

became final and binding on the plaintiff on the expiry of one year. That order was made before the sale at which the plaintiff purchased. It was, moreover, an order in favour of the judgment-creditor, since it disallowed the claim to release the property from attachment. There was, it is true, a declaration added that the defendants (the intervenors) were permanent tenants of the land in question. Such a declaration, however, could not legally be made under either ss. 280, 281 or 282. It is contended by their pleader here that the declaration was made and inserted in the proclamation of sale after enquiry under s. 289. A purchaser, however, at a Court sale is not bound by the specifications in the proclamation of sale contained of the claims of intervenors. They are inserted for his benefit, and no binding effect as against him is anywhere given to them. On his purchase he steps into the place of the former owner of the property, and it is quite open to him to exercise and use, as against the intervenors, all the rights and remedies that that owner had. I concur, therefore, in reversing the decree and remanding the appeal for a hearing on the merits.

Decree reversed.

1890
SEP. 29.
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APPEL-
LATE
CIVIL.
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15 B. 290.

15 B. 293.

APPELLATE CIVIL.

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

PEMRAJ CHANDRABHAU (*Original Plaintiff*), *Appellant v.*
SAVALYA GAJABA (*Original Defendant*), *Respondent.**
[30th September, 1890.]

Hindu law—Joint family—Family property—Mortgage—Mortgage of ancestral property by father of joint family—Decree on mortgage—Auction sale—Extent of the right, title and interest sold.

A. mortgaged his family property to C. Subsequently C. got a decree upon his mortgage, and purchased the property at an auction sale held in execution of the decree.

[294] In a suit brought by C.'s son against the heirs of A. to recover possession of the property,

Held, that, having regard to the language of the mortgage-deed, there could be no doubt that the entire family property was intended to be mortgaged. The auction-purchaser, therefore, took the whole interest in the property, and not merely the interest of A alone.

Simbhunath Pande v. Golap Singh (1) distinguished.

Bhagput Pershad v. Mussamut Girja Koer (2) followed.

THIS was a second appeal from the decision of J. W. Walker, District Judge of Ahmednagar.

Suit to recover property purchased at an auction-sale held in execution of a decree.

On the 26th June 1871, one Anaji mortgaged his ancestral property to one Chandrabhau Bapujishet Marwadi for Rs. 171 under a registered mortgage-deed. The mortgage recited that "In all Rs. 171 are due to you.

* Second Appeal, No. 666 of 1889.

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* * For the said amount are mortgaged our field lands situate at * * which have been in our enjoyment (possession) since the time of our ancestors, and have been in my possession up to this day since my father's death. The particulars of the lands are * *. In all five fields comprised within the aforesaid boundaries are mortgaged for the said amount. The survey numbers of the lands are entered against my name in the government records, and (the lands) are in my enjoyment (possession). Neither I nor any other person will be entitled to the lands until the principal amount, together with interest thereon, is paid off."

On the 22nd December 1873 the mortgagee, Chandrabhau, obtained a decree upon the mortgage against the mortgagor Anaji.

On the 2nd April 1875 Chandrabhau purchased the mortgaged property at an auction sale held in execution of his decree.

Subsequently to the auction sale Chandrabhau and Anaji died.

On the 4th April 1887 Chandrabhau's son, Pemraj, brought the present suit to recover possession of the property. The suit was instituted against three sons of Anaji (defendants 1, 2 and 3) [295] and his grandson the respondent Savalya (defendant 4), who was the son of a deceased son named Gajaba.

Defendants Nos. 1, 2 and 3 did not appear to contest the claim.

Defendant No. 4, Savalya Gajaba, pleaded (*inter alia*) that his father Gajaba was divided from his grandfather Anaji at the time of the mortgage transaction, and that, therefore, his interest in the property did not pass by the sale in execution of the decree against Anaji; that one of the fields, (old Survey No. 84), was mortgaged by his grandfather Anaji to one Vithu Moraji, who got a decree on his mortgage and purchased the land at an auction sale held under his decree on the 3rd February, 1875, and that he (defendant No. 4) held the field under the said Vithu, who had become the owner of it by the said purchase.

The Court of first instance found that Savalya's share in the property was not affected by the Court sale held against Anaji at the instance of Chandrabhau and decreed that the lands claimed in the plaint, *minus* Savalya's share and also *minus* the field, (old Survey No. 84), should be awarded to the plaintiff.

Against the decree of the Court of first instance the plaintiff appealed to the District Court. In appeal the plaintiff did not include in his claim the field (old Survey No. 84). The District Judge confirmed the decree of the Court of first instance.

The plaintiff appealed to the High Court.

Dhondu Moroba Sanzgiri, for the appellant:—Chandrabhau's decree, in execution of which the property was sold, was passed on a mortgage-deed executed by Anaji in his capacity as father and manager of the family. The auction-purchaser, therefore, acquired, by his purchase, an interest in the entire property and not only to the extent of Anaji's share therein—*Girharilal v. Kantulal* (1); *Trimbak v. Narayan* (2). The lower Courts relying on the ruling of the Privy Council in *Simbhunath Pande v. Golap Singh* (3), wrongly held that Anaji's interest alone passed by the auction-sale. That case is not in point, because the mortgage upon which [296] the decree in that case was passed, conveyed by its very terms the right, title and interest of the father alone. The only test to determine the extent of

(1) 11 A. 321.

(2) 8 B. 481.

(3) 14 C. 572.

interest passed at an auction-sale is to see what the purchaser had bargained for and paid—*Mussumat Nanomi v. Modhan Mohun* (1). The ruling of the Privy Council in *Bhagbut Pershad v. Mussumat Girja Koer* (2) governs the present case.

Vasudev Ramchandra Joglekar, for the respondent.—The decree was for the sale of the right, title and interest of Anaji alone, and the certificate of sale purported to convey the same to the auction-purchaser. The lower Court has remarked that Savalya's father, Gajaba, was separated from Anaji when the mortgage was made. Therefore Gajaba's share could not be included in the mortgage, and could not be sold under the decree passed upon the mortgage. The ruling of the Privy Council in *Simbhunath Pande v. Golap Singh* (3) is in point.

JUDGMENT.

SARGENT, C.J.—The District Judge has held that, assuming the family to have been joint, the decision of the Privy Council in *Simbhunath Pande v. Golap Singh* (3) is conclusive against more than Anaji's interest in the property having been sold; but that case proceeded on the ground that the mortgage, on which the decree was passed, by its very terms only passed the right, title and interest of the father. Here, however, the language of the mortgage can leave no doubt that the entire family property was intended to be mortgaged. The case comes within the reasoning of the Privy Council in their judgment in *Bhagbut Pershad v. Mussumat Girja Koer* (2).

But it still remains to consider whether Anaji and Gajaba were separate, the latter having a specific share in the property at the time of the sale, as found by the Subordinate Judge. The Judge has not found distinctly on that question, and we must, therefore, send back the case for the Judge to find on that issue, and transmit his finding to this Court within a month.

[297] Upon the issue sent down by the High Court, the lower Court found that Anaji and Gajaba were not separate, and that the latter had not a specific share in the property at the time of the auction-sale.

The following was the decision of the High Court upon the return of the above finding:—

“The Court reverses the decree of the lower appellate Court and orders defendant (respondent) to deliver possession to the plaintiff (appellant) of the lands mentioned in the plaint, excepting old Survey No. 84. Plaintiff (appellant) to have his costs throughout.”

Decree reversed.

(1) 13 I.A. 1.

(2) 15 I.A. 99 (101).

(3) 14 C. 572.