Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Meenakshi Naidu v. *Immudi Kanaka Ramaya Kounden, from the High Court of Judicature at Madras; delivered November* 1*st*, 1888.

Present:

LORD FITZGERALD.
LORD HOBHOUSE.
SIR RICHARD COUCH.

[*Delivered by Lord FitzGerald.*]

IN this case the Appellant was the decree creditor. The note for Rs. 2,000 was not originally passed to him, but he became the *bonâ fide* holder and upon that note he obtained a money decree against the zemindar. An attempt has been made to impeach that decree which their Lordships will presently refer to. The decree creditor then took the ordinary proceedings to have the zemindary attached and sold. The son of the zemindar, who was the Plaintiff in the suit now before their Lordships, intervened, and he first sought by petition an order that his interest in the zemindary should be excluded from the sale, and that the sale should be m de subject to his right. It does not appear from any document before their Lordships what order, if any, was made on that petition; but their Lordships assume that the petitioner failed before the court below in obtaining that protection which he sought. Notwithstanding that petition, proceedings towards a sale went on, and upon the documents before their Lordships they must come to the conclusion that the thing professed and intended to be sold,

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and actually sold, was not the father's share, but the whole interest in the zemindary itself. Throughout this case the son does not appear to have ever contended that no more than his father's interest was sold. His case was that the whole zemindary was sold out and out; he impeached the debt which led to the sale, and asserted that the decree founded on it could not bind his interests. That impeachment of the debt has failed. It was said to have been for illegal and immoral purposes, and if it had been in its inception illegal and immoral the son would not be liable to pay the debt, and the zemindary would not be the subject of sale. But that ground has entirely failed. The subordinate judge, who examined the evidence with the greatest care, correctly came to the conclusion that there was no satisfactory evidence that the debt was contracted for illegal or immoral purposes, and there is no doubt in the case that the original creditor advanced the Rs. 2,000 *bona fide*, and that it was a debt contracted by the father and coming within the ordinary rule of Hindu law with reference to an estate such as is now before their Lordships, that the son would be liable for the debt contracted by the father to the extent of the assets coming to him by descent from the father, and that his interest in the zemindary was liable, and might be sold for the satisfaction of that debt. The son, having failed to get the protection which he sought by his petition, instituted this suit, impeaching the debt, and seeking to be absolutely relieved from it. He has failed entirely in that, and their Lordships quite agree with the judgement of the subordinate court that, failing in that, his whole suit failed. The Plaintiff based his case upon the impeachment of the debt, and upon that alone, and failing in that allegation and that impeachment, the whole suit fails. That being the case, there might have

been a sale of this estate under this decree, including the whole interest or of so much as was necessary. Upon the documents their Lordships have arrived at the conclusion that the court intended to sell, and that the court did sell, the whole estate, and not any partial interest in it.

Their Lordships do not intend in any way to depart from principles which they have acted upon in prior cases. The High Court, in dealing with the case, entirely agrees with the subordinate judge in the view which he took of the evidence, and would so far confirm his ruling; but it says, "but in view of the recent ruling of the Privy "Council that a sale in execution of a money "decree of the right, title, and interest of an "Hindu father, will affect only the interests of "the father, the Plaintiff is entitled to a declar- "ation that the sale in execution of the decree "of 1879 has affected the interests of the first "Defendant only, and not those of the Plaintiff."

The "recent ruling" referred to is probably that to be found in *Hurdey Narain* v. *Rooder Perkash*, 11 I. A. 28—29.

The High Court seems to have acted on the rule so laid down as a rigid rule of law, apparently applicable to this particular case. But the distinction is obvious. In Hurdey Narain's case all the documents showed that the court intended to sell and that it did sell nothing but the father's share—the share and interest that he would take on partition, and nothing beyond it—and this tribunal in that case puts it entirely upon the ground that everything showed that the thing sold was "whatever rights and interests the said "judgement debtor had in the property" and nothing else.

Their Lordships are of opinion that the decision of the subordinate judge was entirely right, and that the decision of the High Court

was wrong in holding that less than the entirety of the estate was sold.

Their Lordships therefore will humbly advise Her Majesty that the decision of the High Court varying the decision of the subordinate judge be reversed, that the appeal to the High Court be dismissed with costs, and that the decree of the subordinate judge be reinstated, and their Lordships give the Appellant the costs of this appeal.