

(1924) 12 BOM CK 0024

Bombay High Court

Case No: First Appeal No. 68 of 1923

Amolakchand Laduram

APPELLANT

Vs

Motilal Agiariram

RESPONDENT

Date of Decision: Dec. 12, 1924

Acts Referred:

- Civil Procedure Code, 1882 - Section 287

Citation: AIR 1925 Bom 497 : (1925) 27 BOMLR 437 : 87 Ind. Cas. 953

Hon'ble Judges: Norman Macleod, J; Crump, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Norman Macleod, Kt., C.J.

The plaintiff's prayed for a declaration that their interest in the suit lands was neither put up to sale in darkhaat No. 199 of 1919 nor purchased by defendant No 1 Motilal, and for partition. The plaintiff's are minors who with their father defendant No. 2 constituted a joint Hindu family. In 1915 Motilal filed a suit against the second defendant in the Bombay High Court in respect of certain trade transactions which defendant No. 2 hail made with him as his Adatyain Bombay. Laduram wan therein described " as manager of the joint family consisting oil himself and his minor sons and carrying on as such manager a joint family business at Mandal as a merchant." Defendant No. 2 contended that he was an agriculturist, that the High Court has no jurisdiction, that the transactions sued on were all wagering transactions and made without any lawful consideration, and further set up a counter-claim against defendant No. 1. The High Court, disallowing all these contentions passed a decree against the second defendant in favour of Motilal for Rs. 13,235-14-1 on December 16, 1918. In execution of that decree under darkhast No. 119 of 1919 Motilal got attached certain lands of defendant No. 2. Out of them eight lands, the subject matter of this suit, were purchased by Motilal himself with the Court's permission. In taking possession Motilal was obstructed by Bhuribai, the wife of the second

defendant, purporting to act as the guardian of the minor sons on the ground that, their interests in the lands had not been sold. This led to an application by Motilal for removal of the obstruction and delivery of possession of the entire lands to him. The Court granted that application and ordered possession to be given to him. The plaintiffs then filed this suit.

2. We do not quite follow the arguments which appear to have prevailed in the trial Court on a preliminary point. The Judge said the suit should fail because the plaint had not been amended. It is a perfectly proper suit. In the circumstances of the case the sale had already been made to the purchaser, and therefore the plaintiffs had to sue for a declaration that their interest had not passed at the sale.

3. On the merits the plaintiff's claim was dismissed with costs on the ground that defendant No. 2 described himself as manager of the joint Hindu family, that the decree was against the family property, and that the sale by the Court was of the interest of all the members of the family, which thereupon passed to the purchaser.

4. The appellants rely upon the High Court Circular No. 69 (7), which purports to give directions with regard to the preparation of the proclamation for sale in execution proceedings. In circular 69 (6) it is said that the object of the enquiry u/s 287 of the CPC of 1882, now Order XXI, Rule 66 of the Code of 1908, is merely to collect particulars to be inserted in the proclamation for the information of intending purchasers. The conclusions arrived at in this enquiry are not subject to appeal, for they are not determinative between the parties. In sub-clause 7 it is stated that the enquiry shall be completed as soon as possible. When it is finished, the proclamation of sale shall be prepared in the form prescribed (No. 29 Appendix E, Schedule I of the (Dodo). If in the case of a Hindu judgment debtor it is desired to sail the interest of any other member of the family (e. g. that of a minor son or brother) the name of such member and the fact that his interest is being sold must be stated in the proclamation, as otherwise his interest will not pass to the purchaser. That, would really mean that in all proclamations of sale, when the property of a Hindu judgment-debtor is put up for sale, and nothing is said about the interest of other members of his family, a condition should be implied that only his interest passes to the purchaser, even though he is described as the manager of the joint Hindu family, and it had not been suggested that the debt or claim for which the property was being sold was not a proper debt or claim against the family. Now the law with regard to such proclamations of sale is laid down in 21 CWN 442 (Privy Council) where the facts are exactly similar to the facts in this case. The property which belonged to a joint Mitakshara family, consisting of a father and two sons, was sold in execution of decrees against the father, the order and notices providing for the sale of the right, title and interest of the judgment-debtor. It appeared from the circumstances in which the above words had been inserted, from the conduct of the sons, and the price paid by the execution creditor, that it was a sale of property over which the father had a disposing power. It was held that

the substance and not the technicalities of the transaction should be regarded, and that the entire property passed to the purchaser. The observations in (1889) L.R. 17 I.A. 11 (Privy Council) were affirmed. That case was followed by this Court in [Dada Jinappa Vagiani Vs. Yesu Sakhoba Ugare](#), where again there was a mortgage decree executed by the father the first defendant in the suit. The mortgagee purchased the property at the Court sale, and the plaintiff sued the first defendant and his sons to recover possession. The sons contended they were not parties to the prior suit and that their interests were not affected by the sale. No reference appears to have been made to the High Court Circular, and it was held that the interest of all the members of the family passed under the execution proceedings to the purchaser.

5. We have been referred to Timmappa v. Narsinha Timaya I.L.R.(1913) 37 Bom. 631 : 15 Bom. L.R. 794 and Hanmandas Ramdayat v. Valabhdas I.L.R (1918) . 43 Bom. 17 : 20 Bom. L.R. 472. In Timappa v. Narsinha Timaya, the High Court Circular was actually incorporated in the proclamation and therefore the purchaser knew exactly what he was purchasing, If it had been expressly mentioned in the proclamation in this case that the interest of the father only passed, then undoubtedly the plaintiffs would be able to succeed.

6. But the Circular has not been incorporated in the proclamation of sale and therefore we have to apply the ordinary law as laid down in the decided cases, in order to ascertain what passed to the purchaser, for the circular cannot be considered as laying down the law by which we are bound, so that we must hold that the interests of the sons were not purchased, because they were not mentioned in the proclamation. Consequently as a decree was passed against the father carrying on business in the name of the family as manager, the whole of the family property was liable for the family debt, and when the property of the debtor was put up for sale, the whole interest of the family passed to the purchaser.

7. Therefore we agree with the judgment of the Court below and dismiss the appeal with costs.