

BOMBAY HIGH COURT

Mulgund Co-Operative Credit

Vs.

Shidlingappa Ishwarappa Manvi

(Broomfield, J.)

09.04.1941

JUDGMENT

Broomfield, J.

1. The appellant, who was the plaintiff in the Court below, is the Co-operative Credit Society of Mulgund in the Dharwar district. The suit was brought for a declaration that plaintiff is the absolute owner of the property in suit by right of purchase and that the property is not liable to be attached and sold in execution of a decree passed in suit No. 77 of 1931, which was brought by the respondent.

2. The suit property consists of seven fields which belonged to the joint family of one Prabhappa. He borrowed various sums of money from the plaintiff society. In January, 1930, the society obtained awards against him under Section 54 of the Bombay Co-operative Societies Acticle 1925, the awards being made as provided there by an arbitrator nominated by the Registrar. Under the Act these awards may be executed either through the civil Courts, or through the revenue officers under the provisions of the Bombay Land Revenue Code. It appears that the plaintiff first made an abortive application to the revenue authorities and then in June, 1932, he applied to execute the awards in the Court of the Sub-Judge of Gadag. During these proceedings Prabhappa, against whom execution was sought, died and his sons and his cousin Murigeppa were brought on record. Murigeppa contended that his interest could not be sold. Prior to this the minor sons of Murigeppa by their next friend had filed a suit against Murigeppa and Prabhappa's sons and their creditors for a declaration that the debts of Prabhappa and Murigeppa were not binding on their shares. This was suit No. 112 of 1932. Possibly because of this litigation, although there is no evidence as to the reason, the plaintiff did not proceed with his darkhast and it was dismissed on November 20, 1933. In the suit brought by Murigeppa's sons the present plaintiff and the present defendant both contended that Prabhappa and Murigeppa were managers of the joint family and contracted debts for the family. The suit was dismissed in February, 1934, on the ground that as a bare declaration was sought it was barred by Section 42 of the Specific Relief Act. After abandoning his darkhast the plaintiff applied to the revenue authorities for

execution of his awards, and in October and December, 1934, seven fields were put up to auction and purchased by the plaintiff himself. He got possession in November, 1935.

3. The defendant-respondent in this appeal had brought a suit No. 77 of 1931 and obtained a money decree for ₹ 7,000 against Prabhappa, Murigeppa and the other members of the family. He had attached all the suit property before judgment in October, 1931. He got his decree in October, 1932. The plaintiff having purchased the lands applied to raise the defendant's attachment, but his claim was negatived, the Court holding that he had purchased the share of Prabhappa only, and an order was made that the rest of the property, i.e. the interest in it other than Prabhappa's, should be sold. Accordingly in March, 1936, the plaintiff brought this suit.

4. The plaintiff alleges briefly that Prabhappa was the manager of the joint family and the suit lands were accordingly entered in his name in the Record of Rights, that he had borrowed the loans from the plaintiff society for the expenses of the family and the benefit of the family estate, that all the members of the family were liable for the debts, that after Prabhappa's death Murigeppa became the manager and that after his purchase at the auction sales plaintiff became the owner of the lands.

5. The defendant contended that the award decrees were not binding on members of the family other than Prabhappa. He denied that the awards were passed against Prabhappa as manager, he denied that Murigeppa was manager after Prabhappa's death, he alleged that it was never mentioned that the right, title and interest of the whole joint family was to be sold and that the plaintiff had acquired no right to the plaintiff lands.

6. There was a preliminary issue with which we are not concerned and the main issues were (a) whether the debts for which the awards were passed in plaintiff's favour were contracted by Prabhappa as manager of the family and for family purposes; (b) whether the interests of all the members of the joint family were sold in execution of the awards. The trial Judge found the first issue in the affirmative in respect of all the debts except one, a small debt of ₹ 200 which Prabhappa had incurred as a surety, but he found on the second issue in the negative and held that in execution of the awards only Prabhappa's interest had been sold.

