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therefore, in this appeal have recourse to the provisions of section 21 of the Khoti Settlement Act.

The appeal ought, therefore, in my opinion, to be dismissed with costs. A similar view was taken in the case of *Mahomed Ibrahim* v. *Ali Mahomed Ali Pangarkar*[1], by another Bench of this Court.

HEATON, J.:—I agree.

Appeal dismissed.

R. R.

[1] S. A. No. 850 of 1914 (Un. Rep.)

APPELLATE CIVIL.

Before Mr. Justice Heaton and Mr. Justice Hayward.

1918. *September* 27.

PANDU VITHOJI LADKE (ORIGINAL DEFENDANT No. 1), APPELLANT *v.* GOMA RAMJI MARWADI AND OTHERS (ORIGINAL PLAINTIFFS AND DEFENDANT No. 2), RESPONDENTS.*

Hindu law—Mitakshara—Joint family property—Sale of entire property by one co-parcener—Sale operates only upon the co-parcener's share in the property—Purchaser cannot get joint possession of the share but is only entitled to declaration of his rights.

Under the Mitakshara, as interpreted in the Bombay Presidency, a co-parcener can sell his own interest in joint family property, provided there is valuable consideration for the sale. The sale is valid, even though the sale deed takes the form, not of a sale of his interest but of a sale of the whole property. In such a case, joint possession cannot be given to the purchaser, but merely a declaration that he has acquired the interest of the vendor, whatever that may be in the particular property, and a direction that he be left to recover that interest by separate suit for partition in which all necessary parties and properties should be joined.

SECOND appeal from the decision of R. B. Milne, Assistant Judge at Poona, confirming the decree passed by A. Majid, Additional Subordinate Judge at Khed.

*Second Appeal No. 586 of 1917.

Suit to recover possession of property.

One Vithu and his son Pandu (defendant No. 1) owned the property in dispute as joint family property. On the 10th February, 1913, Vithu sold the whole property to plaintiffs for valuable consideration.

The plaintiff filed the present suit to recover possession of the property from defendant No. 1, who contended *inter alia* that the sale was not binding on him and did not affect his share in the property.

The lower Courts held that the sale by Vithu was valid only to the extent of his share in the property. The plaintiffs were accordingly given a decree against that share and directed to be placed into joint possession along with defendant No. 1.

Defendant No. 1 appealed to the High Court.

K. H. Kelkar, for the appellant.

B. K. Mistry, for respondent No. 2.

HEATON, J. :—The facts which it is necessary to set out for the purpose of our decision are these :—

There is a joint Hindu family consisting, so far as the evidence in this case tells us, of one Vithu and his son Pandu. Vithu, the father, purported to sell to the plaintiffs a portion of the joint family property possessed by himself and his son as co-parceners. It does not appear from the judgment in the suit what proportion the property sold was of the entire joint family property. But it was certain specified fields and we understand that there is other joint family property also. The plaintiffs say that they obtained possession of the fields which they thought they had bought and they were afterwards dispossessed. So they brought this suit against Pandu and another person to recover possession. Amongst the

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defendants they did not include Vithu the father, and their vendor. It is found that, though the sale purported to be of the whole of these fields, it was not a sale for the benefit of the joint family. It cannot, therefore, operate as a sale of the entire property as it purported to be. As to that point there is in this case no doubt. But the question then arises as to whether the purchasers bought anything at all. The defendant Pandu says that they bought nothing. The plaintiffs say that at least they bought the vendor Vithu's interest in the property sold. In certain parts of India the law of the Mitakshara, as it is there applied, is held to prohibit a sale of this kind. But here in Bombay, it is now a well-established legal fact that a co-parcener can sell his own interest in joint family property, provided there is valuable consideration for the sale. This fact is recognized by the Privy Council as appears from the cases of *Suraj Bunsi Koer* v. *Sheo Persad Singh*[1] and *Balgobind Das* v. *Narain Lal*[2]. We feel no doubt, therefore, that the purchasers did get whatever the father Vithu could sell in the way adopted, unless, and this point also was argued by the defendant-appellant, seeing that the sale-deed purported to sell the whole, it is void for that reason. In other words it is argued that it is void, because it is a sale-deed of that which cannot be sold. We think, however, that there is really no doubt, that a co-parcener does sell his interest in the joint family property, even though the sale deed takes the form, not of a sale of his interest but of a sale of the whole property which is described in the deed. There is clear authority for this in certain Madras cases: see *Vadivelam* v. *Natesam*[3] and *Marappa Gaundan* v. *Rangasami Gaundan*[4]. Our attention has not been

