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court were unjustified Mohammad Nasir Khan will pay the costs of his cross-objections and the costs of Radhey Shiam in the lower appellate court.

Appeal allowed.

MISCELLANEOUS CIVIL.

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

1929 August, 14.

TRAYAMKESHAR PRASHAD AND ANOTHER (APPELLANTS) *v.* BABU BASANT KUMAR MUKERJI (RESPONDENT).*

Provincial Insolvency Act (V of 1920), sections 2(d) and 29—Joint Hindu family—Insolvency of a Hindu father—Whole of the coparcenary property if vests in the receiver in insolvency.

Where a Hindu father and his sons are members of a joint Hindu family governed by the Mitakshara law and the father becomes insolvent the property of the sons does not vest in the receiver as the father's assignee. The joint property of the sons may possibly be available for the satisfaction of those debts in another manner but it does not vest in the receiver. Where, therefore, the father in a joint Hindu family is declared an insolvent the whole of the coparcenary property of the family does not vest in the receiver. *Sat Narain* v. *Behari Lal* (1), relied on. *Om Prakash and another* v. *Moti Ram* (2), *Bawan Das* v. *O. M. Chiene* (3), *Fagir Chand Moti Chand* v. *Moti Chand Hurrukchand* (4), and *Rungaya Chetti* v. *Thanikachalla Mudali* (5), referred to.

Mr. *Aditya Prasad*, for the appellants.

STUART, C. J. and RAZA, J.:—The facts of the suit out of which this appeal arises are these. Pashupati Prasad was a member of a joint Hindu

*Miscellaneous Appeal No. 16 of 1929, against the order of W. Amir Ali, District Judge of Gonda, dated the 21st of January, 1929, rejecting the appellants' objections.

(1) (1924) L. R., 52 I. A., 22. (2) (1926) I. L. R., 48 All., 100.
(3) (1921) I. L. R., 44 All., 316. (4) (1883) I. L. R., 7 Bom., 438.
(5) (1895) I. L. R., 19 Mad., 74.

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family. This family consisted of two branches. The branch to which he belonged consisted of his father Lachmi Narain, Lachmi Narain's wife and the six branches of Lachmi Narain's sons. Pashupati Prasad's share in the joint family property would, if he had been childless, have amounted to one-sixteenth. Pashupati Prasad had, however, two sons Trayamkeshar Prasad and Baland Prasad the appellants in this appeal. As the three were entitled to a one-sixteenth share, each was entitled to a one-fortyeighth share. Pashupati Prasad was adjudicated insolvent on the 12th of June, 1918. In 1921 the official receiver instituted a suit for partition in order to obtain a separation of Pashupati Prasad's share. The suit was decided on the 8th of April, 1924. In this suit one-fortyeighth was awarded to Pashupati Prasad, one-fortyeighth was awarded to his son Tryamkeshar Prasad, one-fortyeighth was awarded to his son Baland Prasad. No provision was made in the decree of the partition Court for the settlement of Pashupati Prasad's debts as a preliminary to partition. The official receiver who was plaintiff in this suit permitted this decree to become final. In subsequent proceedings he applied to sell the separated share of Tryamkeshar Prasad and Baland Prasad in settlement of the debts of Pashupati Prasad. The learned District Judge has granted his prayer. Tryamkeshar Prasad and Baland Prasad have appealed. The learned District Judge in support of the view which he has taken has relied upon a decision in *Om Prakash and another* v. *Moti Ram* (1). The head note of this decision reads: "When the father of a joint Hindu family is declared to be insolvent,

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the whole of the coparcenary property of the family vests in the receiver." In this decision, according to the head note, the Bench distinguished the decision of their Lordships of the Judicial Committee in *Sat Narain* v. *Behari Lal* (1). The question appears to us to be determined by the decision, said to have been distinguished, though their Lordships were dealing with a case under the Presidency Towns Insolvency Act (III of 1909) and we are dealing with a case under the Provincial Insolvency Act (V of 1920). The Bench of the Allahabad High Court relied in support of their decision in the main upon a decision of a previous Bench in *Bawan Das* v. *O. M. Chiene* (2). That decision, it is to be noted, was of 1921 and the decision of their Lordships was of 1924. In *Bawan Das* v. *O. M. Chiene* the Bench referred with approval to the principles laid down in *Fakir Chand Moti Chand* v. *Moti Chand Hurrukchand* (3) and *Rungaya Chetti* v. *Thanikachalla Mudali* (4). In the decision in *Sat Narain* v. *Behari Lal* their Lorships of the Judicial Committee discussed the pronouncements in *Fakir Chand Moti Chand* v. *Moti Chand Hurruk Chand* and *Rungaya Chetti* v. *Thanikachalla Mudali*. They considered those pronouncements in reference to the question before them. That question had been put in the form of a reference to the Full Bench of the High Court of Lahore and is worded as follows :—

> "Does an order of adjudication as an insolvent passed against a father vest in the official receiver assignee his son's interest in the joint family property?"

The application of the reference is only to families of Hindus governed by the Mitakshara law. All the

(1) (1924) L. R., 52 I. A., 22.
(2) (1921) I. L. R., 44 All., 316.
(3) (1883) I. L. R., 7 Bom., 438.
(4) (1895) I. L. R., 19 Mad., 74.

cases to which we are referring referred to such a family, I. L. R., 7 Bom., 438 was a case under the Indian Insolvency Act, II and 12 Vic., Chap. 21 and I. L. R., 19 Mad., 74 was under the same Act. This is what their Lordships say upon the point :—

> "In their Lordships' opinion the question referred to the Full Bench of the High Court should have been answered in the negative."

