decree against them. See *Máruti Náráyan v. Lálchand*⁽¹⁾. All that the defendant No. 2 had acquired by his purchase was merely the interest of the plaintiff's brothers. The interest of the plaintiff remains unaffected.

Shántarám Náráyan for the defendants:—The lower Courts were right in rejecting the plaintiff's suit. The brothers having been sued as managers, the plaintiff's interest, too, passed away to the defendant. The debts, for which it was sold, were for family purposes, and have been held to be necessary debts by the lower Courts.

SARGENT, C. J.:—The course of decisions in this Court shows that a sale under a decree against the manager of a Hindu family

(1) I. L. R., 6 Bom., 564.

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only passes the right, title, and interest of those who are parties to the suit—*Máruṭi Náráyan v. Lálchand*⁽¹⁾, and, therefore, although the debt contracted by Abáji and Gopál may have been for a family purpose, the plaintiff's share in the southern half, (the subject of this suit), cannot be affected by the execution proceedings in Krishnáji's suit. We must, therefore, reverse the decree of the Court below, and declare that the sale to the defendant No. 2 is void as against the plaintiff's one-fifth share in the southern half of the house. The plaintiff to pay the defendants four-fifths of their costs throughout.

Decree reversed.

(1) I. L. R., 6 Bom., 564.

FULL BENCH.

CRIMINAL REVISION.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice West, and Mr. Justice Nánábhái Haridás.

1886.
December 20.

QUEEN-EMPRESS v. BHARMA' BIN NINGA'PPA.*

Criminal Procedure Code (Act X of 1882), Sec. 164—Statement recorded by a Magistrate—Evidence—Judicial proceeding—Giving false evidence—Indian Penal Code (Act XLV of 1860), Secs. 191 and 192.

A statement taken by a Third Class Magistrate under section 164 of the Code of Criminal Procedure (Act X of 1882), such Magistrate not having authority to carry on the preliminary inquiry in the case, is not evidence in a stage of a judicial proceeding within the meaning of sections 191 and 193 of the Indian Penal Code, such that, when the statement is contradicted afterwards before the Magistrate having jurisdiction and exercising it in the preliminary inquiry, it will form a sufficient basis for an alternative charge of giving false evidence in a judicial proceeding.

In the course of a police investigation into the murder of one Báláppá the accused Bharmá made a statement on solemn affirmation, before a Third Class Magistrate, that he had seen one Dhanáppá stab Báláppá.

It was mainly in consequence of this statement that Dhanáppá was prosecuted on a charge of murder. Bharmá was called as a witness for the Crown at the preliminary inquiry before the

* Criminal Revision, No. 259 of 1886.