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bond and section 253, Civil Procedure Code, combined, there the original decree must be treated as one "passed jointly" against the judgment-debtor and the surety. The words of the explanation to article 179 already read appear to be plain: they refer to the decree which is "passed jointly" against more persons than one, and do not mean as far as we understand them, a decree where a joint liability may be deduced, by combining the surety bond and the provisions of section 253, with the decree in dispute.

The appellant is thus not entitled to take advantage of the previous application for execution of the decree, which he made against the judgment-debtor.

Mr. Nilkanth for the respondent also contended that the decree of the lower Court may be supported on the ground that it can be shown that the District Judge was in error in holding that the decree as against the judgment-debtor, is not also barred. In view of the decision we have arrived at as to article 179, Limitation Act, we need not go into this point.

Decree of the lower appellate Court confirmed with costs.

Decree confirmed.

R. R.

ORIGINAL CIVIL.

Before Mr. Justice Scott.

JAIRAM NATHU (PLAINTIFF) v. NATHU SHAMJI
AND OTHERS (DEFENDANTS).*

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August 17.

*Hindu Law—Partition—Expenses for ceremonies of brother's sons—
Share of step-mother—Value of stridhan to be deducted from share—
Expenses for ceremonies of grandchildren.*

In a suit for partition brought by a Hindu against his father and brothers, the brothers are entitled to have set apart from the family property a sum sufficient to defray the expenses of their prospective thread, betrothal, and marriage ceremonies, such sum to be calculated according to the extent of the family property. A father's wife is on such partition entitled to a share

* Suit No. 841 of 1905.

equal to that of a son but from her share must be deducted the value of any *stridhan* received by her as a gift from her father-in-law or husband. The children of a brother on such partition are not entitled to any sum for the performance of their prospective thread, betrothal or marriage ceremonies.

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THE property the subject-matter of this suit belonged to one Shamji Premji, who died in 1898. After his death his two sons Nathu (the 1st defendant) and Dharamsi divided the property between themselves after a reference of the matter to arbitration. Nathu by his first wife had a son Jairam (the plaintiff) and by his second wife Motibai (the 4th defendant) two sons Mathuradas (the 2nd defendant) and Laxmidas (the 3rd defendant).

The plaintiff was married at the expense of the family property and had two children, a son and daughter. The other two sons of Nathu were unmarried and in the case of the younger the thread ceremony remained to be performed.

In 1905 the plaintiff brought this suit to recover his share in the ancestral property which came into the possession of his father.

At the trial the following issues were raised:—

1. Whether defendant No. 1 is possessed of any ancestral property over and above what is mentioned in the award referred to in paragraph 3 of the plaint.
2. Whether the award is not completely binding on the plaintiff.
3. Whether each of the defendants Nos. 2 and 3 is not entitled to have a sum equal to the amount spent on the plaintiff's betrothal and marriage set apart from the common stock of the family before effecting a partition.
4. Whether defendant No. 3 is not entitled to have a reasonable sum set apart from the common stock for his thread ceremony before effecting a partition.
5. Whether if the 4th defendant is allowed a share on partition, any and what allowance should be made on account of the *stridhan* received by her from her father-in-law or her husband.
6. The general issue.

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Mankar and Desai, for the plaintiff:—Defendants Nos. 2 and 3 are not entitled to their marriage expenses being set apart, as it is clear under Hindu law that no member of a joint family can be charged for sums withdrawn by him for legitimate purposes. See West and Bühler, pp. 790, 791 and 751 (3rd Edn.).

It is admitted that the step-mother is entitled to a share equal to that of a son, but from this share should be deducted the *stridhan* property received by her from her father-in-law or her husband.

If the Court is inclined to set apart the marriage expenses of defendants Nos. 2 and 3, then the marriage expenses of the son and daughter of the plaintiff should also be similarly set apart.

