PRIVY COUNCIL.

P. C.
J. C.
November 8, 28.

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

On Appeal from the High Court for the North-Western Provinces.

Hindu law—Right of illegitimate son to maintenance only.

In the regenerate classes of Hindus a son of illegitimate birth has no part in the family inheritance, but is entitled to maintenance out of his father's estate;—a right personal to him and not inherited by his offspring. *Chuoturya Run Murdun Syn* v. *Sahib Purhulad Syn* (1) referred to and followed:—

An allowance for maintenance was received by the plaintiff's father, that father having been an illegitimate son born to a collateral relation of the head of a family. The ancestral property was in the possession of the latter, who was in a senior line of descent.

The plaintiff, who was himself the legitimate son of his father, claimed to be entitled to redeem a mortgage of part of the ancestral estate, that mortgage having been effected by the above-mentioned head of the family. His ground of claim was that he had inherited the right to maintenance and had thus an interest or charge within the meaning of section 91 of the Transfer of Property Act, 1884, to entitle him to redeem.

The decision was that the High Court had rightly concluded that he had not inherited that right. The authority of the Mitakshara in Chap. 1, sections 11 and 12, was more consistent with a personal right of the illegitimate son.

APPEAL from a decree (2) (18th February 1896) of the High Court reversing a decree (31st March 1894) of the Subordinate Judge of Aligarh.

The plaintiff-appellant, suing in 1893 as a pauper, claimed to be declared entitled to redeem a mortgage of forty-three villages, part of the Husain talukh in the Aligarh district, and comprised within the zemindari formerly possessed by Narain Singh, who made the mortgage on the 30th August 1838, and died in October 1844. The plaintiff's deceased father, Bhoj Singh, was the illegitimate son of Indarjit Singh, who was grandson of Mittar Singh. Narain Singh, who had inherited the ancestral estate, was another grandson of the same.

The mortgagee was Pitambar Singh, who died in November 1845, leaving a minor son. The present successor in title to them was Balwant Singh, now the defendant-respondent.

The mortgagor left no son; his two widows, Mohar Kunwar and Sengar Kunwar, succeeded to the estate. They sued, but failed

Present:—The LORD CHANCELLOR, LORDS HOBHOUSE, MORRIS, DAVEY and ROBERTSON and SIR RICHARD COUCH.

(1) (1857) 7 Moo., I. A., 18. (2) I. L. R., 18 All., 253.

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to get possession of the mortgaged property. In 1868 Bhoj Singh sued a predecessor of the present respondent for the same, but he was found by two Courts in concurrence to be an illegitimate son, and his suit was dismissed. As to this in the present suit the High Court, on the judgment now appealed from, referring to this dismissal, and the reason for it, observed that the question whether this question of his legitimacy or illegitimacy was a cause already adjudged had been held so to be by the Subordinate Judge, and had not been challenged before them.

The plaint alleged that Sanwant Singh, father of Indarjit, and grandfather of Bhoj Singh, had received a malikana allowance of Rs. 457 paid by the head of the family, and that the plaintiff, son of Bhoj Singh, was the sole surviving heir of Narain Singh; but that if it were found that the plaintiff's father, Bhoj, was of illegitimate birth, still the Husain estate had been liable for his maintenance, and that for this reason "they had acquired a right to redeem the property mortgaged."

The defendant in his written statement pleaded that it had been established in the suit of 1868 that the plaintiff's father was not of legitimate birth, and that the ancestors of the plaintiff had never been allowed to have any villages, or malikana, out of the family estate. Among other issues the following were fixed: whether the plaintiff's predecessors had received, and the plaintiff was entitled to, maintenance from the family estate, and whether the latter was entitled to redeem the mortgage of 1838. These were also the questions which the appellant sought to raise on this appeal. The Subordinate Judge decreed the claim to redeem, and redemption upon payment of Rs. 51,000. His view was that the plaintiff had a right to redeem, notwithstanding the fact that his father was of illegitimate birth. He found that Bhoj Singh, and his father and grandfather before him, had received maintenance out of the family property in the shape of a malikana allowance of Rs. 457 per annum, to which the plaintiff as the legitimate son of his illegitimate father was clearly entitled in lieu of his "charge for maintenance" upon the Husain estate; and that he was in consequence a person who had an interest in the right to redeem mortgaged property, and hence was entitled to redeem the mortgage in suit under

section 91 of the Transfer of Property Act (Act No. IV of 1882).

