

bottom of the pedigree-table of 1857 are not the same as those recorded in 1868, but in this case I have no hesitation in holding that the genealogical table of 1868 is to be preferred to that of 1857. The decision of the trial Court, therefore, was correct that the property is not ancestral *qua* the plaintiffs. This is sufficient to dispose of the appeal which I would dismiss with costs.

AGHA HAIDAR J.—I agree.

A. N. C.

AGHA HAIDAR J.

Appeal dismissed.

APPELLATE CIVIL.

Before Tek Chand and Monroe JJ.

JAWAHAR SINGH (PLAINTIFF) Appellant

versus

PARDUMAN SINGH AND ANOTHER (DEFENDANTS)

Respondents.

Civil Appeal No. 280 of 1931.

Hindu Law—Mitakshara—Father's debts—whether take preference over right to maintenance of wife and minor children—before or after partition of joint family.

In execution of a decree obtained by plaintiff-appellant against A, a house was attached as the property of the judgment-debtor. B, who is the minor son of A, objected on the ground that a charge for his maintenance during minority had been created on this house by a decree passed in accordance with the award of an arbitrator who had been appointed to settle disputes between him and his father. The executing Court allowed the objection, whereupon the decree-holder instituted the present suit under Order XXI, rule 63, Civil Procedure Code.

Held, that the arbitration proceedings did not effect a partition of the joint family and the house continued to vest in the joint family of which A was the Manager.

1932

HASAN

MOHAMMAD

v.

MST.

BAHISHTAN.

ADDISON J.

1932

Nov. 23.

1932

JAWAHAR SINGH
v.
PARDUMAN
SINGH.

Held also, that debts contracted by a Hindu governed by the *Matakhara* law take preference over the right of maintenance of his wife or minor children and, therefore, the arrangement for *B*'s maintenance made in the award could not defeat the creditor's right to recover the prior debts of *A*, unless they were tainted with illegality or immorality.

Held further, that even if the arbitration proceedings could be taken as effecting a partition of the joint family between *A* and his son, the plaintiff's claim must still succeed, as under Hindu law property which falls to the son on partition is liable for the pre-partition debts of his father, unless they had been raised for immoral or illegal purposes.

Subramania Ayyar v. Sabapathy Aiyar (1), *Bankey Lal v. Durga Prasad* (2), *Raghunandan Pershad v. Moti Ram* (3), *Annabhat Shankarbhat v. Shivappa Dundappa* (4), *Radhakrishin v. Jaman Das* (5), and *Vithal v. Dawoo* (6), followed.

Second appeal from the decree of Mr. G. D. Khosla, Additional District Judge, Lahore, dated the 4th December, 1930, affirming that of Lala Jagdish Narain, Subordinate Judge, 4th Class, Lahore, dated the 17th December, 1929, dismissing the plaintiff's suit.

M. C. MAHAJAN, for Appellant.

KAHAN CHAND, for Respondents.

TEK CHAND J.

TEK CHAND J.—In execution of a money decree obtained by Jawahir Singh, plaintiff, against Arjan Singh, defendant No. 2, a house situate in Sheranwala Gate, Lahore, was attached as the property of the judgment-debtor. Parduman Singh, minor, defendant No. 1, who is the son of Arjan Singh, objected on the ground that a charge for his maintenance had been created on this house by a decree of the Civil Court and that it was not liable to attachment and

(1) (1928) I. L. R. 51 Mad. 361 (F.B.). (4) (1928) I. J. R. 52 Bom. 376

(2) (1931) I. L. R. 53 All. 868 (F.B.). (5) 1931 A. I. R. (Sind) 84.

(3) (1931) I. L. R. 6 Luck. 497 (F.B.). (6) (1930) 127 I. C. 345.

sale in execution of a personal decree against his father. In support of this contention he produced an agreement, dated the 12th February, 1927, showing that disputes had arisen between Arjan Singh and Parduman Singh about the maintenance of the latter and that they had appointed one Ram Bheja as arbitrator. The arbitrator gave his award on the 14th February, 1927, fixing the maintenance payable to Parduman Singh at Rs. 12 *per mensem*, till he attained majority, and making it a charge on the house in question. The arbitrator also directed that Arjan Singh would not be entitled to alienate the house till Parduman Singh had attained majority. Parduman Singh applied to the Senior Subordinate Judge, Lahore, for having the award filed, and on the 28th March 1927 a decree in accordance with its terms was passed.

