

of Civil Procedure. The first Court will pass a final decree in respect of the mesne profits in accordance with the result of such inquiry. The decree for mesne profits should not be passed against all the defendants jointly. The liabilities of the three sets of defendants mentioned above, should be severed with due regard to the properties held by them separately under the three sale-deeds mentioned above. The plaintiffs will get one-third of their costs of the suit from the defendants Nos. 4 to 6, the principal contesting defendants in the case, in all the three Courts. The said defendants will get three-fourth of their costs from the plaintiffs in all the Courts.

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MUSAMMAT  
SITARAN  
BIBI  
v.  
GANESH  
PRASAD.

Stuart, C. J.,  
and  
Raza, J.

*Appeal allowed.*

## APPELLATE CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge, and Mr.  
Justice Muhammad Raza.*

JAGESHWAR AND OTHERS (PLAINTIFFS-APPELLANTS) v.  
MANNI RAM AND ANOTHER (DEFENDANTS-RESPONDENTS).\*

1927

March, 16.

*Hindu law—Debts of Hindu father—Joint family property,  
liability to be taken in execution of decree against father  
—Partition suit filed after the decree against father,  
effect of—Execution of decree for father's debts against  
joint family property.*

Where a Hindu family consists of a father and sons and the father has incurred debts and a decree has been passed against him on the basis of those debts the estate can be taken in execution proceedings unless the debts had been incurred for immoral purposes; and in no circumstances can that liability of the estate to be taken in execution proceedings be removed by the subsequent filing of a suit for partition.

\* Second Civil Appeal No. 409 of 1926, against the decree of E. M. Nanavutty, District Judge of Fyzabad, dated the 22nd of September, 1926, upholding the decree, dated the 31st of May, 1926, of Sheogopal Mathur, Munsif of Fyzabad, dismissing the plaintiffs' claim.

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JAGESHWAR

v.  
MANNI  
RAM.

The institution of a suit for partition by a member of a joint Hindu family effects a severance of the joint status of the family but the matter is somewhat different in respect of the liability of the family property, in execution of a decree passed before the suit for partition had been instituted. [*Ramalinga Annavi and another v. Narayan Annavi and others* (1), and *Brij Narain v. Mangla Prasad* (2), followed.]

Messrs. *Hydar Husain* and *Ali Zaheer*, for the appellants.

Mr. *R. D. Sinha*, for the respondents.

STUART, C. J., and RAZA, J.:—The circumstances in which this appeal has arisen are as follows. Ram Lal Pandey executed a deed in favour of Manni Ram. A decree was passed upon this deed against Ram Lal on the 6th of August, 1925. Ram Lal has five sons: Jageshar, Jaswant, Jai Govind, Jai Ram and Jagrup; and Jaswant has two minor sons. On the 24th of November, 1925, the latter seven persons filed a suit against Ram Lal and others asking for a partition of the joint family property and the setting aside of a deed of mortgage which Ram Lal had executed. Subsequent to the institution of this suit, but before its decision, Manni Ram attached certain property in execution of his decree. The present plaintiffs, the sons and grandsons of Ram Lal, objected to the attachment. They failed in respect of the main portion of their case, and then instituted the present suit which was dismissed by the trial Court on the 31st of May, 1926. The appeal to the District Judge was dismissed on the 22nd of September, 1926. It is to be noted that the decree in the partition suit was passed on the 26th of April, 1926, and that the plaintiffs have been granted the partition which they desired, but that they have been refused the relief of setting aside the deed of mortgage. It is argued before us by the learned Counsel

(1) (1922) L.R., 49 I.A., 168.

(2) (1923) 51 I.A., 120.

for the appellants that inasmuch as the institution of the partition suit had the effect of creating a division of interests in the property it must be held that five-sixths of the property attached had passed out of the reach of the decree-holder on the 24th of November, 1925, the date when the partition suit was instituted. On this date the property had not been attached. There can be no doubt as to the fact that, as laid down by their Lordships of the Judicial Committee in *Ramalinga Annavi and another v. Narayan Annavi and others* (1), and in previous decisions, the institution of a suit for partition by a member of a joint Hindu family effects a severance of the joint status of the family but the matter is somewhat different in respect of the liability of the family property, in execution of a decree passed before the suit for partition had been instituted. The last pronouncement as to the liability of a joint family property in execution proceedings is in the decision of their Lordships of the Judicial Committee in *Brij Narain v. Mangla Prasad* (2). It is there laid down that where a Hindu joint family consists as here, of a father and sons and the father Ram Lal has incurred debts and a decree has been passed on the basis of those debts the estate can be taken in execution proceedings unless the debts had been incurred for immoral purposes. Here upon the facts, so far from the debts having been incurred for immoral purposes, they were incurred by Ram Lal for the legitimate requirements of the family, and the decree passed against Ram Lal laid the estate open to be taken in execution proceedings. It is our view that in no circumstances can that liability of the estate to be taken in execution proceedings be removed by the subsequent filing of a suit for partition. In this particular case it has been found on the

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facts that these partition proceedings were fictitious and collusive and intended solely to deprive Manni Ram of his security. That is a finding of fact which cannot be challenged in second appeal. In these circumstances the plaintiffs' suit, which was for a declaration that the five-sixths share of the property in suit was not liable to be attached and sold in execution of the decree, has been rightly dismissed. We dismiss this appeal with costs.

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge, and Mr. Justice Muhammad Raza.*

1927  
 March, 22.

KUDAI LAL (DEFENDANT-APPELLANT) v. MUSAMMAT AISHA JEHAN BEGAM (PLAINTIFF-RESPONDENT).\*

*Mortgage—Usufructuary mortgage—Redemption before the prescribed period, whether parties can stipulate about—Clog on equity of redemption—Condition restraining alienation during the mortgage, whether amounts to a clog—Transfer of Property Act (IV of 1882) section 76(g)—Mortgagee with possession is bound to keep full and accurate accounts—Accounts to be kept by mortgagee with possession, nature of—Mortgagee is liable to mortgagor for sums actually realized though unauthorized.*

*Held*, that ordinarily, and in the absence of a special condition entitling the mortgagor to redeem during the term for which the mortgage is created, the right of redemption can only arise on the expiration of the specified period. But there is nothing in law to prevent the parties from making a provision that the mortgagor may discharge the debt within the specified period and take back the property.

Where a mortgage provides that the mortgagor can redeem within the prescribed period, too, by paying the

\* First Civil Appeal No. 36 of 1926, against the decree of Muhammad Abdul Haq, Subordinate Judge of Lucknow, dated the 22nd of December, 1925.