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That is to say an order of adjudication as an insolvent passed against a Hindu father who is a member of a joint Hindu family governed by the Mitakshara law does not vest in the official receiver assignee his sons interests in the joint family property. Their Lordships went on to say (page 39) that the authorities in I. L. R., 7 Bom., and I. L. R., 19 Mad., were not inconsistent with the above conclusion as they were decided under a different statute. We find in their Lordships' decision an even clearer direction as to the law in the matter. Their Lordships say at page 39 :—

> "Having regard to these considerations and to the scope of the Act their Lordships are satisfied that it was not the intention of the Act that on the insolvency of a father the joint property of his family should at once vest in the assignee. It may be that under the provisions of section 52 or in some other way that property may in a proper case be made available for payment of the father's just debts; but it is quite a different thing to say that by virtue of his insolvency alone it vests in the assignee, and no such provision should be read into the Act."

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Section 52 of the Presidency Towns Insolvency Act describes the insolvent's property which is divisible amongst his creditors. The Provincial Insolvency Act (V of 1920) states what is and what is not considered to be the property of an insolvent under the Provincial Insolvency Act. The circumstance that their Lordships were deciding under the Presidency Towns Insolvency Act does not affect the applicability of these remarks to the Provincial Insolvency Act for their Lordships at pages 37-38 based their conclusion largely on the definition of the word "property". They said :—

> "It is true that section 17 of the Act of 1909 provides that on the making of an order of adjudication 'the property of the insolvent' shall vest in the official assignee and shall become divisible among his creditors, and that by section 2 'property' is defined as including any property over which any person has a disposing power which he may exercise for his own benefit; and it may be said that a Hindu father's power to sell the joint property and apply the proceeds to the payment of his debts is such a power. But the definitions in section 2 are only to apply 'unless there is something repugnant in the subject or context'; and it is necessary, therefore, to consider the effect of the definition of 'property' contained in that section in relation to the subject-matter which is being dealt with and the other

sections of the Act. Now, as to the subject matter—namely, the joint property of an undivided Hindu family—it is certainly a startling proposition that the insolvency of one member of the family should of itself and immediately take from the other male members of the family their interests in the joint property and from the female members their right to maintenance and transfer the whole estate to an assignee of the insolvent for the benefit of his creditors. The father's power to dispose of the joint property is not absolute, but conditional on his having debts which are liable to be satisfied out of that property; and section 2 seems to contemplate an absolute and unconditional power of disposal."

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Thus their Lordships' conclusions are based largely on the wording of the definition of 'property' in section 2 of the Presidency Towns Insolvency Act. The definition is as follows:—

> "Property includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit."

In section 2(*d*) of the Provincial Insolvency Act the definition of 'property' is word for word the same. It includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit. Section 17 of the Presidency Towns Insolvency Act corresponds to section 28(2) of the Provincial Insolvency Act. The view that their Lordships take is thus that when a

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Hindu father and Hindu sons are members of a joint Hindu family governed by the Mitakshara law and the father becomes insolvent the property of the sons does not vest in the receiver as the father's assignee. The joint property of the sons may possibly be available for the satisfaction of those debts in another manner but it does not vest in the receiver. As this is our interpretation of their Lordships' decision we do not accept the head note in I. L. R., 48 All., 400 as the statement of the law. We do not find that when the father of a joint Hindu family is declared an insolvent the whole of the coparcenary property of the family vests in the receiver. It would appear that the view taken in I. L. R., 48 All., 400 has been dissented from in the case of the *Allahabad Bank Ltd., Bareilly* v. *Bhagwan Das Johari* (1). In any circumstances it appears to us that the decision of their Lordships of the Judicial Committee is only open to the interpretation which we would place upon it. In these circumstances the two-fortyeighths share of the appellants did not vest in the receiver. Have those shares become liable to satisfy the father's debts in any other way? It appears to us that they cannot be held to be liable. In the partition proceedings of 1921 it was for the receiver to establish the liability of those shares. He did not effect that object. Not only did he permit the son's shares to be separated from the share of the father but he did not obtain any order declaring that those shares should be made liable for the satisfaction of the father's debts. His action in permitting the sons' shares to be divided off would, even in absence of the other considerations to which we have referred, have prevented his success

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in the present proceedings. Having once allowed the sons to take separate possession of their shares he cannot now claim that those shares have vested in him. Apart from that, having failed in the partition proceedings to make provision for the payment of Pashupati Prasad's debts before the partition took place, and having failed to make provision for the liability of the sons to pay the father's debts he cannot take any proceedings now against the sons' separated shares. It is unfortunate that the receiver has not been represented in these proceedings. Notice was served on him on the 3rd of August, 1929. We have however endeavoured to protect his interests by examining closely the authorities. We find that the appeal must succeed. It is allowed. The respondent will pay his own costs and those of the appellants in all proceedings.

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Appeal allowed.

APPELLATE CRIMINAL

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

MATA DIN (APPELLANT) *v.* KING-EMPEROR (COMPLAINANT-RESPONDENT.)*

1929 *August*, 21.

Indian Penal Code (Act XLV of 1860), section 201—Removal by accused of corpse of murdered man with intention to shield himself and to screen the murderer—Accused charged with murder but offence of murder not proved—Conviction under section 201 of the Indian Penal Code, if justifiable—Murder—Abetment of murder—Accused falsely indicating another person as the murderer—Inference that accused was present and was an abettor of the murder, if proper—Confession—When a portion of

*Criminal Appeal No. 256 of 1929, against the order of Jotendra Mohan Basu, 2nd Additional District and Sessions Judge of Lucknow at Unao, dated the 25th of April, 1929.