On an appeal heard by a Division Bench (BANERJI and AIKMAN, JJ.) the Judges reversed the above decision. They said in their Judgment:*—"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 *Kunwar Sham "Singh* v. *Raja Balwant Singh and others*, F. A., No. 295 of "1893, decided by this Court on the 11th 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, inas- "much 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. Conse- "quently 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."

Sir *W. H. Rattigan*, Q. C. and Mr. *C. W. Arathoon*, for the appellant, argued that the result at which the Subordinate Judge's judgment had arrived was correct, and that the reasons given by

* Reported in full, I. L. R., 18 All., 253.

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the High Court for reversing it were insufficient. The appellant was a descendant in a family in which there were two branches; the succession in the senior line of Raja Narain Singh the head of the family, who in 1838 mortgaged part of the ancestral estate, and the other branch to which the plaintiff belonged. The father of the latter was of illegitimate birth. There was evidence that the members of the family in the plaintiff's branch had for three generations received malikana allowance; and the Court of first instance had found this as a fact. It was a just inference, and it was now submitted, that a substantial portion of the ancestral estate had been applied by way of maintenance for the collateral members of the family. The appellant relying on his being entitled to maintenance in succession to his father, claimed to have an interest in, or charge upon, the mortgaged property within the meaning of section 91 of the Transfer of Property Act 1892, and in virtue of such interest to be entitled to redeem the mortgage of 1838. There was not, it was contended, any break in consequence of the illegitimate birth of the plaintiff's father Bhoj Singh; and against the continuance of the right to maintenance that illegitimacy was no bar.

As averred in the plaint, and found by the first Court, Indarjit Singh, father of Bhoj, and grandfather of the plaintiff, in succession to Sanwant, had received the malikana allowance. Referring to the effect of the illegitimacy of Bhoj, according to the Hindu Law, an illegitimate son was not in any sense "quasi nullius filius," although he did not share, and had no coparcenary right, in joint family estate. Such a son had a recognized, though lower, status in the family of his father, and he had a right to maintenance out of the family estate. The general principle might be thus stated,—that disqualification to share in the family estate on account of illegitimacy did not involve a disqualification to be maintained out of that estate. There was, it was submitted, no reason why the illegitimacy of Bhoj should involve his incapacity to transmit the right to malikana not withheld in this family from the younger branch. The Hindu law was liberal in the matter of assigning maintenance to those who were regarded as members of the family, and the right might attach to a junior line within certain limits. As an authority to show that offspring

not of legitimate birth might be regarded, as belonging to a family, *Pandara Telaver* v. *Puli Telaver* (1) was cited: there the judgment gave effect to such propositions. In regard to the consequences of illegitimacy as to disqualifying to inherit reference was made to the Mitakshara, Chapter I, section XI paragraphs 30, 31, 33; R. C. Mitra, Tagore Law Lectures 1895, 1896, lecture 11, where the texts were given as to maintenance, and to the judgment at page 369 of I. L. R., 6 Allahabad Series.

Mr. *J. D. Mayne* and Mr. *G. E. A. Ross*, for the respondent, argued that the judgment of the High Court was right. By the Hindu Law the right of Bhoj Singh to maintenance was a personal right only attaching to him as the illegitimate son of Indarjit; and no right over the family inheritance could have been claimed by him. This applied to the claim attempted to be made for his son that the latter had an interest in the family estate. That interest had not been founded upon a malikana agreed to be paid, or made the subject of a decree. Resting only on the right of Bhoj Singh to maintenance, the present claim could not be supported, because an illegitimate son could only claim maintenance from his father's estate and could neither claim it from his collateral relations, nor from the estate of the family to which his father belonged. The right of the illegitimate son attaching to him personally was not transmissible from him to his son by inheritance. Reference was made to the Mitakshara, Chapter I, section XI paragraphs 30 and 59; *Chuoturiya Run Murdun Syn* v. *Sahub Purhulad Syn* (2). *Har Gobind Kuari* v. *Dharam Singh* (3) was also referred to show the personal nature of the right to maintenance.

Sir *W. H. Rattigan*, Q. C. replied.

