1925.

Raja Satya Niranjan Chakravarty v. Sushila Bala Dasi.

Ross, J.

coal. If she herself is working coal no injunction is sought against her. Injunction is sought against strangers. The defendants do not allege that they have taken any settlement from Chain Kumari and evidently they cannot do so because this would go to the root of their own alleged title. There is no substance in this objection.

The result, therefore, is that the appeal is decreed with costs. The title of the plaintiffs to the sub-soil of the *taluks* Jamjuri, Nagori, Chota Ashna and Bara Ashna to the extent of their interest is declared, and it is further declared that the defendants have no right to the minerals of these *mauzas;* and it is ordered that an injunction do issue permanently restraining the defendants from working coal or other minerals lying on or under the said *taluks*, and from obstructing the plaintiffs in exercising their rights to the sub-soil in the said *taluks*. As the learned Subordinate Judge found that no damage had been proved, there will be no decree for damages. The plaintiffs are entitled to their costs in both Courts.

Das, J.—I agree.

Appeal decreed.

APPELLATE CIVIL.

Before Kulwant Sahay and Sen, J.J.

1925.

May, 27.

RAMSEKHAR PRASAD SINGH

v.

MATHURA LAL.*

Mortgage—amount payable by instalments—whole amount recoverable on default—suit after six years from the date of the first default—whether claim for whole amount barred.

---

* Appeal from Appellate Decree no. 171 of 1922, from a decision of J. F. W. James, Esq., I.C.S., District Judge of Shahabad, dated the 11th November, 1921, confirming a decision of B. Priya Lal Mukherji, Munsif of Arrah, dated the 20th December, 1920.

1925.

RAMSEKHAR PRASAD SINGH v. MATHURA LAL.

Plaintiffs brought a suit on the basis of a *kistbandi* mortgage bond, dated the 16th of April, 1909, executed by the defendant. The principal secured by the bond was payable in nine annual instalments in the month of September each year. It was further stipulated that if default was made in the payment of any one of the instalments the mortgagees would be entitled to demand the full amount secured by the bond with interest thereon at the rate of 12 *per cent. per annum*. There was default in the very first instalment which was due on the 29th of September, 1909. The present suit was brought on the 13th of January, 1920, to enforce the mortgage. It was contended by the defendant that the entire amount fell due when there was default in the payment of the first instalment and, therefore, that the suit ought to have been brought within six years from the date when the first instalment fell due.

Both the Courts below dismissed the plaintiff's suit.

Held, in second appeal, that the instalments which fell due within six years of the institution of the suit were not barred by limitation inasmuch as it was left to the option of the creditors to demand payment of the entire amount on default of any one of the instalments or to wait until the last instalment fell due.

Mata Tahal v. *Bhagwan Singh* (1), *Rup Narain Bhattacharya* v. *Gopi Nath Mandol* (2) and *Narna* v. *Ammani Amma* (3), approved.

Appeal by the plaintiffs.

This was an appeal by the plaintiffs against the decision of the District Judge of Shahabad, which confirmed the decree of the Munsif and dismissed the plaintiffs' suit.

The suit was on the basis of a *kishtbandi* mortgage bond, dated the 16th April, 1909, executed by the defendant no. 1 Mathura Lal in favour of the plaintiffs. The principal amount secured was Rs. 291 and the stipulations contained in the bond were that this sum of Rs. 291 was to be paid in nine annual instalments, the first seven instalments being of Rs. 33 and

(1) (1921) 19 All. L. J. 406. (2) (1906-07) 11 Cal. W. N. 908.
(3) (1916) 35 Ind. Cas. 418.

1925.

RAMSEKHAR PRASAD SINGH v. MATHURA LAL.

the last two of Rs. 30 each. The instalments were to be paid in the month of September each year. There was a condition attached that if default was made in payment of any one of the instalments the mortgagees would be entitled to demand the full amount secured by the bond with interest thereon at the rate of 12 *per cent. per annum*. The first instalment was payable on the 29th of September 1909. There was default in the very first instalment and the plaintiffs brought the present suit on the 13th January, 1920, to enforce the mortgage. In this suit not only the mortgagor, the defendant no. 1, but also the other members of his family were made defendants.

The defence of the defendants, other than defendant no. 1, was that the debt was not contracted for any legal necessity of the family and therefore the mortgage was invalid. As regards the claim for a personal decree against the defendant no. 1, it was pleaded that the suit was barred by limitation and the defendant no. 1 further pleaded payment.

