

Code. Their common object at that time was to commit an offence, namely, the offence of using criminal violence to the constables in order to effect the rescue of Dalip. Dalip joined with the rescuers in carrying out their common object, and he himself used violence. In our opinion all the accused were rightly convicted of the offence punishable under section 147 of the Indian Penal Code, and of that offence we convict them. We set aside so much of the order of the Sessions Judge as quashed the convictions under section 147. Dalip and his companions also committed the offence punishable under section 323 of the Indian Penal Code and of that offence we convict them. The acquittal by the Sessions Judge of the offence charged under section 332 of the Indian Penal Code was right, and we do not interfere with his order in that respect. For the offence under section 323 we sentence the respondents to this appeal severally to twelve months' rigorous imprisonment. For the offence punishable under section 147 of the Indian Penal Code we sentence the respondents severally to one day's rigorous imprisonment. Warrants will issue for the arrest of the respondents. The sentences will be concurrent.

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 QUEEN-  
EMPERESS  
v.  
DALIP.

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 APPELLATE CIVIL.
 

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February 18.

Before Mr. Justice Banerji and Mr. Justice Aikman.

BALWANT SINGH (DEFENDANT) v. ROSHAN SINGH (PLAINTIFF).

*Hindu Law—Joint Hindu family—Rights of illegitimate member of the family—Mortgage—Redemption—Suit by legitimate son of illegitimate member of family to redeem a mortgage made by previous legitimate owner.*

The right of an illegitimate son in a Hindu family to receive maintenance from the family property is a purely personal right and does not descend to his son.

*Held* that the legitimate son of an illegitimate member of a Hindu family, who, as such illegitimate son, might have had a right to maintenance from the property of his father, had no such interest in the estate belonging to the family as would entitle him to redeem a mortgage made by a previous rightful and legitimate owner of the estate.

THE facts of this case sufficiently appear from the judgment of the Court.

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First Appeal No. 113 of 1894, from a decree of Babu Ganga Saran, B.A., Subordinate Judge of Aligarh, dated the 31st March 1894.

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BALWANT  
SINGHv.  
ROSHAN  
SINGH.

Mr. T. Conlan, Mr. D. N. Banerji, Babu Jogindra Nath Chaudhri, Pandit Sundar Lal, Babu Bishnu Chandar and Babu J. N. Chatterji for the appellant.

Mr. A. H. S. Reid, Munshi Ram Prasad, Pandit Moti Lal and Munshi Gobind Prasad for the respondent.

BANERJI and AIKMAN, JJ.—The plaintiff brought the suit in which this appeal has arisen to redeem a mortgage. The facts, so far as it is necessary to state them, are briefly these:—The Husain estate, which originally belonged to Raja Mittar Singh, descended to his grandson Raja Narain Singh, and was mortgaged by Raja Narain Singh to the predecessor in title of the defendant. Raja Mittar Singh had a son, Kuar Sanwant Singh, whose son was Kuar Indarjit Singh. The plaintiff's father Bhoj Singh, it is alleged, was the illegitimate son of Indarjit Singh, although the plaintiff does not admit the fact of illegitimacy. After the death of Raja Narain Singh the estate was in the possession of his widows. The last of the widows having died, the plaintiff brought the present suit on the ground that he was entitled to the estate. Another ground of his claim, as alleged in his plaint, was that, even if his father Bhoj Singh was illegitimate, he, Bhoj Singh, had a right of maintenance for which the estate of Raja Mittar Singh was liable, and the plaintiff being the son of Bhoj Singh had a similar right which entitled him to redeem the mortgage. The plaintiff's right of redemption was denied by the defendant. The Court below has held that the question of the illegitimacy of Bhoj Singh, the plaintiff's father, is *res judicata*, it having been decided in 1868, in a suit brought by Bhoj Singh against the predecessors in title of the defendant, that Bhoj Singh was illegitimate. This conclusion of the Subordinate Judge has not been challenged by the respondent in this appeal. The Subordinate Judge has held, by a process of reasoning which we are unable to follow, that the plaintiff has a right to redeem the mortgage in question although his father was illegitimate. What we understand the Subordinate Judge to hold is this:—That the plaintiff's father Bhoj Singh was entitled to maintenance from the Husain estate; that he had a charge on that