The judgment of the Board was as follows:—

The defendant in the original suit, now respondent, is in possession of the Husain Taluk by virtue of a mortgage effected in the year 1838 by the Talukdar Narain Singh. The plaintiff seeks to redeem the property. The Subordinate Judge decreed redemption on payment of Rs. 51,000 and interest to date of

(1) (1863) 1 Mad., H. C. Rep., 478, 482. (2) (1857) 7 Moo., I. A., 18.
(3) (1884) I. L. R., 6 All., 329.

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payment. The High Court reversed that decree and dismissed the suit.

The plaintiff is the son of Bhoj Singh who was son of Indarjit and first cousin once removed of Narain, the common ancestor of the two being Mittar Singh the grandfather of Narain and the great-grandfather of Bhoj. The plaintiff first claimed title as a co-sharer in the estate; but he failed in that claim because his father Bhoj was not the legitimate son of Indarjit. The plaintiff still claims to redeem on the ground that he is entitled to maintenance out of the estate; which, as he contends, is a charge or interest carrying with it the right to redeem within the terms of the Transfer of Property Act 1882. This position he seeks to establish in two ways. First, he alleges a title by contract with the widows and heirs of Narain. Secondly, he contends that Bhoj, though excluded from inheritance, was entitled to maintenance from the estate, and that Bhoj's title has descended to himself.

The contract with the widows is contained in a declaration by them dated 20th August 1850. It appears that Bhoj had sued to recover the whole estate from them, that his suit had been dismissed by the Sudder Ameen, and that he had appealed to the Sudder Dewani Adawlut. The operative part of the declaration is as follows:—

"Now through fear of ruining the ancestral estate he came on "the right path, and of his own free will and accord came to us "and so we are also pleased with him. We therefore declare in "writing that we shall continue to pay Rs. 457 from the malikana "dues to the said Kuar without objection after taking possession "of the said villages under the settlement proceeding, as the same "was paid for maintenance to the forefathers of the said Kuar by "the Raja, masnad-nashin of this family."

Four days later Bhoj executed a deed of relinquishment in which he withdrew his appeal and stated:—"In fact the appel-"lant has no right except to the malikana dues of village "Allahdinpur which was formerly granted to his grandfather "Sanwant Singh by Raja Narain Singh."

From these documents the Subordinate Judge deduces the conclusion that the widows of Narain, in whom a widow's estate

was then vested, granted, or agreed to continue, a malikana allowance, which was charged on the estate in favour of Bhoj and on his death descended to the Plaintiff. But there is no such agreement. What virtue there might be in the word 'malikana,' or in the thing signified, we need not discuss; for the widows do not profess to vest or to recognise any malikana right in Bhoj. There is nothing in the record to show any malikana right in anybody but the widows except the indirect assertion of Bhoj himself that malikana dues over one of the 43 villages for which he was suing had been granted to his grandfather. The malikana dues of the estate belonged to the widows subject to the mortgage by Narain. They were not in possession. All they undertake is that when they get possession they will out of the malikana dues so recovered pay Rs. 457 a year to Bhoj, as the same was paid to his forefathers. In point of fact the agreement has been wholly ineffectual, because the widows, who have now been dead for many years, never got possession at all. But if they had, they only agreed to make a money payment to Bhoj personally, and they did nothing to create a heritable interest in him or any charge on the inheritance.

The more general question of law raised by the plaintiff relates to the position of the offspring of an illegitimate son. The family belongs to one of the twice-born classes. Among them an illegitimate son takes no part of the inheritance; but he is entitled to maintenance from the estate of his father. This law is found in sections 11 and 12 of Chap. I. of the Mitakshara. In par. 3 of section 12 it is thus stated:—"It follows that the son begotten by "a man of a regenerate tribe on a female slave does not obtain a "share. . . but if he be docile he receives a simple maintenance." There is no reason to think that this effect of illegitimacy differed according to the particular mode of it; and the more general statement applying to illegitimacy generally which their Lordships have just made is embodied in the judgment of this Board in *Chuoturya Run Murdun Syn* v. *Sahub Purhulad Syn* (1).

The Subordinate Judge, whose opinion has been supported at this Bar in an able argument by Sir Wm. Rattigan, reasons thus.

(1) (1857) 7 Moo., I. A., at pp. 50 and 53.

