

12 B. 691.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and
Mr. Justice Nanabhai Haridas.

KAGAL GANPAYA (Original Plaintiff), Appellant v.
MANJAPPA AND OTHERS (Original Defendants), Respondents.*

[14th August, 1888.]

Hindu law—Joint family—Money decree—Decree against father alone—Purchaser at execution sale under such decree—How far such sale binding on the interest of the sons not parties to the suit or execution proceedings.

In the case of a joint Hindu family whose family property is sold by the father alone by private conveyance, or where it is sold in execution of a decree obtained against him alone, the mode of determining whether the entire property or only his interest in it passes by the sale, is to inquire what the parties contracted about in the case of a conveyance, or what the purchaser had reason to think he was buying if there was no conveyance but only a sale in execution of a money decree.

In the case of an execution sale the mere fact that the decree was a mere money decree against the father as distinguished from one passed in a suit for the realization of a mortgage security directing the property to be sold, is not a complete test.

The plaintiff claimed certain property from the defendant, alleging that he had purchased it from a third person, who had purchased it at an auction sale held in execution of a money decree obtained against the first defendant alone. The first defendant was the father of the remaining defendants, and they constituted a joint Hindu family. The sons contended that only the father's interest was bound by the sale; and the lower Courts decided in their favour.

In appeal, the High Court reversed the decree, and sent back the case for a fresh decision, on the ground that the lower Courts had decided the question in the case exclusively on the ground that the property had been purchased in execution of a money decree without referring to the execution proceedings.

[F., 18 C.W.N. 42; R., 3 Bom.L.R. 322 (355).]

THIS was a second appeal from a decision of G. McCorkell, District Judge of Kanara.

The plaintiff sued the defendant for certain property, alleging that he had purchased it from a person who himself had bought it [692] at an auction sale held in execution of a money decree obtained against the first defendant Manjappa.

The other five defendants, who were Manjappa's sons, contended that by the sale, in execution of the decree against their father alone, their interest was not affected, the property being family property.

The Court of first instance awarded the plaintiff one-sixth of the property.

The plaintiff appealed to the District Judge, who confirmed the lower Court's decree having regard to the cases cited in the following paragraph of his judgment:—

"The appellant's pleader relies on the case of *Girdhars Lall v. Kantoo Lall* (1), *Ram Narain Lal v. Bhawani Prasad* (2), *Ponnappa Pillai v. Pappuwayyanganar* (3), *Sivasankara Mudali v. Parvati Anni* (4), *Gan Savant*

* Second Appeal No. 440 of 1886.

(1) 1 I.A. 321.

(2) 3 A. 443.

(3) 4 M. 1.

(4) 4 M. 96.

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" Respondent relies on the ruling in *Babaji v. Dhuri* (3).

" As the decree was on account of unsecured debt, the case cited by the respondent must prevail. It would have been otherwise had the debt been a mortgage-debt.

" For this reason I hold that only the father's share could be sold in execution of the decree, and the shares of the sons cannot be touched."

The plaintiff preferred a second appeal to the High Court.

Narayan Ganesh Chandavarkar, for the appellant.—The lower Courts were wrong in holding that the father's interest alone passed. The only test is to see what the purchaser had bargained for and paid for: see *Mussamut Nanomi Babuasin v. Modhun Mohun* (4) followed by this Court in *Jagabhai Laiubhai v. Vijbhukandas Jagivandas* (5) and *Sakharamshet v. Sitarmshet* (6).

[693] *Ghanasham Nilkanth Nadkarni*, for the respondents, contended, on the authority of *Baboo Hurdey Narain Sahu v. Pundit Baboo Rooder Perakash Misser* (7), *Girdharee Lall v. Kantoo Lall* (8) and *Trimbak v. Narayan* (2), that where there is a mere money decree, the father's interest alone passes. The sons were not parties to the suit, and their interest stood unaffected.

JUDGMENT.

SARGENT, C. J.—The District Judge held that only the share of Manjappa, the second defendant, passed to the plaintiff's vendor under the Court sale in execution of the decree against the second defendant, on the ground that the decree was a mere money decree as distinguished from one passed in a suit for the realization of a mortgage security directing the property to be sold. This distinction is doubtless much relied on by the Privy Council in *Baboo Hurdey Narain Sahu v. Pundit Baboo Rooder Perakash Misser* (7) as explaining the apparent inconsistency between the decision in *Girdharee Lall v. Kantoo Lall* (8) and that in *Deendyal Lal v. Jugdeep Narain Singh* (9); and was acted upon by this Court in *Trimbak v. Narayan* (2). However, that the above distinction is not a complete test of whether the entire family property or only the father's interest in it passes to the auction-purchaser, and that *Deendyal's Case* does not bind the Court to hold under all circumstances that only the co-parcenary interest of the father passes to the purchaser, is shown by the decision in *Mussamut Nanomi v. Modun Mohun* (4), where the decree was a mere money decree, and yet the Privy Council, confirming the decision of the Calcutta High Court, held that the entire family interest in the property passed to the purchaser, on the ground that the language of the execution and sale proceedings was such that the purchaser must be deemed "to have bargained and paid for the entirety."

In *Simbhunath Panday v. Golab Singh* (10) the Privy Council after referring to *Deendyal's Case* and *Nanomi's Case* say: "Each [694] case must depend on its own circumstances. It appears to their Lordships

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| (1) 7 B. 467. | (2) 8 B. 481. | (9) 9 B. 305. |
| (4) 13 I.A. 1=13 C. 21. | (5) 11 B. 37. | (6) 11 B. 42. |
| (7) 11 I.A. 26. | (8) 1 I.A. 321. | (9) 4 I.A. 247. |
| (10) 14 I.A. 77 (83)=14 C. 572 (579). | | |

that in all the cases, at least the recent cases, the inquiry has been what the parties contracted about if there was a conveyance, or what the purchaser had reason to think he was buying if there was no conveyance, but only a sale in execution of a money decree." In that case, as in *Deendyal's Case* and the case of *Hurdey Narain*, the Court had little difficulty in coming to the conclusion that only the father's interest was intended to be sold by the proclamation, as the property attached and offered for sale stated by the certificate to have been purchased was, in terms, confined to the interest of the father in the family property.

As the District Judge has decided this question exclusively on the ground that the property was purchased in execution of a money decree without referring to the execution proceedings, we cannot accept his decision as conclusive. Those proceedings are not before us, and as the *vakils* on both sides think it the advisable course, we reverse the decree and send back the case for a fresh decision. Costs to abide the result.

Decree reversed.

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