

hands after Gotam Singh's death, did not survive on the same ground or in the same way as it would in the similar suit brought against heirs and estates *not* governed by the Hindu law, and subject to devolution by survivorship as distinguished from inheritance ; in other words, the son of Gotam Singh, who, immediately on his death, took, and now represents, the whole ancestral estate, is not a person holding any property of Gotam Singh, which the latter's creditors can follow as assets of the paternal estate into the hands of the son as heir. But under the law affecting Hindu joint ancestral estate, every member of the family is a potential owner of a separable portion of his share of the estate ; and as such he is competent to charge his debts on the undivided estate to the extent of his own partible, though unseparated, share. It is this right to sue which has survived to the plaintiff after the death of Gotam Singh—the right to seek for a decision that, his debt being proved, the share in the estate which Gotam Singh might have got separated as his own in his lifetime stands charged with this debt under the mortgage-deed on which the claim is based, and, being made the subject of partition, may now be sold or otherwise dealt with in satisfaction of the debt. But the plaintiff wants something more. It is conceivable, and perhaps probable, that Gotam Singh's share in the family ten biswas of Kunwara may not suffice to pay the debt, and the plaintiff consequently asks for a decree against the whole ten biswas now in Zalim Singh's possession which Gotam Singh affected to deal with in his bond of June, 1830.

There are two ways in which a Hindu son might be saddled with the responsibility of a paternal debt in connection with property like this ten biswas of Kunwara. The father, as head of the family and manager of its estate, might have raised the loan in this express capacity for family purposes, the money borrowed being thus applied, so as to make the son a party to the contract by procuration of his father, and by participation on his own part in the benefit of the loan. Or the plaintiff might have pleaded that the debt incurred was of such a character that the Hindu law imposed upon a pious son the duty of discharging it from his own estate. In the present case, the latter line was adopted by the creditor ; and accordingly we find that the main issue propounded by the Court below was,—“ What was the necessity under

1836

---

 SITA RAM  
 v.  
 ZALIM SINGH.

1885

SITA RAM  
v.  
ZALIM SINGH.

which the money was borrowed by Gotam Singh? and was it such that the ancestral estate should be held liable for the debt?"

The Court found on the evidence, which is practically uncontradicted, in this respect, that while the father was grossly extravagant and selfish in his expenditure, still there is no evidence that the proceeds of this particular loan were applied to any special "licentious acts;" but finding that "the money in question was neither borrowed to meet any family necessity, nor laid out in necessary expenses, but was used in the personal expenses of Gotam Singh," the Court below decreed that the debt should be charged on the share of Gotam Singh alone. This decree is challenged here on the ground that the evidence does not warrant this finding of fact, as it does not establish that Gotam Singh "wasted the money on immoral purposes," or that the debt is such that a pious son is free to repudiate it.

It is now settled law that "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 joint estate there is now, as their Lordships think, no conflict of authority."—*Nanomi Babuasin v. Modun Mohun*, decided on the 18th December, 1885.

The Court below was therefore wrong in exempting half of the whole property mortgaged for his debt by the father Gotam Singh; and, allowing the pleas of the appellant in this respect, we must modify the decree so as to make it a decree enforceable against the entire joint ten biswas share in Kunwara, with costs. The plea in respect of the disallowed claim for Rs. 200-0-3 is without force, and is disallowed with proportionate costs.

*Appeal allowed.*

*Before Sir Comer Petheram, Kt., Chief Justice, and Mr. Justice Brodhurst.*

MUHAMMAD ALLAH DAD KHAN AND ANOTHER (PLAINTIFFS) v.  
MUHAMMAD ISMAIL KHAN AND OTHERS (DEFENDANTS)\*.

*Muhammadan law—Legitimacy—Effect of acknowledgment of sonship.*

*Held by PETHERAM, C.J., that, according to the Muhammadan law, the effect of an acknowledgment by a Muhammadan that a particular person, born of*

\*First Appeal No. 83 of 1885, from a decree of Babu Mirtanjoy Mukerji, Subordinate Judge of Meerut, dated the 3rd March, 1885.

1886  
March 22.