

(1879) 03 CAL CK 0010

Calcutta High Court

Case No: None

Nownit Lal and
Bunwari Lal

APPELLANT

Vs

Rai Narain Dass

RESPONDENT

Date of Decision: March 17, 1879

Citation: (1879) ILR (Cal) 810

Hon'ble Judges: Richard Garth, C.J; Prinsep, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

We think that this case is quite undistinguishable in principle from that of Deendayal Lal v. Jugdeep Narain Singh (L.R. 4 I A 247; S.C.I.L.R. 3 Cal 198). It was there held by the Privy Council that, where a decree has been obtained against the father of a joint Hindu family governed by Mitakshara law, his interest in the family property could be sold under the decree, and that what the purchaser bought under such a sale was the right which the father had as a member of the family to a partition, by means of which the extent of his share would be ascertained, and that share would then become the purchaser's property.

2. The only difference between that case and the present is, that here the member of the joint family against whom the decree has been obtained, is not the father of the family, but a son; and an attempt has been made by Baboo Chunder Madhub Ghose to show that the son is not in the same position as the father, because he would not, except under certain circumstances, be entitled to a partition as against the father But it has been held by a Full Bench of this Court (8 W.R. 15), that a son is entitled to a partition against his father.

3. There is nothing in the judgment of the Privy Council which leads us to think, that the principle which their Lordships lay down is not applicable to the case of any member of the joint family; and our attention has been called to a case In this Court, which does not appear to have been reported (Special Appeal, No. 2038 of 1877), in

which it was decided by Mr. Justice Jackson and Mr. Justice Tottenham, that where the facts were precisely similar to those of the present case, the interest of the son would pass to the purchaser by a sale under the decree.

4. Then another point has been raised in this appeal, viz., that as the subject matter of the attachment was a four-anna share of certain property belonging to the joint family, and not merely the right, title, and interest of the judgment-debtor (the son) in that property, the Court is bound to prevent the sale.

5. But as we understand the facts, the judgment-creditor (whatever the form of the attachment may have been) only proposes to sell the right, title, and interest of the judgment-debtor; and we find that the third issue raised in the Court below was, "Has the defendant No. 2 such an interest in the joint family property, that it is liable to sale in execution of the decree against him?"

6. The parties, therefore, evidently meant to raise the question, whether the right and interest of the judgment-debtor could be sold; and as the object of this suit was to prevent the sale not only of the entire property, which may have been attached, but also of any interest in it, we think that we ought not to interfere to prevent the sale of such right, title, and interest as the judgment-debtor has.

7. The judgment of the lower Court will, therefore, be reversed, and the plaintiff's suit will be dismissed with costs in both Courts.