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[22] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

LAKSHMIBAI, WIDOW OF SIDHOJIRAO NIMBALKAR (*Original Defendant*), *Appellant v.* SANTAPA REVAPA SHINTRE (*Original Plaintiff*), *Respondent.** [8th February, 1888.]

Decree—Execution—Sale of moveable property in execution of decree—Place of holding the sale—Practice—Appeal—Parties—Application to be made party to appeal.

Under the Code of Civil Procedure (Act XIV of 1882) it is intended that a sale of moveable property attached in execution of a decree should ordinarily be held in some place within the jurisdiction of the Court ordering the sale. Good and sufficient reasons must be shown for directing otherwise.

Where the only ground urged for directing a sale outside the Court's jurisdiction was that the property would probably fetch a better price, and it was found by the Court that a fair sale could be had on the spot.

Held, that no sufficient reason was shown for departing from the usual practice.

A judgment-debtor died. His widow was thereupon placed on the record as his legal representative. In the execution proceedings which followed, the widow made an appeal to the High Court against a certain order passed by the Court executing the decree. To this appeal, a person alleging himself to be the adopted son of the deceased judgment-debtor applied to be made a party.

The widow opposed the application, denying the fact of the adoption.

Held, that whether the applicant was or was not the adopted son of the deceased judgment-debtor, there was no objection to entering his name on the record if the decree-holder consented, as it intended to his security that this should be done. The applicant was accordingly made a co-appellant with the widow.

APPEAL from the order of Rav Bahadur Jayasatyabodhrao Tirmalrao, First Class Subordinate Judge of Belgaum, in *darkhast* No. 670 of 1886.

One Santapa Revapa Shintre obtained a decree for Rs. 1,36,000 in the Court of the First Class Subordinate Judge of Belgaum against Sidhojirao Naik Nimbalkar, his adoptive mother Rakhmabai, and one Raghunathrao Murarao.

Sidhojirao died after decree. On the decree-holder's application Sidhojirao's widow, Lakshmibai, was placed on the record as his legal representative.

The decree-holder sought in execution to attach and sell certain valuable ornaments which had been pledged with him by Sidhojirao. Lakshmibai objected to the sale of the ornaments at [23] Belgaum on the ground that there were few merchants on the spot who could buy articles of such considerable value. She, therefore, applied to the Court to direct the ornaments to be sold at Bombay, where they would fetch an adequate price.

The Court rejected this application, on the ground that a fair sale could be had at Belgaum, and ordered the ornaments to be sold there.

Against this order Lakshmibai appealed to the High Court, on the following grounds:—

(1) That the ornaments in question were made of diamonds, emeralds, rubies, pearls, &c., and were very valuable, being of the total value of nearly 2 lakhs of rupees.

* Appeal, No. 74 of 1887.

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(2) That there were very few extensive dealers in such articles at Belgaum. The appellant would, therefore, be materially prejudiced by their sale at Belgaum.

(3) That the judgment-creditor having obtained permission to bid, and there being very few likely to bid against him at Belgaum, the ornaments would be sold for very much below their real price.

Pending the appeal, one Murarao applied to be made a party to the appeal, on the ground that he was the adopted son of the deceased judgment-debtor Sidhojirao, and that, therefore, he alone, and not Lakshmibai, was the legal representative of the deceased.

Raghunathrao, who was one of the judgment-debtors, also applied to be made a party to the proceedings in appeal. Both these applications were disposed of at the hearing of the appeal.

Inverarity (with him *Ganesh Ramchandra Kirloskar*), for the appellant:—The judgment-creditor has obtained permission to bid. At a place like Belgaum there would be fewer bidders than in Bombay. The judgment-debtor's wishes should be consulted.

Farran (with him *Manekshah Jehangirshah*), for the respondent:—The mere fact that the ornaments would probably fetch a better price in Bombay than at Belgaum is not a reason to depart from the usual practice of holding a sale at some place within the Court's jurisdiction. The lower Court has found that a fair sale could be had on the spot.

JUDGMENT.