1932
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 JAWAHAR SINGH
 v.
 PARDUMAN
 SINGH.
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 TEK CHAND J.

The executing Court allowed the objection, holding that the award and the decree passed thereon had practically made Parduman Singh owner of the house and that it could not be sold in execution of a money-decree obtained against Arjan Singh.

Thereupon Jawahir Singh, decree-holder, instituted a suit under Order 21, rule 63, for a declaration that his debt having been incurred by Arjan Singh before February 1927, had priority over the charge for the maintenance of the judgment-debtor's minor son, and that he could execute his decree by sale of the house. The Courts below have dismissed the suit.

On second appeal, it is urged on behalf of the plaintiff-appellant, (1) that the lower Courts were in error in holding that the award and the decree passed in accordance with its terms had effected a partition of the joint Hindu family properties between Arjan

1932

JAWAHAR SINGH

v.

PARDUMAN
SINGH.

TEK CHAND J.

Singh and his son Parduman Singh, and (2) that even if it was so, on a correct view of the Hindu Law, property which falls to the share of a son on partition is liable for the pre-partition debts of the father, unless the debts had been raised for immoral or illegal purposes. In my opinion both these contentions are well-founded and must prevail.

The arbitration proceedings do not show that there was disruption of the joint family, or that its properties were divided between the various coparceners. It appears that owing to disputes in the family the education of the minor was being neglected, and therefore a convenient arrangement was made by setting apart for this purpose a portion of the income of the house for the period of his minority. The ownership of the house continued to vest in the joint family, of which Arjan Singh is the manager. This arrangement, however, is not binding on the creditors of the father and cannot defeat their right to recover debts incurred before the arrangement was made, unless, of course, the debts were tainted with illegality or immorality. It is settled law that debts contracted by a Hindu, governed by the *Mitakshara* school, take preference over the right of maintenance of his wife or minor children, and this proposition has not been controverted by counsel for the respondents. In the case before us, there is no allegation that the debt was immoral or illegal and in this view of the case, the decision of the Courts below is erroneous and must be set aside.

But even if the lower Courts were correct in holding that the arbitration proceedings are to be taken as effecting a partition of the joint family properties between Arjan Singh and his son, the plaintiff's claim

must still succeed. In this province, it has been held in numerous cases that property which falls to a son on partition is liable for the pre-partition debts of his father, and the conflict which at one time prevailed in other Courts has also been set at rest now. See *Subramania Ayyar v. Sabapathy Ayyar* (1), *Bankey Lal v. Durga Prasad* (2), *Raghunandan Pershad v. Moti Ram* (3), *Annabhat Shankarbhat v. Shivappa Dundappa* (4), *Radhakrishin v. Jaman Das* (5), and *Vithal v. Dawoo* (6). Mr. Kahan Chand has referred us to *Ram Ghulam Singh v. Nand Kishore Prasad* (7), but in that case the question was not discussed at any length. The decision was based on *Peda Venkanna v. Sreenivasa Deekshatulu* (8), which has since been overruled in *Subramania Ayyar v. Subapathy Ayyar* (1).

I hold, therefore, that the plaintiff's suit was wrongly dismissed. I would accordingly accept the appeal and setting aside the judgments and decrees of the Courts below, would pass a decree granting the plaintiff-appellant the declaration asked for. Having regard to all the circumstances I would leave the parties to bear their own costs in all Courts.

MONROE J.—I agree.

MONROE J.

A. N. C.

Appeal accepted.

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- (1) (1928) I. L. R. 51 Mad. 361 (F.B.). (5) 1931 A. I. R. (Sind) 84.
 (2) (1931) I. L. R. 53 All. 868 (F.B.). (6) (1930) 127 I. C. 345.
 (3) (1931) I. L. R. 6 Luck. 497 (F.B.). (7) (1925) I. L. R. 4 Pat. 469.
 (4) (1928) I. L. R. 52 Bom. 376. (8) (1918) I. L. R. 41 Mad. 136.

1932

SON JAWAHAR SINGH

v.

PARDUMAN
SINGH.

TEK CHAND J.