Sellur and Bhandarkar, for the defendants:—The unmarried brothers in a joint Hindu family have a right, at the partition of the family property from their married brothers, to be put in the same position as their married brothers by setting apart a sum for their marriage expenses from the common fund before it is partitioned, *Yajnyavalkya*, ch. II, v. 125. The author of the *Mitakshara* makes it clear that the expense of the unmarried brother must come out of the common stock.

[SCOTT, J.—The passage in the *Mitakshara* refers to the partition when the father is dead; but in the present case the father is alive.]

No doubt that passage speaks of the brothers arriving at a partition after the father's demise, but, bearing in mind the context, that should not be taken as a condition precedent to the expenses of marriage coming out of the common stock. The author refers generally to the time of partition, when he uses the words "after the father's death. . ."

The provision for setting aside the marriage expenses is made in obedience to the basic principle of partition, *viz.*, equality of shares. See *Mitakshara*, ch. I, section 3, paragraphs 2 and 7. Marriage and other *samskaras* are special to each individual and expenses incurred for them come under the rule that extraordinary expenses incurred for the special benefit of the members must be debited to their shares. Stokes' Hindu Law-Books, p. 398; Viramitrodaya, 81.

The passages cited from West and Bühler by counsel for plaintiff have no application here, as they relate to sisters and disqualified heirs.

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It is contended for the plaintiff that if the marriage expenses of the defendants Nos. 2 and 3 are set aside then those of the plaintiff's son and daughter should similarly be set aside from the common fund before it is partitioned. This cannot be done; because, instead of equalizing the shares, it would be simply aggravating the inequality. The passage in the Mitakshara refers to brothers only and not to their children: see Strange's Hindu Law, Vol. II, pp. 286-288.

The claim for the thread ceremony of defendant No. 3 stands on the same footing, for the word "*samskara*" (initiation) used in the Mitakshara includes all the ceremonies up to marriage: see Stokes' Hindu Law, p. 398, note 3.

The claim for a share of the step-mother is admitted by the plaintiff. Having regard to Mitakshara, ch. I, section 2, paragraph 9; and ch. I, section 7, paragraphs 1 and 2; and Vyavahara Mayukha, ch. IV, section 6, and paragraphs 15 and 18, it would serve no good purpose to dispute the deductions claimed in issue No. 5.

Mankar was heard in reply.

SCOTT, J.—Shamji Prémji, a Bhatia, died intestate on the 26th July 1898, leaving him surviving two sons Nathoo Shamji and Dharmsey Shamji, and property which is alleged to have been of the value of upwards of a lakh of rupees.

— After the death of Shamji, his sons Nathoo and Dharmsey, being desirous of partitioning the estate, referred the question of partition to the arbitration of Mr. Vithaldas Damodar Thakersey and that gentleman made his award on the 18th July 1905.

The present suit was filed on the 24th November 1905 by one of Nathoo's sons Jairam against Nathoo and his two brothers, Nathoo's other sons, Mathuradas and Lakhmidas, for the partition of that portion of Shamji's estate which fell to Nathoo's share; and by an amendment, Motibai, wife of Nathoo, was added as a party to the suit.

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The first two questions which are raised in the issues 1 and 2 may be quickly disposed of.

The first issue is whether the first defendant is possessed of any ancestral property over and above that mentioned in the award referred to in the plaint; and the second issue is whether the award is not binding on the plaintiff.

Mr. Mankar, who appears for the plaintiff, has stated that the plaintiff is willing to accept the award. He also admits that there is some ancestral property; and it appears to me that as a consequence of the plaintiff's acceptance of the award he must be bound by the finding of the arbitrator as to the amount of the ancestral property. Therefore, no question can arise as to whether there is any ancestral property over and above that mentioned in the award.

The third and fourth issues may be taken together. They relate to the right of the defendants Nos. 2 and 3 to have a sum set apart for those ceremonies which are bound to take place in the course of the life of every Hindu, if he lives long enough, before the property is partitioned. The ceremonies are the thread ceremony, the betrothal ceremony and the marriage ceremony. The second and the third defendants have not yet been married or betrothed, and the third defendant has not as yet had his thread ceremony performed.

