

## APPELLATE CIVIL.

1908.

November 23.

*Before Mr. Justice Chandavarkar and Mr. Justice Heaton.*

SUBRAYA VITHAL NAIK (ORIGINAL DEFENDANT NO. 1), APPELLANT; v.  
NAGAPPA SUBBAYA SHANBHOG AND OTHERS (ORIGINAL PLAINTIFF  
AND DEFENDANTS NOS. 2 TO 4), RESPONDENTS.\*

*Hindu law—Debts—Son's liability to pay father's debts—Attachment of son's share in family property—Father's power to deal with the attached share—Civil Procedure Code (Act XIV of 1882), section 276.*

When the right, title and interest of a Hindu son in joint ancestral property has been attached in execution of a decree against him and its private alienation by him has been prohibited by an order of the Court under section 276 of the Code of Civil Procedure, his father is deprived of the power of alienation of that interest in satisfaction of his own debts.

SECOND appeal from the decision of C. C. Boyd, District Judge of Kánara, amending the decree passed by K. R. Natu, Subordinate Judge at Kumta.

One Anant Subbaya (defendant No. 2) and his two sons Martu and Anant (defendants Nos. 3 and 4) together constituted a joint Hindu family, which owned an ancestral shop.

A money decree was passed against Waman in a matter which concerned him. In execution of this decree Waman's share in the shop was attached on the 8th March 1900 and it was subsequently sold to the plaintiff at a Court sale on the 18th October 1900.

Meanwhile on the 20th August 1900, Waman's father Anant (defendant No. 2) sold the whole shop to Subbaya (defendant No. 1) in satisfaction of a family debt of Rs. 700.

The plaintiff brought the present suit for recovering, by partition, Waman's one-third share in the family shop.

In the first Court, the plaintiff's claim was decreed. The reasons were as follows:—

The attachment of Waman's one-third share in the shop and its site took place in Darkhást No. 454 of 1899 on the 8th March 1900. The sale to defendant 1 took place on the 20th August 1900. It is not denied and does also appear from the deposition of defendant 2 that the shop and its site form part

\* Second Appeal No. 835 of 1907.

of the ancestral property of defendants 2 to 4. Hence evidently defendant 4 had a third share in it. The sale to defendant 1 of the attached third share in the shop is illegal under section 276 of the Civil Procedure Code (*vide* I. L. R. 30 Bom. 337) . . . The sale in respect of the third share of Waman is illegal under the abovementioned section 276 although the Court sale took place on the 18th October 1900 the attachment was effected on the 8th March 1900. Plaintiff Nagappa's claim is *enforceable under the attachment* as provided in section 276."

1908.

SUBRAYA  
v.  
NAGAPPA

On appeal this decree was confirmed by the District Judge with a slight variation.

There was an appeal to the High Court.

*Nilkantha Atmaram* for the appellant :—The provisions of section 276 of the Civil Procedure Code (Act XIV of 1892) do not apply to the sale by the father. The section must be read with section 274 of the Code which expressly prohibits alienations only by the judgment-debtor and forbids any persons from taking transfer from the judgment-debtor. Here the alienor is not the judgment-debtor; and therefore the sale is not affected by section 276.

Further, the father's power of alienation is independent of the sons. In the case of *Mussamut Nanomi Babuasin v. Modun Mohun*<sup>(1)</sup>, their Lordships of the Judicial Committee hold that as a matter of fact the son's vested right by birth is destroyed by the obligation upon him to pay the father's debts.

*S. S. Patkar* for respondent No. 1 :—The son's share in the house was admittedly under attachment at the date of the sale of the whole to the appellant by the father. The effect of the attachment was to arrest the power of the father to make any alienation of it: see *Madho Parshad v. Mehrban Singh*<sup>(2)</sup>. The father's power of alienation is not independent of the son. He cannot alienate it without the authority of the son either express or implied. When the share is once attached, the son himself cannot alienate it much less could the father do so. The attachment constitutes a valid charge on the land: see *Suraj Bansi Koer v. Sheo Proshad Singh*<sup>(3)</sup>. It prevents even the right of survivorship in the joint family. The attachment under section 276 like the rule of *lis pendens* makes the alienation subservient to the

(1) (1885) L. R. 13 I. A. 1.

(2) (1890) L. R. 17 I. A. 194, pp. 196-197.

(3) (1878) L. R. 6 I. A. 88.

1908.

SUBRAYA  
v.  
NAGAPPA.

rights of the attaching creditor. The alienation is void as against all claims enforceable under the attachment.

*Sumitra S. Hattiangdi* for respondent No. 2.

CHANDAVARKAR, J. :—Under the Hindu law a father has the right to sell or mortgage ancestral property, including the interests therein of his sons, in satisfaction of his antecedent debts, provided those debts were not contracted for immoral or illegal purposes. This right to dispose of the ancestral property so as to include and affect the shares of the sons arises, according to Hindu law, in virtue of the pious obligation of the sons to pay the debts of the father, which were not illegal or immoral. In other words, when the father alienates the property, he exercises the power of alienation which the sons would have exercised in discharge of their pious duty which they owed to him: he is virtually alienating the property for them and on their behalf in discharge of their duty in accordance with the power given to him by Hindu law. When once this principle of Hindu law is grasped, it follows that when the right, title and interest of a Hindu son in joint ancestral property has been attached in execution of a decree against him and its private alienation by him has been prohibited by an order of the Court under section 276 of the Code of Civil Procedure, his father is deprived of the power of alienation of that interest in satisfaction of his own debts. And that is so, because, the son's power of alienation having been taken away by the Court, there is no power left in him on which the father's power could rest after the Court's order. For these reasons we think the lower Court is right and its decree is confirmed with costs.

*Decree confirmed.*

R. R.