

S.F. De Souza Vs. Wamanrao Bhai Thakur

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Court : Mumbai

Decided On : Aug-06-1925

Reported in : AIR1926Bom117; (1925)27BOMLR1451

Judge : Norman Macleod, Kt., C.J. and ;Coyajee, J.

Appeal No. : First Appeal No. 259 of 1922

Appellant : S.F. De Souza

Respondent : Wamanrao Bhai Thakur

Disposition : Appeal dismissed

Judgement :

Norman Macleod, Kt., C.J.

1. The only question in this appeal is what was purchased by Mathuraprasad in 1908, when the right, title and interest of defendant No. 1, Moreshwar, in the properties Sonbhatwadi and Devakiwadi was sold in execution of the Bombay Small Cause Court decree passed against defendant No. 1 and another party.

2. It is contended that because the decree was against the defendant alone, and not against him as the manager or head of the joint family, therefore only the right, title and interest of defendant No. 1 was sold, and that the interest of his son at that date would not pass by the sale. The certificate of sale clearly shows that it was intended that the defendant's share passed to the purchaser, and that the defendant had a half share in the property. That by itself would not preclude other persons entitled to shares in the property contending against the purchaser that their interest did not pass. But the liability of the sons for the debts of their father being joint with them (provided that the debts are not incurred for immoral purposes) has now been finally decided by the Full Bench of the Privy Council in Brij Narain v. Mangla Prasad (1923) 28 Bom. L. R. 500 and certain propositions are laid down at p. 508. There is first a distinction made between mortgage debts and simple debts, and again as regards simple debts, a distinction is made between the debts incurred by a manager or coparcener of joint and undivided estate, and the debts incurred by a father when the joint family consists of a father and his sons. A manager cannot partition or alienate the estates qua manager except for purposes of necessity. A father may lay the estate open to be taken in execution proceedings upon a decree for payment of a debt incurred by him, so long as it is not incurred for an immoral purpose.

3. In this case it is not suggested that the debt incurred by defendant No. 1 was incurred for immoral purposes. There is a pious obligation on the part of the sons to

pay that debt even during their father's lifetime. That was stated to be the law by Mr. Justice Chandavarkar in Govind v. Sakharam I.L.R.(1904) 28 Bom. 383 : 6 Bom. L.R. 344 and the relevant passage in the judgment; is cited with approval in Brij Narain v. Mangla Prasad (1923) 28 Bom. L. R. 500 . The second proposition at p. 508 seems to give effect to the proposition laid down by Mr. Justice Chandavarkar

4. It follows that the sons of defendant No. 1 cannot dispute the sale of their interest in the family property in execution of the decree for the debt incurred by their father.

5. The appeal then must be dismissed with costs.

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