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estate for maintenance, but in lieu of that charge he was entitled to a *malikana* allowance; that the plaintiff as the legitimate son of his illegitimate father is entitled to the same *malikana* allowance, and consequently he is a person who has an interest in or charge upon the mortgaged property and hence is entitled to redeem the mortgage. Now assuming that the plaintiff is entitled to maintenance from the Husain estate, that right to obtain maintenance cannot, in the absence of a contract or of a decree of Court making the maintenance a lien on the estate, be regarded as a charge on the estate within the meaning of sections 91 and 100 of Act No. IV of 1882, as was held in *Kuar Shiam Singh v. Raju Balwant Singh and others*, F. A. No. 295 of 1893, decided by this Court on the 11th of June 1895. It is urged before us that, although the plaintiff may not have a charge on the property in question, he has an interest in it, inasmuch as his father Bhoj Singh was entitled to a *malikana* allowance in lieu of his maintenance. There is nothing before us to show that, if Bhoj Singh was entitled to maintenance, or to a *malikana* allowance in lieu of maintenance, that allowance was one which was not limited to the term of his life, but was heritable by his son. According to Hindu Law an illegitimate son of a person belonging to one of the three regenerate classes is entitled, if docile, to obtain maintenance from his father. No authority has been shown to us for holding that this is anything but a personal right. Therefore, even if it be assumed that Bhoj Singh was granted a *malikana* allowance in lieu of his maintenance, it would not follow that that allowance would pass to his son. The Subordinate Judge was clearly in error in holding that the plaintiff was entitled to the *malikana* allowance which Bhoj Singh is said to have enjoyed. Consequently the plaintiff has no right to redeem the mortgage in question. This is sufficient to dispose of this suit. The plaintiff having no right of redemption his suit should have been dismissed. We allow the appeal and dismiss the plaintiff's suit with costs here and in the Court below. As the plaintiff brought his suit *in forma pauperis*, and the suit has failed, the amount of Court-fee payable by him should be paid

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to Government by him. In the decree of this Court the amount of the Court-fee which would have been paid by the plaintiff if he had not been permitted to sue as a pauper, and which has been wrongly stated in the decree of the Court below, will be correctly specified.

*Appeal decreed.*

*Before Mr. Justice Banerji and Mr. Justice Aikman.*

AHMAD-UD-DIN KHAN (DEFENDANT) v. SIKANDAR BEGAM  
(PLAINTIFF).\*

*Civil Procedure Code, section 44, Rule (b)—Misjoinder of causes of action—  
Suit by assignee of Muhammadan widow for part of her dower and part of  
the estate of the widow's deceased husband.*

*Held that a suit by the assignee of a Muhammadan widow for the recovery of part of the assignor's dower and of part of the estate of the assignor's late husband did not contravene the provisions of section 44, Rule b, of the Code of Civil Procedure. Ashabai v. Haji Tyeb Haji Rahimtulla (1) dissented from.*

Musammat Sughra Begam claimed as widow of, and heir to, her deceased husband, Mumtaz Husain Khan, a certain sum as her dower debt and a certain fractional share of the estate left by her deceased husband. On the 17th of June 1893 Sughra Begam assigned to the plaintiff in the suit out of which this appeal arose, *viz.*, Musammat Sikandar Begam, one-half of her dower debt and one-half of the share in Mumtaz Husain's estate which she claimed by inheritance. On this assignment Sikandar Begam sued for possession of the property assigned. Sughra Begam also sued for the unassigned portion of her claim for dower and inheritance. The defendants were the son and the daughters of Mumtaz Husain. The defendants raised various pleas, but principally contended that Sughra Begam was, in fact, never married to Mumtaz Husain, and that the suit was bad for multifariousness and misjoinder of causes of action. Both suits were tried together, and both were decreed by the Court of first instance (Subordinate Judge of Moradabad). The defendant, Ahmad-ud-din Khan, appealed to the High Court,

\* First Appeal No. 100 of 1894, from a decree of Pandit Raj Nath, Sahib, Subordinate Judge of Moradabad, dated the 7th February 1894.

(1) I. L. R., 6 Bom., 390.

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