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He states the rule that illegitimate sons of a Hindu are entitled to maintenance out of their father's estate. He then continues:—"Bhoj Singh was entitled to maintenance out of the estate held "by Narain Singh, not because of his relationship with Narain "Singh, but because he was a son of Indarjit Singh, who in his "turn had a share in the estate. I have therefore no doubt that "as the estate was joint family property of the descendants of "Mittar Singh, among whom Bhoj Singh was one, the latter as "such member, though of illegitimate descent, was entitled to be "maintained out of the estate."

It seems to their Lordships that this reasoning leaves the difficulty of the plaintiff's case wholly untouched. Conceding that Bhoj could claim maintenance as against Narain, the question is whether he could transmit that claim to his son. Indarjit, we are told, had a share in the family estate. Bhoj then had a right to maintenance out of Indarjit's estate including that share. But Bhoj had no share in the family estate out of which the plaintiff could be maintained; therefore the plaintiff's right to be maintained out of his father's estate does not place him in the same relation to the family estate as Bhoj derived from his right in respect of Indarjit's estate.

On this point the High Court, speaking of Bhoj's right, say:—"No authority has been shown to us for holding that this is anything but a personal right." Neither has any been shown to their Lordships. Sir Wm. Rattigan cited a case from Madras High Court Reports Vol. I. p. 478, *Pandaiya Telaver and another* v. *Puli Telaver and others*, which, he contended, was a direct authority in his favour. But the question there was whether an illegitimate daughter entitled to maintenance out of her father's estate was so far a member of his family as to make a marriage with her a lawful marriage; and the Court held that she was. Whether right or wrong, that decision has no bearing on the question whether a right to be maintained, vested in one who cannot inherit, is itself a heritable right. The plaintiff's proposition does not appear to follow from the expression in the Mitakshara which says that the illegitimate son "if he be docile," receives a "simple maintenance." On the contrary that passage is more consistent with a purely personal right; and

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there is no authority either of texts or of decisions to contravene the obvious meaning.

The plaintiff would also, before he could succeed, have to show that a claim for maintenance, not founded on contract or decree, is an interest in or charge upon the property within the meaning of the Transfer of Property Act. The High Court think it is not. The point has been much discussed at the Bar, but no authority has been produced either way. As the principle on which their Lordships have expressed their concurrence with the High Court goes to the root of the plaintiff's title to maintain this suit, it is not necessary for them to decide the second point. They will humbly advise Her Majesty to dismiss the appeal. The appellant must pay the costs.

Solicitors for the appellant:—Messrs. *T. L. Wilson & Co.*

Solicitors for the respondent:—Messrs. *Pyke and Parrott.*

FULL BENCH.

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December 19.

Before Sir Arthur Strachey, Knight, Chief Justice, Mr. Justice Blair and Mr. Justice Burkitt.

ZAMIR HASAN AND ANOTHER (DECREE-HOLDERS) v. SUNDAR AND ANOTHER (JUDGMENT-DEBTORS).*

Execution of decree—Limitation.—Act No. XV of 1877 (Indian Limitation Act), Sections 7 and 8—Minority.

Section 8 of the Indian Limitation Act, 1877, applies only to those cases in which the act of the adult joint creditor is *per se* a valid discharge. *Seshan* v. *Rajagopala* (1) and *Govindram* v. *Tatia* (2) followed. *Hargobind* v. *Srikishen* (3) overruled.

A decree was passed in 1881 in favour of two decree-holders. Subsequently one of the decree-holders died, and the names of his widow and his two minor sons and one minor daughter were entered as his representatives. In 1888 an application was made for execution by the widow on behalf of the minor sons, which was dismissed. In February 1894 the two sons of the deceased decree-holder being still minors made another application for execution through one Aijaz Husain. *Held* that section 7 of the Limitation Act applied, and that this application was not time-barred. *Lolit Mohun Misser* v. *Janoky Nath Ray* (4) and *Pahari* v. *Bhupendra Narain Roy* (5) followed.

* Second Appeal No. 312 of 1897 from an order of C. Rustomjee, Esq., District Judge of Moradabad, dated the 30th January 1897 reversing the order of Pandit Rajnath Sahib, Subordinate Judge of Moradabad, dated the 28th July 1894.

(1) (1889) I. L. R., 13 Mad., 236. (3) Weekly Notes, 1884, p. 58.
(2) (1895) I. L. R., 20 Bom., 383. (4) (1893) I. L. R., 20 Calc., 714.
(5) (1895) I. R., 23 Calc., 374.