Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Nanomi Babuasin and others v. *Modun Mohun and others, from the High Court of Judicature at Fort William, Bengal; delivered* 18th *December* 1885.

Present:

LORD MONKSWELL.
LORD HOBHOUSE.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

This is one of the cases, frequently occurring of late years, which raise questions as to the circumstances under which ancestral estate of a family subject to the Mitakshara law becomes liable to answer the debts of the Head of the Family.

This family is one governed by the Mithila law, which on the point under consideration does not differ from the Mitakshara. Its head is one Girdhari Singh. He has a wife the Appellant Nanomi Babuasin, and two sons the other two Appellants, who were born before the transactions which give rise to this suit, and were minors when this suit was commenced. The family are, or were, possessed of valuable ancestral property in land.

In the year 1870 one Mrs. Collis, complaining that Girdhari had wrongfully ousted her from land held under lease from him, sued him to recover possession and mesne profits. The

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lease had been granted as part of an arrangement under which Girdhari took a loan of Rs. 45,000 from Mr. Collis, the predecessor in title of Mrs. Collis. On the 10th April 1871 a decree was made according to the prayer of Mrs. Collis's plaint, and the sum of Rs. 32,318 was awarded to her for mesne profits.

On the 9th of September 1872 a portion of the family ancestral land was brought to sale by execution proceedings in satisfaction of the decree, and the Respondent Hirdey Narain became the purchaser. The property sold was described as "8 annas $11\frac{1}{4}$ gundahs out of the entire 16 "annas, the right and interest of the judge-"ment debtor in mouza Rampore Bhatkera." The fraction mentioned was the share of the whole of Girdhari's joint family, the remaining annas and gundahs belonging to some relatives who were separate in estate. A dispute arose as to the regularity of the sale, which led to further litigation; but in the result the sale was upheld and Hirdey Narain took possession, which he still retains.

In September 1878 the present suit was brought by the Appellants against Hirdey Narain and Girdhari. They pray that either the sale to Hirdey Narain may be wholly set aside, or that they may recover possession of the land and that Hirdey Narain may be put to take proceedings for partition. They contend first, that nothing passed by the sale except such share as Girdhari would have taken on partition; and secondly, that he would only have taken one fourth part.

The Subordinate Judge of Bhagulpore agreed with the Appellants on the first point, but differed on the second. He was of opinion that by the Mithila law the wife, having had a provision made for her, would take no share on

partition, and that the father would take a double share. He therefore gave the Appellants a decree for a moiety of the estates in suit. In deciding for the first contention, the Subordinate Judge founded himself on Deendyal's case, 4 Ind. App., p. 247. In his opinion, as Mrs. Collis sued Girdhari alone, she did not intend her decree to extend over the entire property of the joint family. And on the same grounds he construed the language used to describe the property in the execution proceedings as though it meant nothing more than the coparcenary interest of Girdhari.

Both parties appealed to the High Court, who were of opinion that the whole interest of the family passed to Hirdey Narain by the sale, and ordered that the suit should be dismissed with costs. The Court considered that the interest which all parties believed that Hirdey Narain was buying was the whole 8 annas 11 gundahs into possession of which he was actually put. As regards Deendyal's case, they held that it does not lay down an invariable rule that in no case will the coparceners' interest pass in an execution sale unless they are joined in the suit. And they point out that in Muddun Mohun's case, 1 Ind. App., 321, a different rule was laid down; and that in Suraj Bunsi's case, 6 Ind. App., p. 85, a statement was made of the effect of the then decisions on the subject, which embodied the principle of Muddun Mohun's case. The present appeal is brought from the decree of the High Court.

There is no question that considerable difficulty has been found in giving full effect to each of two principles of the Mitakshara law, one being that a son takes a present vested interest jointly with his father in ancestral estate, and the other that he is legally bound

to pay his father's debts, not incurred for immoral purposes, to the extent of the property taken by him through his father. It is impossible to say that the decisions on this subject are on all points in harmony, either in India or here. But the discrepancies do not cover so wide a ground as was suggested during the argument in this case.

It appears to their Lordships that sufficient care has not always been taken to distinguish between the question how far the entirety of the joint estate is liable to answer the father's debt, and the question how far the sons can be precluded by proceedings taken by or against the father alone from disputing that liability. Destructive as it may be of the principle of independent coparcenary rights in the sons, the decisions have for some time established the principle that the sons cannot set up their rights against their father's alienation for an antecedent debt, or against his creditors' remedies for their debts, if not tainted with immorality. On this important question of the liability of the joint estate their Lordships think that there is now no conflict of authority.

The circumstances of the present case do not call for any inquiry as to the exact extent to which sons are precluded by a decree and execution proceedings against their father from calling into question the validity of the sale, on the ground that the debt which formed the foundation of it was incurred for immoral purposes, or was merely illusory and fictitious. Their Lordships do not think that the authority of Deendyal's case bound the Court to hold that nothing but Girdhari's coparcenary interest passed by the sale. If his debt was of a nature to support a sale of the entirety, he might legally have sold it without suit, or the creditor might legally

procure a sale of it by suit. All the sons can claim is that, not being parties to the sale or execution proceedings, they ought not to be barred from trying the fact or the nature of the debt in a suit of their own. Assuming they have such a right, it will avail them nothing unless they can prove that the debt was not such as to justify the sale. If the expressions by which the estate is conveyed to the purchaser are susceptible of application either to the entirety or to the father's coparcenary interest alone (and in Deendyal's case there certainly was an ambiguity of that kind), the absence of the sons from the proceedings may be one material consideration. But if the fact be that the purchaser has bargained and paid for the entirety, he may clearly defend his title to it upon any ground which would have justified a sale if the sons had been brought in to oppose the execution proceedings.

That brings their Lordships to consider the nature of the debt in this case. There was a great deal of discussion whether the debt originated in the loan of Rs. 45,000, or in Girdhari's receipt of the mesne profits for which the decree was given. It appears to their Lordships that the new debt for which the decree was made is the foundation of the sale. But, whichever it was, they think the High Court are clearly right in holding that it must be taken as a joint family debt. The Subordinate Judge does not give any opinion on this point. If it is a joint family debt, a sale to answer it effected either by Girdhari or in a suit against him cannot be successfully impeached.

There remains only the question whether anything more than the father's coparcenary interest was bargained for, paid for, and taken possession of by the purchaser. On this point,

their Lordships are clearly of opinion that the High Court have decided rightly. Indeed the Subordinate Judge did not decide otherwise, so far as the facts go. As before mentioned, he held that only the coparcenary interest passed, because of the effect he ascribed to Deendyal's case. But he was clear that the language of the execution and sale proceedings was such that the purchaser must have thought that he was buying the entirety. It is equally clear that all parties thought the same.

The purchaser therefore has succeeded in showing that he bought the entirety of the estate, which could lawfully be sold to him, and the suit fails upon the merits. Their Lordships will humbly advise Her Majesty to dismiss this appeal, and the Appellant must pay the costs.