7. The learned advocate who appears for the respondent in this appeal has conceded that Prabhappa was the manager of the family. He was not prepared to concede that the debts were contracted for family purposes but he has not been able to make any effective answer to the reasoning of the learned trial Judge in paragraph 6 of the judgment, and in our opinion there can be no reasonable doubt that all the debts, except the small one already mentioned, were contracted for purposes of family necessity.

8. I therefore come to the second issue in the appeal, whether the interest of all the members of

the joint family was sold or the interest of Prabhappa only. The learned trial Judge has relied on the sale proclamations which state that the right, title and interest of Prabhappa was to be sold and he disregarded the sale certificates, according to which the lands themselves described as the property of Prabhappa were stated to have been sold. So far he appears to be right. The sale certificates must be regarded as merely a record of what had been sold at the auction and what that was would depend on what was put to sale. But the learned Judge was wrong in assuming that the right, title and interest of Prabhappa necessarily meant his individual share in the lands only. As was pointed out by their Lordships of the Privy Council in *Red Babu Mahabir Pershad v. Rai Markunda Nath Sahai*¹ the expression "right, title and interest" is an ambiguous one. It is quite

¹(1889) L.R. 17 I.A. 11

consistent with the sale of every interest which the judgment-debtor might have sold and it is a question of fact in each case what has in fact been sold.

9. Certain propositions of law in this connection may be said to be beyond dispute, viz., (a) that a decree against the manager of a joint family representing the family in respect of a debt contracted for family purposes is binding on all the members and may be executed against the whole coparcenary property, and (b) that a decree against the manager personally, even though in respect of a family debt, cannot be executed against the whole coparcenary property but only affects the manager's own interest. So that one of the principal questions that has to be decided here is whether these awards were passed against Prabhappa as representing the family of which he was the manager. Unless they were passed against him in his representative capacity, no more could be sold in execution of them than his own share. Now Prabhappa was not described as the manager in the award proceedings. But it has been held that in order that a decree against the manager of a joint family should bind coparceners not parties to the litigation it is not essential that the pleadings should expressly state that he was suing or sued as manager: *Madhgouda Babaji v. Halappa Balappa*¹ and *Lalchmd Thakur v. Seogobind Thakur*²

10. The question is not whether the manager has been described as manager but whether in fact he represented the family in the proceedings in question. The learned advocate for the appellant has had to admit that there is nothing that can be said to be evidence to show that Prabhappa was proceeded against in his capacity as manager of the family. But there is good authority for the view that when the manager has contracted debts for family purposes and is sued in respect of those debts there is a presumption that he is sued in his representative capacity, so that a decree against him will be binding on all the coparceners. In *Sakharam v. Devji*³ it was held that where a debt is incurred by a Hindu as manager of the family for family purposes, the other members of the family, though not parties to the suit, will be bound by the decree passed against him in respect of the debt; and if in execution of the decree any joint property is sold, the interest of the whole family in such property will pass by the sale. This is the headnote in the case, but the propositions stated there, though they do not appear in so many words in the judgment, correctly represent the effect of it. It is to be noted moreover that in that case the litigation was not

expressly brought against the manager of the family in his representative capacity, that is to say there was nothing in the record of the suit to show that that was the case.

11. In *Pithipal Singh v. Rameshwar*⁴ the Court laid down this proposition.

12. Where the circumstances of the case clearly show that the person sued was the manager of a joint family and the property involved in the suit was family property, the natural and legitimate inference to be drawn should be that the defendant had been sued in the capacity of a manager. It is not necessary that the plaintiff should state in distinct terms that he is suing as manager or that the defendant is being sued as manager. This case was cited with approval by Mr. Justice Shingne in *Madhgouda Babaji v. Halappa Balappa*. Reference may also be made in this connection to *Hori Lal v. Munman*

¹(1933) I.L.R. 58 Bom. 348, S.C. 36 Bom. L.R. 327

³(1898) I.L.R. 23 Bom. 372

²(1929) I.L.R. 8 Pat. 788.

