

(1880) 05 AHC CK 0008

Allahabad High Court

Case No: None

Ganga Ram and
Another

APPELLANT

Vs

Chandra Sen

RESPONDENT

Date of Decision: May 21, 1880

Citation: (1880) ILR (All) 899

Hon'ble Judges: Straight, J; Oldfield, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Oldfield, J.

The plaintiffs are two minor sons of one Gopal: the latter misappropriated some jewels which were pledged to him by one Ram Kinkar, who brought a suit against him for damages and obtained a decree, and in its execution caused his judgment-debtor's rights and interests in a joint ancestral house to be sold, and appellant became the purchaser. Plaintiffs sue to recover their shares of the house. Both Courts have decreed the claim, and we consider that the appeal fails.

2. The law is that, when joint ancestral property has passed out of the joint family under a sale in execution for a father's debts, his sons by reason of their duty to pay his debts cannot recover the property, unless they show that the debts were contracted for immoral purposes and that the purchaser had notice that they were so contracted and a purchaser at an execution-sale being a stranger to the suit, if he has not notice that the debts were contracted for immoral purposes, is not bound to make inquiries beyond what appears on the face of the proceedings--*Suraj Bunsu Koer v. Sheo Prasad Singh* ILR 5 Cal. 148.

3. In the case before us the debt is not one which the sons were in duty bound to pay, but it may be that, had the property passed out of the family under the sale in execution of the decree, they could not recover it from the appellant, who is an

auction-purchaser and a stranger to the suit; but an examination of the suit and decree and execution-proceedings shows that no more than the right, title, and interest of the judgment-debtor in the property passed under the execution-sale. The claim was not for a joint family debt, but a personal claim against Gopal, who was alone represented in the suit, and the decree was against him personally for a money-claim, and it was only his right, title, and interest that was put up for sale and bought by the appellant. I would dismiss the appeal with costs.

Straight, J.

4. I concur in the judgment of my honourable colleague entirely on the ground that the decree was purely a personal one against Gopal, and that all that was put up and brought to sale was his right, title, and interest. The appeal should be dismissed with costs.