

18 B. 175 (F.B.).

APPELLATE CIVIL.—FULL BENCH.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy and Mr. Justice Fulton.

SHANTAPPA CHEDAMBARAYA (Auction-purchaser) v. SUBRAO RAMCHANDRA YELLAPUR (Decree-holder), RAYAPA SHIVAPA SHETTI (Judgment-debtor).\* [23rd February, 1893.]

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18 B. 175 (F.B.).

Stamp—Stamp Act (I of 1879), sch. I, arts. 16-21—Decree—Execution—Sale of property subject to mortgage—Valuation of property sold—Computation of purchase-money—Certificate of sale—Proclamation of sale—Mortgages noted in proclamation of sale—Civil Procedure Code (Act XIV of 1882), ss. 282-287.

Mortgages noted in the proclamation of sale as claims upon the property sold, should not be entered in the certificate of sale, or be computed as part of the purchase-money, unless they have been admitted by the parties, or established by decree, or unless they have been declared, under s. 282 of the Civil Procedure Code (Act XIV of 1882), to be charges on the property, and the Court has seen fit to sell it subject to them, but they should be entered in the certificate and computed as part of the purchase-money if they have been thus admitted or established, or if they have been declared under s. 282 of the Civil Procedure Code (Act XIV of 1882), and the sale has been held subject to them.

Claims admitted by parties or established by the decree of a Court should be entered in the proclamation of sale as charges upon the property, though they have come to the knowledge of the Court in an enquiry under s. 287 only, and have not been made the subject of an order under s. 287 of the Civil Procedure Code (Act XIV of 1882).

[Rel., 15 Ind. Cas. 5 (8) = 15 O.C. 211.]

THIS was a reference made by Rao Saheb H. S. Phadnis, Subordinate Judge of Kumta in the Kanara District, under s. 49 of the Stamp Act (I of 1879) and s. 617 of the Civil Procedure Code (Act XIV of 1882).

[176] One Subrao Ramchandra Yellapur obtained a decree against Rayapa Shivapa Shetti and in execution attached and sold certain property subject to four different mortgages. The property was purchased at the Court sale by one Shantappa Chedambaraya, who was the holder of one of the four mortgages. He applied for a certificate of sale, and relying upon the decision in *In re Ramkrishna* (1) contended that his mortgage and one of the other three mortgages should not be inserted in the certificate of sale and computed as purchase-money, as they had not been admitted by the parties or established by the decree of a Court. The Subordinate Judge, being of opinion that the decision relied on was irreconcilable with the ruling in *Sha Nagindas v. Halalkhore Nathwa* (2), referred the following questions:—

"I. Should not the mortgages specifically noted in the proclamation of sale as being charged upon the property sold, be so entered in a certificate of sale, and be computed as part of the purchase-money?"

"II. Should claims admitted by the parties, or established by the decree of a Court, be entered in the proclamation of sale as charges upon the property to be sold, supposing they have come to the knowledge of the Court in an inquiry made under s. 287 only, but are not covered by an order under s. 282?"

The opinion of the Subordinate Judge on the first question was in the affirmative and on the second in the negative.

\* Civil Reference No. 16 of 1892.

(1) 9 B. 47.

(2) 5 B. 470.

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There was no appearance for the parties.

The reference was decided by a Full Bench consisting of SARGENT, C.J., and CANDY and FULTON, JJ.

## JUDGMENT.

We think that the first question, put by the Subordinate Judge, should be answered by saying that mortgages, noted in the proclamation of sale as claims upon the property sold, should not necessarily be entered in the certificate of sale, or be computed as part of the purchase-money, unless they have been admitted by the parties, or established by decree, or unless they have been declared, under s. 282 of the Civil Procedure Code, to be charges on the property and the Court has seen [177] fit to sell it subject to them, but that they should be entered in the certificate, and computed as part of the purchase-money, if they have been thus admitted or established, or if they have been declared, under s. 282 of the Civil Procedure Code, and the sale has been held subject to them.

As regards the second question, we consider that claims admitted by the parties, or established by decree of a Court, should be entered in the proclamation of sale as charges upon the property, though they have come to the knowledge of the Court in an enquiry under s. 287 only, and have not been made the subject of an order under s. 282 of the Civil Procedure Code.

*Order accordingly.*

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18 B. 177.

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.*

PARVATI AND ANOTHER, MINORS (*Original Plaintiffs*), Appellants v.  
GANPATRAO BALAL AND OTHERS (*Original Defendants*),  
*Respondents.*\* [27th February, 1893.]

*Hindu law—Joint family—Manager—Gift by manager of part of family property—  
Illegitimate daughters—Maintenance—Gift—Alienation of family property—  
“Dasiputra” (son of a slave).*

Ramchandra, the manager of an undivided Hindu family, gave certain shares in a spinning and weaving company, which had been purchased out of family funds, to Ganesh for and on behalf of the plaintiffs, who were Ramchandra's illegitimate daughters. After the death of Ramchandra and Ganesh, Ramchandra's illegitimate daughters sued the surviving members of the family for a declaration that the shares belonged to them, and that they had a right to have them transferred to their names in the company's books.

*Held*, without deciding whether illegitimate daughters are entitled to simple maintenance from the family property, in any case, Ramchandra, as manager, could not alienate the shares for that purpose, as there were no emergent circumstances requiring it.

[F., 4 Bom.L.R. 893 (890); R., 24 B. 563 (579); 29 B. 51 (54); 32 B. 562 (566)=10 Bom.L.R. 736.]

APPEAL from the decision of L. G. Fernandez, First Class Subordinate Judge of Poona.

The plaintiffs were the minor illegitimate daughters of one Ramchandra Ganesh, deceased. They sued the defendants, who were the

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\* Appeal No. 67 of 1890.