⁴(1926) I.L.R. 2 Luck. 288

*Kunwar*⁵ In the circumstances of this case also we think it may fairly be assumed that as these debts were contracted by Prabhappa for family purposes when he was the manager of the family, the plaintiff society took proceedings against him in his capacity as manager and the awards are therefore binding not only against his own interest in the family property but against the whole coparcenary interest.

13. The learned trial Judge was of opinion that *Lalchand Thakur v. Seagobind Thakur* and *Sakharam v. Devji* were not applicable in the circumstances of the present case. His reasons were partly that he thought that the suit brought by Murigeppa's minor sons had put an end to the joint family. That, however, is contrary to *Ramsing v. Fakira*⁶ and *Ganapathy v. Subramanyan Chetty*⁷ The true position is that when a partition suit is brought on behalf of minor coparceners by their next friend there is no severance of status unless and until a decree is made in the suit.

14. The learned trial Judge also attached importance to the fact that the plaintiff abandoned his proceedings in the Sub-Judge's Court and had recourse to the procedure under the Bombay Land Revenue Code. But this the society is permitted to do under the provisions of the Bombay Co-operative Societies Act and we are unable to see that this conduct of the plaintiff affects the principles laid down in the cases to which I have referred. We hold, therefore, that the awards were passed against Prabhappa as manager of the joint family.

15. It next remains to consider whether the whole estate or merely Prabhappa's interest in the estate was sold at the auction. Mr. Murdeshwar drew our attention to *Deendyal Lal v. Jugdeep Narain Singh*⁸ and to *Baboo Hurdey Narain Sahu v. Pundit Baboo Rooder Perkash Misser*⁹ These were both cases in which decrees were obtained against a father in execution of which his right, title and interest was sold. The Privy Council held that what was sold was merely his own interest, that is to say what he would get on partition, and not the whole estate. Both of these cases were governed by the Mitashara law as applied to Bengal which is not in all respects the same as the law applicable in Bombay. In that connection I may refer to the observations of Sir

Dinshah Mulla in his Principles of Hindu Law at pp. 304 and 354. Moreover *Deendyal v. Jugdeep Narain* has been distinguished in *Mussamut Nanomi Babuasin v. Modun Mohun*¹⁰ where it was pointed out that it was a decision on the special circumstances of the case and was not intended to lay down any general proposition that a sale of the right, title and interest of the father in a joint family must be confined to his individual interest.

16. Mr. Murdeshwar also cited *Maruti Sakharam v. Babaji*¹¹ where Sir Charles Sargent in a short judgment said that in the absence of special circumstances showing an intention to put up the entire interest of the family in the property sold in execution of a money decree against the father, only the interest of the father passes to the auction purchaser, and observed that in *Nanomi Bubwasin v. Mohun Mohun*, *Minakshi Naidu v. Immudi Kanka Ramaya Kounden*¹² and *Rai Babu Mahabir Pershad v. Rai Markunda Nath Sahai*¹³ in which it had been held that the whole estate passed, there were special circumstances

⁵(1912) I.L.R. 34 All. 549, F.B

⁷(1929) I.L.R. 52 Mad. 845

⁹(1883) L.R. 11 I.A. 26

⁶(1938) 41 Bom. L.R. 195

⁸(1877) L.R. 4 I.A. 247

¹⁰(1885) L.R. 13 I.A. 1

¹¹(1890), I.L.R. 15 Bom. 87

¹³(1889) L.R. 17 I.A. 11

¹²(1888) L.R. 16 I.A. 1

justifying that view. According to the latest pronouncement of the Privy Council on this subject, in *Sripat Singh v. Tagore*¹⁴ the Court in cases of this kind has simply to regard the substance of the transaction and not technicalities. Moreover, we are not satisfied that the circumstances existing in the cases just referred to were more conclusive than those in the present case.