(1) (1879) 5 Cal. 148.
(2) (1893) L. R. 20. I. A. 116.
(3) (1912) 37 Mad. 435.
(4) (1899) 23 Mad. 89.

called to any cases of this Court in which this particular point was dealt w l But we think that it would be unreasonable to hold that though a co-parcener can sell his own interest, such a sale becomes void by reason of the fact that the deed incorrectly describes that which is sold as the entire property instead of describing it as such interest as the vendor possessed. If objection can be taken to a sale of this kind it lies with the purchaser and not with the seller to take objection. The purchaser might indeed object that he had been misled or that he has one thing palmed off on him whereas he paid for a very much better thing. Here, however, the purchaser does not take exception to the purchase, and it would be a curious deviation from one's ideas of justice to hold, that an objection in this form could be taken not by but against him. We think, therefore, that the sale is good even though the deed wrongly described what was sold. This is substantially the view taken by both the lower Courts and the view to which they gave effect. But they gave effect to it in a wrong form. The decree made by the first Court was "plaintiffs granted joint possession of half of the plaint property, viz., Vithu's share along with defendant No. 1. Parties to bear their own costs under the circumstances", and that decree was confirmed by the Court of first appeal. In this particular, I think, the decrees were wrong. To me personally, it is an extraordinary thing that any stranger should ever be placed in joint possession of joint Hindu family property, sharing the possession with the co-parceners in the joint family. If one stranger can be so put in possession then another can. You may have a Mahomedan, a Parsi or a European put into joint possession with the members of a Hindu family of their joint family property. So great an anomaly or, as I should say, absurdity, as this, is not supported by the highest authority. The matter was dealt with by the

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Privy Council in *Deendyal Lal* v. *Jugdeep Narain Singh*[1] and their decision was afterwards followed in *Hardi Narain Sahu* v. *Ruder Perkash Misser*[2]. I think myself I cannot do better than follow the very words used in framing the decree of the Privy Council. The plaintiff obviously cannot obtain full possession of the property which is what he sues for, for he is not entitled to such possession. He ought not to be allowed to have joint possession for that as I have explained is contrary to reason and authority. The most that he can get is a declaration. We make the declaration in this form :—The respondents, as purchasers at the sale by Vithu have acquired the share and interest of the said Vithu in the property sold and are entitled to take such proceedings as they may be advised, to have that share and interest ascertained by partition. Claim to recover possession is dismissed. Both parties should bear their own costs throughout.

HAYWARD, J. :—I agree. It is settled law that a co-parcener can sell his undivided share in a joint family in the Presidency of Bombay. If authority be required for that proposition, reference should be made to the decision of the Privy Council in *Balgobind Das* v. *Narain Lal*[3]. It would also be inequitable to permit the vendor to deny that he had sold his own share merely because he purported in his sale-deed, also to sell the share belonging to another co-parcener. It is again well established that joint possession cannot be given in such a case to the purchaser but merly a declaration that he has acquired the interest of the vendor, whatever that may be, in the particular property and a direction that he be left to recover that interest by separate suit for partition in which all necessary parties and properties

(1) (1877) 3 Cal. 198. (2) (1883) 10 Cal. 626.
(3) (1893) L. R. 20 I. A. 116 at p. 125.

should be joined. If authority for that proposition be required reference should be made to the case of *Hanmandas Ramdayal* v. *Valabhdas*[1] decided by Sir Stanley Batchelor.

Decree accordingly.

R. R.

[1] (1918) 43 Bom. 17.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

RAMJI VALAD BAPUJI PATIL (ORIGINAL PLAINTIFF), APPELLANT v. PANDHARINATH VALAD RAVJI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1918. *October* 4.

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 15 B—Mortgage decree—Decree nisi.

A decree in a redemption suit under the provisions of the Dekkhan Agriculturists' Relief Act provided that on mortgagor paying a certain amount within twelve months he would be entitled to redeem or in default the mortgagee should recover the amount by sale of the mortgaged property.

Held, that on the terms of the decree, it was substantially a decree *nisi* and was not one of the variants permitted by section 15 B of the Dekkhan Agriculturists' Relief Act, 1879.

SECOND appeal against the decision of R. B. Gogte, First Class Subordinate Judge, A. P., at Nasik, confirming the decree passed by D. T. Chaubal, Second Class Subordinate Judge at Sinnar.

The facts of this case are fully stated in the Full Bench report of *Ramji* v. *Pandharinath*[1].

S. R. Bakhale, for the appellant.

P. B. Shingne, for respondents Nos. 6 to 9.

* Second Appeal No. 15 of 1917.

[1] See *ante* p. 334.