Mr. Mankar in his opening contended that the sons of Nathoo were not entitled to have any prospective provision made for their ceremonies, inasmuch as they were sharers; but in his reply he cited a passage from Mayne's Hindu Law, which entirely bears out the argument, addressed by Mr. Setlur, based on the texts of Yajnavalkya and of Mitakshara. The passage I refer to is in these words: "Having ascertained what property there is to divide, the next step is to ascertain its amount. For this purpose it is necessary first to deduct all claims against the united family for debts due by it, or for charges on account of maintenance, marriages or family ceremonies, which it would have had to provide for, if it remained united. When these are set aside, an account must be taken of the entire family property in the hands of all the different members." (See section 470 of Mayne's Hindu Law, 6th edition.)

I am, therefore, of opinion that the defendants 2 and 3 are entitled to have a sum set apart from the family property sufficient to defray the expenses of those ceremonies which have not been performed in the case of each of them, the sum set apart being calculated according to the extent of the family property; and there will be a reference to the Commissioner to ascertain what sum should be so set apart, having regard to the extent of the family property. It is necessary, however, that a direction should be given to the Commissioner in the case of the second defendant that in deciding what sum should be set apart he shall deduct Rs. 1,928 which is the sum allowed to the second defendant by the arbitrator in respect of an entry made to the second defendant's credit in the books of his grandfather Shamji with reference to his marriage expenses.

The fifth and the seventh issues relate to the fourth defendant, who is the wife of the first defendant, and it is admitted that she is entitled on partition to a share, equal to that of the plaintiff; but on the other hand there must be deducted from that share the value of any *stridhan* received by her as a gift from her father-in-law or her husband. Mr. Setlur, who appears for her, admits her liability to this deduction.

That is sufficient to dispose of the issues which have been raised, but Mr. Mankar has contended that if issues 3 and 4 are found in favour of the second and third defendants, the plaintiff's children, a son and a daughter, should be added as parties to the suit and an enquiry should be directed as to the amount which should be allowed for the prospective ceremonies of the son and for the marriage of the daughter of the plaintiff.

I do not think that Mr. Mankar has made out sufficiently clearly that the plaintiff's children would be entitled to have any such sums set apart on a partition between their grandfather, father and uncles. The proposition is contrary to the answer of the Shastris given in Strange's Hindu Law, Volume 2, page 286, which relates to the exclusion of a nephew in a partition between brothers. The compiler of Strange's Hindu Law explains the answer of the Shastris by a reference to a passage in the *Mitak-*

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shara, which expressly mentions brothers but makes no mention of brother's sons. That passage from Strange's Hindu Law appears to have been adopted as a correct statement of the law in West and Bühler at page 782, and Mr. Mankar has not been able to refer me to any authority differing from Strange, and West and Bühler on this point. The right of the plaintiff's daughter to share would seem to depend upon similar considerations to that of the plaintiff's son; and as in the Mitakshara sisters are mentioned whose marriage ceremonies have to be provided for on a partition between brothers but no mention is made of nieces, I think by parity of reasoning the niece, *i. e.*, in this case the plaintiff's daughter, would be excluded from a right to have the expenses of her marriage set apart from the joint family funds before partition is made between her grandfather, father and uncles.

There will, therefore, be a reference to the Commissioner in the terms mentioned in my judgment on the third and fourth issues and to ascertain the amount of *stridhan* to be deducted from the fourth defendant's share.

The costs up to date will come out of the family funds. Further costs and directions reserved.

Defendant 1 appointed Receiver of the family property without security and without remuneration to sell the shares and apply the proceeds towards satisfaction of Dharamsey's decree on the award and to mortgage the immoveable property for such further terms as may be necessary to satisfy the decree.

Attorneys for the plaintiff: *Messrs. Chitnis and Motilal.*

Attorneys for the defendants: *Messrs. Raghavayya and Bhimji.*

W. L. W.
