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the present form. I must now consider the second question—as to apportionment. There is no doubt that if the defendant is compelled to pay more than the share of the debt apportioned on the property, he is entitled to contribution. But the question in this case is, whether in a suit framed like the present, in which the plaintiff sues to recover a certain sum of money, and having regard to the array of parties, such a question can be determined? I am of opinion that such an apportionment cannot be made in this case at this stage after the manner in which it has been tried. In my opinion, the appeal should be partially decreed, and the decrees of the lower Court modified to the effect that the rights and interests of the defendant-appellant in mauza Bhawalpura should not be brought to sale till the plaintiff has, in the first instance, resorted to the share of Jaipal in Misarpura for recovering the mortgage-money, and that the share of the defendant-appellant be brought to sale for the purpose of recovering such balance as may remain due after the sale of Jaipal's rights in Misarpura. I would modify the decree of the lower Courts accordingly, but make no order as to costs. •

BRODHURST, J.—I concur in modifying the decree of the lower appellate Court as proposed by my learned colleague.

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*Before Mr. Justice Oldfield and Mr. Justice Mahmood.*

MUHAMMAD AWAIS (PLAINTIFF) v. HAR SAHAI (DEFENDANT).\*

*Muhammadan Law—Inheritance—Devolution not suspended till payment of deceased ancestor's debts.*

A creditor of A, a deceased Muhammadan, under a hypothecation bond, obtained a decree on the 20th December, 1876, for recovery of the debt by enforcement of lien against M, one of A's heirs, who alone was in possession of the estate; and, in execution of the decree, the whole estate was sold by auction on the 21st March 1878, and purchased by the decree-holder himself. J, another of A's heirs, was not a party to these proceedings. On J's death, her son and heir A. H. conveyed to M. A. the rights and interests inherited by him from his mother, namely, her share in A's estate. The purchaser of the share thereupon brought a suit against the decree-holder for its recovery.

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\* Second Appeal, No. 736 of 1884, from a decree of Muhammad Nasir Ali Khan, Subordinate Judge of Moradabad, dated the 5th April, 1884, affirming a decree of Maulvi Ahmad Hasan, Munsif of Amroha, dated the 21st September, 1883.

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Held that, immediately upon the death of *A*, the share of his estate claimed in the suit devolved upon *J*; that, she being no party to the decree of the 20th December 1876, her share in the property could not be affected by that decree, nor by the execution sale of the 21st March 1878; that upon her death that share devolved upon her son, who conveyed his rights to the plaintiff; that the plaintiff was therefore entitled to recover possession of the share which he had purchased; but that he could not do so without payment to the defendant of his proportionate share of the debts of *A*, which were paid off from the proceeds of the auction-sale of the 21st March 1878. *Jafri Begum v. Amir Muhammad Khan* (1) followed.

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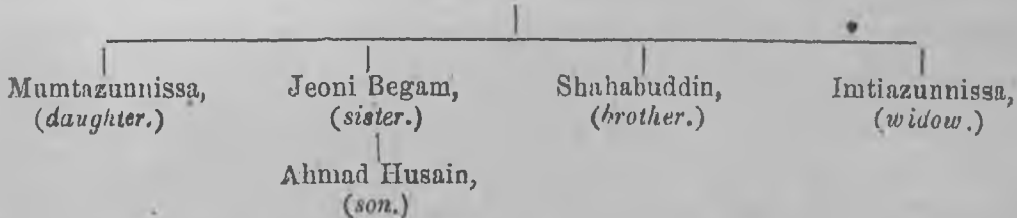
THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the Court.

Mr. *Amiruddin* and *Shaikh Maula Bakhsh*, for the appellant.

The *Junior Government Pleader* (*Babu Dwarka Nath Banarji*) and *Babu Jogindro Nath Chaudhri*, for the respondent.

OLDFIELD and MAHMOOD, JJ.—The property to which this litigation relates formed part of the estate of one *Ahmaduddin*, who died in September, 1871, leaving heirs whose names appear in the following table:—

Ahmaduddin.