17. The description of the suit property is given in the plaint. The first survey number is No. 896 and the value of that was assessed by the panch at ₹ 70 an acre. The plaintiff purchased it for ₹ 1,700 which works out at ₹ 71 an acre. The second field is No. 739. That was valued by the panch at ₹ 1,500 and plaintiff paid ₹ 1,501. Then there were three fields sold together. The panchas valued them at ₹ 70 an acre. The plaintiff purchased for ₹ 2,001 which works out at ₹ 70 an acre. The total area of the land sold was 82 acres and 6 gunthas. The price paid was ₹ 6,102, i.e., roughly ₹ 71 per acre which is slightly above the valuation of the panchas. That, we think, is fairly good evidence that what was put to auction and sold by the plaintiff was the entire land and not merely Prabhappa's half share in it. The learned trial Judge thought he saw an indication that plaintiff had purchased at an undervalue in case of one of the fields because in his execution application made in June, 1932, he valued it at ₹ 2,400 whereas he purchased it for ₹ 1,700, that being in accordance with the valuation of the panchas in August, 1934. It is quite possible, however, that the value may have fallen in the meantime, and in view of the valuation of the property as a whole and the total price paid it would, we think, be quite unreasonable to hold that the plaintiff purchased merely Prabhappa's individual interest.

18. It was contended on behalf of the respondent that sales of land by the revenue authorities

under the provisions of the Bombay Land Revenue Code are not subject to the same rules and principles as sales in execution by the Court. It was said that there was no notice to other members of the family and that the proceedings in execution of the awards were all taken behind the backs of the coparceners. That, however, is not an accurate statement of the position. Notice is provided for by Section 166 of the Code and we may assume that the requirements of the Act were complied with since there is no evidence to the contrary. That being so, Murigeppa must have had ample notice, and in addition to that there were the sale proclamations.

19. Mr. Murdeshwar also relied upon the fact that the property brought to sale was described as the property of Prabhappa (represented) by his heir Murigeppa, and he argued that that meant that the plaintiff was not selling more than Prabhappa's own interest. That inference we think is not at all justified, and in view of the fact that plaintiff was admittedly seeking to bring the entire property to sale before the civil Court, it is most unlikely that when he went to the revenue authorities he contented himself with selling Prabhappa's half share. Under the Bombay Land Revenue Code what is sold is no doubt the right, title and interest of the defaulter: see Section 155. But when default is made in payment of assessment and the land is sold, what passes is the entire land and not merely the interest of the defaulter in it. That is because assessment is paid on behalf of all persons having an interest in the land, but when the law allows the revenue

¹⁴(1916) L.R. 44 I.A. 1. s.c. 19 Bom. L.R. 290

procedure to be applied in other cases, as is allowed by the Bombay Co-operative Societies Act, the effect of a sale must, we think, be the same. We are not in fact impressed by the argument that a sale under the Bombay Land Revenue Code has not the same effect as a sale by a civil Court.

20. It may on the face of it seem to be a hardship that the whole estate should be sold in this way without any inquiry having been made into the claims of Murigeppa or other members of the family. But on the other hand all the grounds on which Prabhappa's coparceners could have objected to the sale have now been decided against them.

21. In the course of his argument Mr. Murdeshwar raised the question whether it is permissible for a Hindu manager to belong to a co-operative society with the result that disputes affecting the family may automatically be referred to arbitration as provided in the Bombay Co-operative Societies Act. We do not consider that this point falls to be decided in the present case. It is well settled that a manager has power to refer disputes to arbitration and prima facie we can see no reason why he should not borrow from a Co-operative Credit Society if in his discretion he thinks it for the benefit of the family to do so. But the only points we have to decide are whether the awards were passed against Prabhappa in his capacity as manager and whether in execution of the awards the entire property of the family was actually sold. We have found both these points in favor of the appellant and therefore the appeal must be allowed and the trial Court's decree set aside.

22. There will be a decree as prayed for in the plaint except as regards the fields Nos. 819 and 919 as to which the declaration will be that the plaintiff is the owner of Prabhappa's half share therein. As the plaintiff has substantially succeeded, we award him his costs in both Courts.

.