APPELLATE CIVIL.

Before Chief Justice Scott and Mr. Justice Heaton.

SHIVRAM DHONDU PUJARA (ORIGINAL DEFENDANT 14), APPELLANT, *v.* SAKHARAM KRISHNA KULKARNI (ORIGINAL PLAINTIFF), RESPONDENT.* 1908. *July* 30.

Hindu Law—Mitakshara—Liability of sons to pay father's debt—Money decree—Appeal by some of the parties to a decree—Decree in appeal final—Execution—Civil Procedure Code (Act XIV of 1882), sections 234, 244, 253—Limitation Act (XV of 1877), Schedule II, Article 179.

A money decree obtained against the father of an undivided Hindu family governed by the Mitakshara law can be executed after his death against his sons to the extent of the ancestral property that has come to their hands even if the debt has been incurred for the sole purposes of the father provided that it is not tainted with immorality or illegality and if the son against whom the decree is sought to be executed as representative of his father takes the objection that the debts are tainted with immorality, he can do so under section 244 of the Civil Procedure Code (Act XIV of 1882).

Umed Hathising v. *Goman Bhaiji*(1), followed.

There is no substantial distinction, in regard to questions arising in execution, between the position of legal representatives added as parties to the suit before decree and legal representatives brought in after decree. All questions between them and the decree-holder relating to execution must alike be disposed of under section 244 of the Civil Procedure Code (Act XIV of 1882).

Where some of the parties to a decree appeal against it, the decree in appeal is the final decree for the purpose of execution with respect to all the parties.

SECOND appeal from the decision of J. D. Dikshit, Assistant Judge of Ratnagiri, confirming the order of K. K. Sunavala, Subordinate Judge of Malvan, in an execution proceeding.

The plaintiff brought a suit against one Dhondu Lala, his two brothers and other co-sharers, for the recovery of Rs. 1,275-5-6

* Second Appeal No. 222 of 1908.

(1) (1895) 20 Bom. 385.

1903.

SHIVRAM v. PAKHARAM.

due under two money bonds executed by Dhondu Lala alone. The plaintiff wanted a decree against all the defendants alleging that Dhondu was the manager of the family and that the debt was contracted by him for the joint purposes of the whole family. At an early stage of the suit Dhondu Lala died and his sons were brought on the record as defendants 13, 14 and 15. The Court, on the 31st March 1903, gave a decree to the plaintiff against the assets of Dhondu Lala and dismissed the suit against the other defendants. The plaintiff appealed against that part of the decree which dismissed the suit against the other co-parceners. But his appeal was dismissed. Dhondu Lala's representatives, defendants 13, 14 and 15 did not appeal against the decree against the assets of the deceased. The plaintiff having in the year 1906, that is, within three years of the date of the appellate decree and more than three years after the date of the first decree, presented a darkhast for the execution of the decree, defendant 14 contended that Dhondu Lala and defendants 13, 14 and 15 were joint and that the said defendants being the survivors were the sole owners of the property. He further contended that the darkhast was time-barred.

The Subordinate Judge found that the darkhast was in time, that the decree-holder was entitled to execute his decree against the interest of Dhondu Lala in the properties mentioned in the darkhast, that the said interest included the shares of defendants 13, 14 and 15 and that the decretal debt was of such a nature that the said defendants were bound to pay it. He, therefore, ordered that execution should proceed according to the darkhast.

Against the said order defendant 14 appealed and the Assistant Judge confirmed the decree.

Defendant 14 preferred a second appeal.

M. R. Bodas, for the appellant (defendant 14):—Our father who was defendant 1 died before decree and we and our brothers were brought on the record as legal representatives of the deceased. As the decree was passed against the estate of our father, the execution of the decree cannot now proceed against us. At the

time the decree was passed our father had no subsisting interest as it had already passed to us by survivorship.

Next, the plaintiff applied for execution more than three years after the decree of the Court of first instance. The application was therefore not within time. It was an error to compute the period of limitation from the date of the appellate decree to which we were not a party. The parties to the appeal were the plaintiff and the other defendants. Therefore clause 2 of the third column of article 179, schedule II of the Limitation Act cannot apply.

K. N. Koyaji, for the respondent (plaintiff):—The liability of the sons in execution proceedings is settled by the ruling in *Umed Hathising* v. *Goman Bhaiji* (1).

