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have from the defendant a sum of Rs. 143, plus interest from the date of his purchase to the date of realization from the defendant. Allowing the appeal and setting aside the decrees of the lower courts, we decree accordingly. The appellant will have his costs as already decreed in the trial court and the lower appellate court, and the defendant appellant here will have his costs of the appeal.

*Appeal allowed.*

*Before Mr. Justice Sulaiman and Mr. Justice Banerji.*

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April, 25.

MUNNI LAL (DEFENDANT) v. PHULA (PLAINTIFF) AND  
UDIT RAM AND ANOTHER (DEFENDANTS).\*

*Hindu law—Joint Hindu family—Partition between sons—  
Effect of pendency of partition proceedings on mortgage  
given by sons—Nature of mother's estate in property  
given to her on partition.*

Pending proceedings for the partition of joint family property between the sons, the father being dead, the sons mortgaged a portion thereof. On the completion of the partition the portion mortgaged fell to the share of the mother.

*Held*, that the doctrine of *lis pendens* applied and the mortgage was not binding on the property in the hands of the mother.

*Held also*, that a mother at the time of partition has no share as a co-parcener. She is only entitled to maintenance, and if a share is given to her on partition, it is given to her by way of provision for her maintenance, and when the necessity for maintenance ceases, the property will revert to the estate from which it was taken. *Debi Mangal Prasad Singh v. Mahadeo Prasad Singh* (1), referred to.

THE facts of the case fully appear from the judgment of the Court.

\* First Appeal No. 234 of 1924, from a decree of Mirza Nadir Husain, Second Additional Subordinate Judge of Aligarh, dated the 25th of February, 1924.

Pandit *Shiam Krishna Dar*, for the appellant.

Munshi *Panna Lal*, for the respondents.

SULAIMAN and BANERJI, JJ. :—This is a defendant's appeal arising out of a suit for recovery of possession of property by avoidance of a mortgage-deed executed by the plaintiff's sons, and a decree passed thereon and the consequent purchase, followed by mutation of names in favour of the mortgagee. The plaintiff's case, as set forth in the plaint, was that the original owner of this property was Paras Ram, who under an oral will had bequeathed a one-third share in the estate to his wife, Musammat Phula; that her name has remained entered as heir; that subsequently there was a private partition between the sons in 1905 under which she got her property separated; that this has been followed by partition proceedings in the revenue court under which a separate *mahal* was constituted; that in spite of all these facts the defendant No. 1 took a mortgage from her sons Udai Ram and Ram Chander of the plaintiff's share, which was in no way binding on her. The contesting defendant denied that there was any bequest in favour of the widow or that she got any property on partition. He pleaded that her name was entered in the revenue papers for the sake of her consolation and she had no proprietary interest. The learned Subordinate Judge has come to the conclusion that the will set up by the plaintiff was proved and she entered into possession under the directions of her deceased husband. He has further held that there was a private partition between the said sons at which she got a definite share, and lastly he has held that the revenue court proceedings were a bar to the defence. He has decreed the plaintiff's claim for proprietary possession of the property.

We are not satisfied that the finding of the learned Subordinate Judge as regards the oral will should be accepted.

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[The judgement then discussed the evidence on the point and concluded as follows :—]

On the other hand, the finding of the learned Subordinate Judge that there was a partition among the sons and that the widow got a share of her own, must be accepted. This finding is not based on the oral testimony of two witnesses, Dip Chand and Bhup Singh, but is supported by plenty of documentary evidence. The name of the lady has continued in the revenue papers for a long time and her assertion of a separate proprietary interest in the property over which her name is recorded has been accepted twice by the revenue court. In 1907, when an application for partition by another person was made, she also applied that her share should be separated. Udai Ram, one of the sons, objected on the ground that she had no proprietary interest in the property at all. The revenue court by an order overruled this objection and decided that she had a proprietary interest. This partition, however, did not come off, as, for some reason or other, the application for partition was either not pressed or was struck off. Subsequently in 1909 an application for partition was made by Musammat Phula herself, which also was objected to by Udai Ram. In spite of the objection the partition court directed that the partition should be completed and five separate *mahals* have been constituted. It was during the pendency of these partition proceedings that the main contesting defendant obtained the mortgage in dispute. We are, therefore, of opinion that it is not possible for the contesting defendant to contend that the plaintiff does not possess any proprietary interest at all. The order of the revenue court operates as a decree of a civil court and is binding on a transferee *pendente lite*.

It is conceded by the learned vakil for the appellants that if the widow got the property on partition she would have a Hindu widow's estate which would go to the line

of her husband on her death. This view is confirmed by a judgement of their Lordships of the Privy Council in *Debi Mangal Prasad Singh v. Mahadeo Prasad Singh* (1). On the finding that the widow got the property on private partition, the appeal must stand dismissed.

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We may, however, mention that the argument of the learned vakil for the appellants; that in case she had obtained this property in lieu of maintenance there would be a limited estate with a vested remainder, cannot be accepted. As observed by their Lordships of the Privy Council in the case referred to above, a mother at the time of the partition has no share as a co-parcener. She is only entitled to maintenance and if a share is given to her on partition, it is given to her by way of provision for her maintenance, and when the necessity for maintenance ceases, the property will revert to the estate from which it was taken. It seems to us that the principle underlying the two cases is the same, and it is impossible to hold that the widow has got a limited estate with a remainder in the sons. The appeal is accordingly dismissed with costs.

*Appeal dismissed.*

Before Mr. Justice Sulaiman and Mr. Justice Banerji.

GIRDHARI LAL (PLAINTIFF) v. GOBIND RAI (DEFENDANT).\*

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 April, 26.

*Act (Local) No. II of 1901 (Agra Tenancy Act), sections 164 and 201(3)—Suit for profits—Presumption—"Shall presume."*

If the conditions laid down in section 201(3) of the Agra Tenancy Act, 1901, are fulfilled, the presumption raised is irrebuttable and conclusive, and the court is not entitled to go

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\* Second Appeal No. 479 of 1925, from a decree of H. Beatty, Additional Judge of Saharanpur, dated the 9th of December, 1921, confirming a decree of Rahman Bakhsh Qadri, Assistant Collector, first class, of Saharanpur, dated the 2nd of July, 1923.