[24] BIRDWOOD, J.—This is an appeal by Lakshmibai, the widow of Sidhojirao, against an order in execution passed by the First Class Subordinate Judge of Belgaum. Before hearing the appeal, it has been necessary for us to dispose of two applications, made by Raghunath and Murarao respectively, to be joined as parties. The application of Raghunath can be at once granted, as he was a party to the proceeding in the lower Court as the representative of Rakhmabai, who was a party to the decree of which execution is now sought, and the decree-holder, the respondent in this Court, consents.

The application of Murarao stands on a different footing. When Sidhojirao died after decree, the respondent caused a notice under s. 248 to be issued to his widow, Lakshmibai, and she was accordingly placed on the record as his legal representative; but Murarao now claims to be placed on the record as the son adopted by Lakshmibai to Sidhojirao, and therefore, his legal representative. Lakshmibai denies the adoption, alleges another adoption, and opposes the application. As, however, the decree-holder consents, we grant the aphlication. The applicant may or may not be the adopted son of Sidhojirao; but whether he is or is not, it would appear, on the analogy of the case of *Lakshmibai* v. *Balkrishna* (1), that there is no objection to entering his name on the record if the decree-holder consents; and indeed, as there pointed out, it tends to his own security that this should be done. In another case, *Athiappa* v. *Ayanna* (2), the claimant was, under somewhat similar circumstances, made a party to the appeal. We, therefore, place Murarao, also on the record as one claiming to be the representative of the deceased judgment-debtor, Sidhojirao, and make both him and Raghunath co-appellants with Lakshmibai.

(1) 4 B. 654. (2) 8 M. 300.

The appeal itself relates to the sale of certain ornaments which have been attached in execution of the decree. The widow, Lakshmibai, asked that they should be sold, not at Belgaum, where they are held in attachment by order of the Subordinate Court, but at Bombay, on the ground that they would probably fetch a higher price there. The application was opposed by the [25] judgment-creditor and refused by the Subordinate Judge. Lakshmibai has now appealed. We are unable to find that the order is in any respect either illegal or improper. The Subordinate Judge, on facts which were before him, came to the conclusion that a fair sale could be had in Belgaum. No materials are before us for a contrary finding. The mere contention that a higher price is likely to be bid in Bombay than at an out-station might be made in the case of almost every sale, and would lead to endless disputes if lightly yielded to. There can be no doubt that the Code intended that a sale should ordinarily be held at some place within the jurisdiction of the Court ordering the sale. Good and sufficient reasons ought to be shown for directing otherwise. We do not find any such reasons in the present case; and, therefore, confirm the Subordinate Judge's order, and direct each of the appellants to bear his and her own costs. The appellant Lakshmibai to bear also the costs of the respondent.

Order confirmed.

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13 B. 25 = 13 Ind. Jur. 145.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

ANANTA BALACHARYA (*Original Plaintiff*), *Appellant v.* DAMODHAR MAKUND (*Original Defendant*), *Respondent.* *

[13th February, 1888.]

Hindu law—Partition—Effect of agreement to divide—Res judicata—*Suits in respect of different portions of the family estate—Material issue.*

To constitute a partition there need not be an actual partition by mêtes and bounds. An agreement to divide is sufficient to constitute partition.

Two brothers drew up a memorandum of partition, whereby they agreed to divide the family property in equal shares, and provided that, if at any future time their sons did not agree and there were any partition, they should exercise ownership in accordance with this document; neither was to take more than was mentioned in the document.

Held, that this agreement constituted a partition between the brothers, and was binding on their descendants.

In 1876 the plaintiffs, alleging a partition of the family estate in 1864, sued their uncle (father of the present defendants) to recover their share of the rent of a certain piece of land which had formed part of the family estate. The plaintiffs relied in that suit upon a memorandum or agreement of partition executed in 1864. The defendant in that suit, however, [26] contended that the family was still joint and that the plaintiff could not claim a share of any particular piece of land, but must sue for partition of the whole property. At the hearing of that suit an issue was raised as to whether partition had taken place. The Court found in the affirmative and awarded the plaintiff's claim. In the present suit the plaintiff sued the defendants (the sons of the defendant in the former suit), to recover possession of certain property which they alleged formed part of the share awarded to them at the partition of

* Second Appeal, No. 235 of 1885.