[SCOTT, C. J. referred to *Amar Chandra Kundu* v. *Sebak Chand Chowdhury* (2).]

That decision entirely supports our case. The liability of the sons taking ancestral property by survivorship can be determined in execution proceedings. A separate suit for the purpose is not necessary and such a suit will not lie.

As to limitation the plain words of clause 2 of the third column of article 179, schedule II of the Limitation Act must be strictly followed. That is now the settled rule of the three High Courts in India: *Lakshman Ramchandra* v. *Satyabhamabai* (3), *Kanti Chunder Goswami* v. *Bisheswar Goswami* (4), *Kristnama Chariar* v. *Mangammal* (5). In *Mashiat-Un-Nissa* v. *Rani* (6), two of the five Judges held the same view, and the case was distinguishable in some respects as pointed out in *Kanti Chunder Goswami* v. *Bisheswar Goswami* (4).

SCOTT, C. J.—The opponents in these execution proceedings are Hindus governed by the Mitakshara law. The original first defendant, their father, died before decree. On his death the opponents were placed on the record as defendants as his legal

(1) (1895) 20 Bom. 385.
(2) (1907) 34 Cal. 642.
(3) (1877) 2 Bom 491.
(4) (1898) 25 Cal. 585.
(5) (1902) 26 Mad. 91.
(6) (1889) 13 All. 1.

1908

SHIVRAM v. SAKHARAM.

representatives. The plaintiff has obtained a simple money decree against them as such legal representatives for Rs. 1,271-5-6 and costs to be recovered from the estate of the deceased. He has attached various properties mentioned in the application for execution which with a few trifling exceptions are ancestral properties which devolved exclusively upon the opponents by right of survivorship on their father's death. They claim that the ancestral properties formed no part of the estate of their father at the date of the decree and consequently are not liable to attachment. It is no doubt correct that at the date of decree the properties in question formed no part of the estate of the deceased. It has however been decided by this Court in *Umed Hathising* v. *Goman Bhaiji*[1], that a money decree obtained against the father of an undivided Hindu family can be executed after his death against his sons to the extent of the ancestral property that has come into their hands even if the debt has been incurred for the sole purposes of the father provided that it is not tainted with immorality and illegality and if the son against whom the decree is sought to be executed as representative of his father takes the objection that the debts are tainted with immorality he can do so under section 244 of the Civil Procedure Code. That was a case in which the decree was sought to be executed against the son as legal representative under section 234 of the Code. The present is a case in which execution is sought against the sons added as legal representatives before decree, a situation dealt with in section 252.

There is however no substantial distinction, in regard to questions arising in execution, between the position of legal representatives added as parties to the suit before decree and legal representatives brought in after decree under section 234. All questions between them and the decree-holder relating to execution must alike be disposed of under section 244. We, therefore, must follow the decision above referred to and we hold that it was open to the opponents to dispute in this proceeding the liability of the ancestral properties for the debt of their father on the ground that the debt was tainted with immorality

(1) (1895) 20 Bom. 385.

or illegality. They cannot insist on the plaintiff resorting to a fresh suit to enforce their pious obligation as Hindu sons to satisfy the debt out of these properties because the question having arisen in execution proceedings between the decree-holder and themselves as parties to the suit, a separate suit is rendered inadmissible by the provisions of section 244.

As the opponents have not impeached their father's debt on the ground either of immorality or illegality the decree-holder is entitled to execute his decree against all the attached properties unless his right to do so is, as contended by the opponents, barred by the law of Limitation under Article 179 of the 2nd schedule to the Limitation Act. It is contended on their behalf that the words of clause 2 in the third column of that article should not be taken literally and that as the opponents did not appeal against the original decree, although other defendants did, the date of the final decree of the appellate Court which was passed within three years from the initiation of these proceedings is a date which does not concern the opponents as the original decree which was final so far as they were concerned was passed more than three years before. We, however, are not disposed thus to disregard the plain words of clause 2. There was an appeal and the final decree of the appellate Court was passed less than three years before plaintiff's application. That application is therefore within time. We confirm the judgment of the lower Court and dismiss the appeal with costs.

Decree confirmed.

G. P. R.