

enforce the right of pre-emption had obtained certain plots of land belonging to the zamindar and in his occupation. It was held that he thereby became a person responsible under section 146 of Act XIX of 1873 for the revenue for the time being assessed upon the mahal. This responsibility for land revenue was insisted on in another case decided by this Court, *Ali Husain Khan v. Tasaddug Husain Khan* (1). If we apply that test to the present case, the purchaser of a grove would not be a co-sharer, inasmuch as he is not liable to payment of Government revenue. We think the Court below was right, and we dismiss the appeal with costs.

1905

MUHAMMAD
ALI
v.
HUKAM
KUNWAR.

Appeal dismissed.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice
Sir William Burkitt.*

TIRBENI SAHAI (PLAINTIFF) v. MUHAMMAD UMAR AND OTHERS
(DEPENDANTS).*

1905
November 9.

Hindu law—Inheritance—Joint Hindu family—Lunacy.

A member of a joint Hindu family who has acquired by his birth an interest in the joint family property is not divested of that interest by subsequently becoming insane. *Deo Kishen v. Budh Prakash* (2) followed.

THIS was a suit to recover the plaintiff's share as a member of a joint Hindu family in certain houses which had been sold in execution of a decree against the plaintiff's brother. The plaintiff was a lunatic, and sued through his mother, Lachmin Kunwar. His lunacy, however, was not congenital, but dated from some 15 or 16 years before suit. The Court of first instance (Munsif of East Budaun) held that the plaintiff upon becoming insane lost all right to a share in the family property, and accordingly dismissed the suit. The plaintiff appealed. The lower appellate Court (District Judge of Shahjahanpur) found that lunacy would not divest the plaintiff of property already vested, but that the property in suit was acquired after the plaintiff became insane, and therefore never vested in him. The District Judge therefore confirmed the Munsif's decree, though upon a different ground. The plaintiff appealed to the High Court.

* Second Appeal No. 13 of 1904, from a decree of C. D. Steel, Esq., District Judge of Shahjahanpur, dated the 12th of November, 1903, confirming a decree of Maulvi Saiyid Muhammad Hidayat Ali, Munsif of Budaun, dated the 23rd July 1903.

(1) *Supra*, p. 124.

(2) (1883) L. L. R., 5 All., 509.

1905

TIRBENI
SAHAI
v.
MUHAMMAD
UMAR.

Dr. *Satish Chandra Banerji*, for the appellant.

Pandit *Madan Mohan Malaviya*, for the respondents.

STANLEY, C.J. and BURKITT, J.—The question raised in this appeal appears to us to be concluded by a ruling of a Full Bench of this Court in the case of *Deo Kishen v. Budh Prakash* (1). In that case it was held that a person is disqualified under the Hindu law from succeeding to property if he be insane when the succession opens, whether his insanity is curable or incurable, but when property has once vested by succession in a person his subsequent insanity will not be a ground for its resumption. In the case before us it is admitted that the plaintiff appellant was not insane at the time when he became entitled by birth-right to a share in the property which is the subject-matter of this suit. According to the ruling to which we have referred the fact that insanity supervened would not divest the interest which the plaintiff had so acquired by birth-right. The case of *Deo Kishen v. Budh Prakash* does not appear to have been brought to the notice of either of the Judges of the Courts below. If it had been, their decision would most probably have been different. We therefore allow the appeal, set aside the decrees of both the lower Courts, and remand the suit to the court of first instance, through the learned District Judge, with directions that it be replaced on the file of pending suits and be disposed of according to law. This remand is ordered under the provisions of section 562 of the Code of Civil Procedure, as the suit was determined upon a preliminary point.

Appeal decreed and cause remanded.

(1) (1883) I. L. R., 5 All., 509.