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APPELLATE CIVIL.

Before Mr. Justice Telang and Mr. Justice Fulton.

JANKIBAI (Original Plaintiff), Appellant v. MAHADEV AND OTHERS
(Original Defendants), Respondents.* [10th February, 1893.]

Hindu law—Joint family—Family debt—Liability of family property—Manager—Decree against manager—Execution sale—Questions for Court to decide in determining the quantum of interest which passes to the auction-purchaser.

Where the manager of a joint Hindu family is sued for the recovery of a debt, and his right, title and interest in the family property are sold in execution, the questions which the Court has to decide in determining the *quantum* of interest which has passed to the auction-purchaser are : (1) whether the debt was one for which the entirety might, by proper procedure, have been brought to sale, and (2) whether, as a matter of fact, the purchaser bargained and paid for the entirety.

A, and his three younger brothers B, C, and D were members of a joint Hindu family. A was the manager of the family. After A's death, B, C, and D were sued as his legal representatives in respect of a debt which A had contracted for the benefit of the family. A decree was passed against them as A's representatives, directing the recovery of the debt by sale of A's estate. In execution of this decree, A's right, title and interest in certain family property was put up to sale.

Held, that the sale affected the rights of all the members of the joint family. Under the circumstance what was meant to be brought to sale was the right, title and interest of the family of which Sakharam had been the manager, and for the benefit of which the debt had been incurred.

[R., 21 B. 205 (219) ; 21 B. 616 (618) ; 3 Bom. L.R. 322 (356); 10 C.P.L.R. 67 (69).]

[148] SECOND appeal from the decision of Rao Bahadur N. G. Phadake, First Class Subordinate Judge, A. P., of Satara in appeal No. 282 of 1889.

Suit for redemption of certain land. The land in question was family property and belonged to four brothers, *viz.*, Sakharam, Sitaram, Govind and Antaji.

Sakharam was the manager of the family. In 1871 he mortgaged the property to Vinayak, the father of defendant No. 1.

In 1872 and 1873 he passed two other bonds in favour of Vinayak to secure certain debts contracted for the benefit of the family.

After Sakharam's death, his brothers were sued as his legal representatives on the two bonds of 1872 and 1873, and a money decree was passed against them, directing that the decretal amount should be recovered out of the property of the deceased Sakharam.

In execution of this decree, Sakharam's right, title and interest in the property in dispute were put up to sale on the 13th October, 1875, and purchased by defendants Nos. 2, 3 and 4.

By a deed of sale dated 15th February 1884, Sitaram, Govind and Lakshumbai, widow of Antaji, conveyed their interests in the lands in suit to plaintiff No. 1.

In 1887 the present suit for redemption was filed by plaintiff No. 1. Plaintiffs Nos. 2 and 3 were joined subsequently to the institution of the suit, as persons interested in the equity of redemption.

The main question at issue between the parties was, whether the interest of Sakharam alone, or the interests of his brothers also, passed to

* Second Appeal No. 266 of 1891.

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the defendants Nos. 2, 3 and 4 at the Court-sale held in 1875 in execution of the money decree obtained by Vinayak, the father of defendant No. 1.

On this point both the lower Courts found that Sakharam was manager of the family; that the debt for which the decree was passed, and the property sold in execution, was contracted [149] by Sakharam for the benefit of the family, and that, therefore, the interests of all the brothers passed to the defendant Nos. 2, 3 and 4 as auction-purchasers.

The lower Courts, therefore, held that the plaintiffs were not entitled to redeem that portion of the property which was purchased by defendants Nos. 2, 3 and 4.

Against this decision plaintiff preferred a second appeal to the High Court.

Mahadeo Chimnaji Apte, for the appellant:—The decree in execution of which the property in dispute was sold, was a decree against Sakharam's property in the hands of his heirs. It was a money decree for the recovery of a debt contracted by Sakharam alone. The decree and the sale in execution affected only Sakharam's interest in the family property. Even in the case of a father, a sale in execution of a money decree against him passes his interest only, in the absence of any special circumstances showing an intention to put up to sale the entire interest of the family—*Maruti Sakharam v. Baboji* (1); *Pandu v. Maniklal* (2), *Basaya v. Fakir-gavda* (3).