It was held by both the Courts below that the debt had not been proved to have been contracted for any necessity of the family or for the benefit of the family and that the mortgage was therefore invalid. It was further held that the personal claim against the defendant no. 1 was barred by limitation.

A. K. Roy and *S. S. P. Singh*, for the appellants.

P Dayal and *S. C. Mozumdar*, for the respondents.

KULWANT SAHAY and SEN, J.J. (after stating the facts set out above, proceeded as follows): It is contended on behalf of the appellants that the finding of the learned District Judge on the question of limitation was erroneous. His finding on the question of legal necessity for the loan has not been challenged.

1925.

RAMSEKHAR PRASAD SINGH *v.* MATHURA LAL.

As regards the question of limitation, it is contended that the instalments which fell due within six years of the institution of the suit were not barred by limitation. The question as to whether those instalments which fell due within six years of the suit were or were not barred by limitation would depend upon the terms of the bond. The bond provides for payment of a sum of Rs. 291 in 9 annual instalments. The instalments which fell due within six years of the date of the suit, namely, the 13th January, 1920, would therefore be saved from limitation. But it is contended that the entire amount fell due when there was default in the payment of the first instalment and therefore the suit ought to have been brought within six years of the first instalment which fell due on the 29th September, 1909. In our opinion this contention is not sound. The contract was for payment of the debt by instalments extending up to the 29th September, 1917. It was left to the option of the creditors to demand the entire amount if there was default in payment of any one of the instalments. It was open to the creditors to avail themselves of this right or not to do so. They could exercise their option and demand payment of the entire amount on default of any one of the instalments or they could under the terms of the bond wait until the last instalment fell due. It was not obligatory for the creditors to bring a suit for realization of the entire amount as soon as any one of the instalments fell due. If they waited until the expiry of the time for payment of all the instalments, their claim would not be barred in so far as the instalments within the period of limitation were concerned. This view has been taken in a number of cases [*vide Mata Tahal* v. *Bhagwan Singh*(1), where the facts appear to be very much similar to the facts of the present case; *Rup Narain Bhattacharya* v. *Gopi Nath Mandol*(2) and *Narna* v. *Ammani Amma*(3)].

(1) (1921) 19 All. L. J. 406. (2) (1906-07) 11 Cal. W. N. 903.
(3) (1916) 35 Ind. Cas. 418.

1925.

RAMSEKHAR PRASAD SINGH v. MATHURA LAL.

In this view of the case it is clear that the claim of the plaintiffs in so far as the instalments from September 1914 to 1917 are concerned was not barred by limitation.

The plaintiffs will, therefore, get a personal decree against the defendant no. 1 for a sum of Rs. 126, being the instalment from September 1914 to September 1917, with interest thereon at the rate of 12 *per cent per annum* from the date of default of each instalment, and proportionate costs of the suit throughout.

APPELLATE CIVIL.

Before Das and Adami, J.J.

1925.

April, 23, 24, 27, 28; May, 4, 29.

KANHAIYA LAL SAHU

v.

MUSSAMMAT SUGA KUER.*

Hindu Law—Mithila *School*—*Adoption of* karta putra—*status and rights in the estate of the adoptive father*—*contract as to sonship.*

A person adopted as a *karta putra* does not take the estate of his adoptive father by virtue of his original contract with him. In such a case the only contract between the parties is as to sonship and the adopted son is, therefore, liable to be frustrated by an act of the adoptive father or by the subsequent birth of a natural-born son.

Where a natural-born son is in existence he is entitled to exclude every other kind of son from sharing with him in the estate of his father.

Kullean Singh v. *Kirpa Singh* (1), *Mussammat Sutputtee* v. *Indranund Jha* (2) and *Ooman Dut* v. *Kunhia Singh* (3), referred to.

* Appeal from Original Decree no. 94 of 1922, from a decision of Ashutosh Chatterji, Esq., District Judge of Darbhanga, dated the 3rd January, 1922.

(1) (1795) 1 Sel. Rep. 11; 6 Ind. Dec. (O. S.) 8.

(2) (1816) 2 Sel. Rep. 222; 6 Ind. Dec. (O. S.) 529.

(3) (1822) 3 Sel. Rep. 192; 6 Ind. Dec. (O. S.) 824, 825.