Under the Muhammadan law of inheritance, the estate of the deceased, being divided into 32 *sehams*, devolved upon the heirs in the following proportions:—

Mumtazunnissa	...	...	16 <i>sehams</i> .
Jeoni Begam	...	...	4 "
Shahabuddin	...	...	8 "
Imtiazunnissa	...	...	4 "

But it appears that, on account of an alleged will executed by the deceased in favour of his daughter *Mumtazunnissa*, her name alone was entered with reference to the property, and she alone obtained possession of her father's estate, to the exclusion of his other heirs. The deceased and his brother *Shahabuddin* appear to have been indebted to the defendant under a hypothecation-bond dated the 8th May, 1867, and subsequent to his death he instituted a suit against *Mumtazunnissa* alone as representing *Ahmaduddin*,

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and against the heirs of Shahabuddin. The suit was decreed on the 20th December, 1876, for recovery of the money by enforcement of lien; and, in execution of that decree, the property in suit, along with the shares of other parties—defendants in that suit—was sold by auction on the 21st March, 1878, and purchased by the defendant himself, and under that purchase he is in possession. To none of these proceedings was Jeoni Begam a party, and she died, leaving Ahmad Husain her son and heir, who, on the 19th November, 1882, executed a deed of sale, whereby he conveyed to the present plaintiff the rights and interests in the property inherited by him from his mother, namely, the 4 *shams* in the estate of Ahmaduddin. This share represents the property in dispute in this litigation. Such being the plaintiff's title, the object of the suit was to recover possession of the share which he had purchased. The defendant, without disputing the question of inheritance and the extent of the rights purchased by the plaintiff, resisted the suit mainly upon the ground that the execution-sale of the 21st March, 1878, having taken place in execution of a decree passed against the estate of the deceased Ahmaduddin for his debts, in a suit to which his daughter Mumtazunnissa, the heir in possession, was a party, the auction-sale at which he purchased conveyed to him absolute ownership of the property, as, under the Muhammadan law, the debts of the deceased ancestor took precedence over the rights of the heirs, and inheritance did not therefore open up in favour of Jeoni Begam till the payment of the debts of the deceased, —the payment of such debts being a condition precedent to the devolution of property upon the heirs.

Both the lower Courts have concurred in accepting this defence and in dismissing the suit, and the plaintiff has appealed upon the ground that, as representing the interests of Jeoni Begam, he was not bound by the decree of the 20th December, 1876, to which she was no party; that Mumtazunnissa could not in that litigation represent so much of the estate of Ahmaduddin as had devolved upon Jeoni Begam, and therefore all that the plaintiff purchased in the auction-sale of the 21st March, 1878, was the rights and interests of those who were parties to the decree, without affecting the rights which the plaintiff had purchased from the son and heirs of Jeoni Begam.

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We are of opinion that this contention has force. The question of law involved in this case arose in the case of *Jajri Begam v. Amir Muhammad Khan* (1), which was referred to the Full Bench, and the answers given by the whole Court in that case dispose of the contentions of the parties in this litigation. Following the ruling in that case, we hold that, immediately upon the death of Ahmaduddin, the share of his estate claimed in this suit devolved upon his sister Jeoni Begam; that, she being no party to the decree of the 20th December, 1876, her share in the property could not be affected by that decree, nor by the auction-sale of the 21st March, 1878, which took place in execution of that decree; that upon her death that share devolved upon her son Ahmad Husain, who conveyed his rights to the present plaintiff under the sale-deed of the 9th November, 1882, which, upon the findings of the lower Courts, was a *bond fide* transaction. The plaintiff is therefore entitled to recover possession of the share which he has purchased; but, according to the Full Bench ruling to which we have already referred, he cannot do so without payment to the defendant of his proportionate share of the debts of Ahmaduddin, which were paid off from the proceeds of the auction-sale of the 21st March, 1878. But no decree giving effect to this view can be framed here without ascertaining—(1) What was the amount for which Ahmaduddin would have been liable under the bond of the 18th May, 1867, at the date of the auction-sale of the 21st March 1878? (2) How much of the proceeds of that sale went to pay off Ahmaduddin's debt? (3) What is the exact amount which the plaintiff, according to the view above expressed, is bound to pay the defendant before obtaining possession of the share claimed by him in the estate of Ahmaduddin?

We remand the case under s. 566 of the Civil Procedure Code for clear findings upon these issues, and ten days will be allowed to the parties for objections under s. 567 of the Civil Procedure Code.

*Issues remitted.*

(1) Weekly Notes, 1885, p. 248.