

## APPELLATE CIVIL

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

1929  
May, 6.

CHOTKAO SINGH (OBJECTOR-APPELLANT) v. S. HASAN  
BAQAR (DECREE-HOLDER-RESPONDENT).\*

*Hindu law—Joint Hindu family—Debt incurred by a Hindu father—Decree passed on the debt—Whole of the joint estate, if open to be taken in execution proceedings—Speculative transactions—Debt incurred for speculative transactions, if tainted with immorality.*

Where a Hindu father has incurred a debt and a decree is passed upon that debt the whole estate is open to be taken in execution proceedings upon that decree unless the debt has been incurred for an immoral purpose. *Brij Narain v. Mangla Prasad* (1), relied on.

In a joint Hindu family a debt incurred by the father in connection with speculative transactions cannot be considered to be a debt tainted with immorality for speculation is not usually repugnant to good morals. Speculation may be foolish but it is not, unless tainted with fraud, immoral. *Mohammad Ali v. Jhao Lal and another* (2), relied on.

Mr. *Ram Bharose Lal*, for the appellant.

Mr. *Naim Ullah* for the respondent.

STUART, C. J. and RAZA, J. :—The facts of the case out of which this appeal arises are these. Saiyed Hasan Baqar obtained a decree on the 5th of November, 1925, against Sheo Narain Singh. Sheo Narain Singh died on the 5th of March, 1928. In execution of this decree Saiyed Hasan Baqar has attached certain property. The present appellant Chotkao Singh, a minor son of Sheo Narain Singh, has objected to the attachment on the ground that the property being joint family property the share of Sheo Narain Singh at the most could be attached; and on the further ground that the debt on which the decree was passed was tainted

\*Execution of Decree Appeal No. 6 of 1929, against the decree of S. Ali Hamid, Subordinate Judge of Bara Banki, dated the 12th of January, 1929, dismissing the objections.

(1) (1923) L.R., 51 I.A., 129.

(2) (1927) 4 O.W.N., 1069.

with immorality. The learned trial Judge finding against him on both points he has appealed here. The main questions have been decided definitely by their Lordships of the Privy Council in *Brij Narain v. Mangla Prasad* (1). At page 139 their Lordships said :—

“ If he (the managing member) is the father and the other members are the sons he may, by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceeding upon a decree for payment of that debt.”

Thus the plea that the property is joint family property is of no value. Here Sheo Narain Singh incurred a debt. A decree was passed upon the debt and the whole of the estate is open to be taken in execution proceeding upon that decree unless the debt has been incurred for an immoral purpose. We now come to the second plea : Was the debt incurred for an immoral purpose? The judgment-debtor at the very commencement gave up the suggestion that his father Sheo Narain Singh was guilty of immoral connections with women, but he proceeded to add that Sheo Narain Singh indulged in intoxicating drugs as a result of which he embarked in speculative transactions. The learned Judge has found on the evidence before him that it is not established that Sheo Narain Singh indulged in intoxicating drugs. We agree with that finding. Even if the transaction in question were speculative we would not consider that the debt was tainted with immorality, for we hold, agreeing with the view taken in *Mohammad Ali v. Jhao Lal and another* (2), that speculation in itself does not enter into the question. Speculation is not usually repugnant to good morals. It may be foolish but it is not, unless tainted with fraud, im-

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moral. Apart from that we find on the facts that the transaction was not greatly speculative. It was certainly risky. As we have held that the debt was not tainted with immorality we uphold the decision of the court below and dismiss this appeal with costs.

*Appeal dismissed.*

### APPELLATE CIVIL

*Before Mr. Justice Gokaran Nath Misra and Mr. Justice Muhammad Raza.*

FAQIR BAKHSH SINGH (PLAINTIFF-APPELLANT) v.  
UDERAJ SINGH (DEFENDANT-RESPONDENT).\*

1929  
May, 8.

*Under-proprietary rights—Certain co-sharers held occupancy tenants by one court and on appeal by only one co-sharer he was held to be an under-proprietor at the time of first regular settlement—All the co-sharers recorded as under-proprietors in the regular settlement and the subsequent settlement—Recognition as under-proprietor and transfers by them as such—Co-sharers, whether to be treated as occupancy tenants or under-proprietors.*

Where at the time of the first regular settlement a number of co-sharers obtained decrees from the court of the Extra Assistant Commissioner granting them under-proprietary rights in different lands but on appeal by the taluqdar the Settlement Officer held that they will be deemed to hold those lands in occupancy rights only and not as *sir* and only one of the co-sharers appealed against that decree to the Financial Commissioner who reversed that order and restored the order of the Assistant Commissioner, though the other co-sharers had not appealed but after the order of the Financial Commissioner all of them were recognised by the Taluqdar as holding under-proprietary rights in the lands held by them and they were recorded as such in the papers prepared at the first regular settlement as well as in the subsequent settlement and assessed to rent accordingly and in a subsequent litigation the defendant co-sharer's ancestors claimed

\*Second Civil Appeal No. 36 of 1929, against the decree of Pandit Kishan Lal Kaul, Additional Subordinate Judge of Fyzabad, dated the 17th of October, 1928, confirming the decree of Pandit Hari Shankar Chaturvedi, Munsif Haveli, Fyzabad, dated the 14th of August, 1928, dismissing the plaintiff's suit.