M. B. Chaulal, for respondent No. 1.

Shivram Vithal Bhandarkar, for respondents Nos. 2 to 4:—What was sold is a question of fact, and both the lower Courts have found, as a fact, that the interest of the whole family was put up to sale and purchased by the respondents. This finding is conclusive in second appeal—*Appaji Bapuji v. Keshav* (4). At the time of the suit, Sakharam's brothers were not minors. They were parties to the suit, and they raised no objection in the execution proceedings to the sale of the entire family estate. They are, therefore, estopped, and so is the plaintiff, their assignee, from contending that Sakharam's interest alone passed to the auction-purchasers. Cites *Nimba v. Sitaram* (5); *Punchanun v. Rabia Bibi* (6); *Hari Vithal v. Jairam* (7); *Jagabhai v. [150] Vijbhukandas* (8); *Jairam v. Joma* (9); *Kagal Ganpaya v. Manjappa* (10); *Vishnu v. Venkatrav* (11); *Vasudev v. Krishna* (12).

Mahadeo Chimnaji Apte, in reply:—The decree is plain on the face of it. It binds only Sakharam's interest in the family property—*Kisan-sing Jivansing v. Moreskwar* (13).

JUDGMENT.

FULTON, J.—The only point argued in this appeal was whether the District Court was correct in holding that the rights of Sitaram, Antaji and Govind in certain portions of the property in dispute were conveyed to defendants Nos. 2 to 4 by the auction sales referred to in certificates 84, 86 and 88.

Sakharam was, it has been found, the manager of the family, and the debt, to recover which the auction sale took place, was, according to the finding of the Court of first instance, contracted for family purposes. Against

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| (1) 15 B. 87. | (2) P. J. (1891), p. 124. | (3) P. J. (1892), p. 141. |
| (4) 15 B. 13. | (5) 9 B. 458. | (6) 17 C. 711. |
| (7) 14 B. 597. | (8) 11 B. 37. | (9) 11 B. 361. |
| (10) 12 B. 691. | (11) P.J. (1889), p. 248. | (12) P.J. (1891), p. 18. |
| (13) 7 B. 91. | | |

this finding no express appeal was made to the District Court, and no issue was sought for on the subject. Under these circumstances, we think the District Court could rightly regard the debt as a family debt, and that we are bound to treat it as such. When the suit was brought to recover this debt, Sakharam was dead, and it was accordingly filed against his brothers Sitaram, Govind, and Antaji as his representatives. A decree was passed against them in this capacity directing the recovery of the debt by the sale of Sakharam's estate. In execution of this decree the deceased Sakharam's right, title and interest were sold, and the question now arises whether the sale affected the rights of all the members of the joint family in the property or not.

As the debt was a family debt it is obvious that all those rights could be sold to satisfy it, and the question, therefore, is narrowed to one of procedure. Strictly speaking, at the time of the sale, Sakharam's estate had ceased to exist; for, at his death, his interest, in the joint property, passed to his brothers, but under the circumstances we think the lower Court was right in holding that what was meant to be brought to sale and conveyed was the right, title and interest of the family of which [151] Sakharam had been the manager, and for the benefit of which the debt had been incurred. An examination of the various reported decisions in suits in which a manager, whether a father or a brother, has been sued for the recovery of the debt and in which his right, title and interest have been sold in execution, leads to the conclusion that the questions, which the Court has to decide, are whether the debt was one for which the entirety might by proper procedure have been brought to sale, and whether, as a matter of fact, the purchaser bargained and paid for the entirety—*Hari Vithal v. Jairam Vithal* (1), and this conclusion seems, in no way, inconsistent with the decision in *Pandu v. Maniklal* (2), which merely shows that the sale of a manager's interest will not, in the absence of the above special circumstances, affect the rest of the family.

In the present case the suit was brought in a very awkward form against the three brothers as representatives of their deceased brother, but we think that the principle which governed the decision in *Hari Vithal v. Jairam Vithal* (1) and other cases relating to the same subject, left it open to the District Court to decide whether the purchasers, as a matter of fact, bargained and paid for the whole family interest. On this issue the First Class Subordinate Judge's judgment (though not quite so clear as might have been desired) amounts to a finding in the affirmative. This finding is in accordance with probability, as the Court cannot have intended to sell, or the purchasers to buy, merely an interest which was non-existent at the time of the sale, and Sitaram, Antaji and Govind, who were parties to the suit, do not seem to have made any objection to the proceedings in execution; but in any case it is not a finding which we can now question.

We must, therefore, confirm the decree of the First Class Subordinate Judge, A. P. The appellant to pay separate costs for the respondents, represented by Mr. Chaubal and Mr. Bhandarkar respectively.

Decree confirmed.

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(1) 14 B. 597.

(2) P. J. (1891), p: 124.