

the husband, and after his death the widow, lived with the defendant as members of a joint family, and that there was a community of interest between them. Even if there had been no actual partition by metes and bounds, but if the two co-parceners had enjoyed the rents and profits of their respective shares, and did not throw them into a common fund or box, as is the case in all joint families, it must be held that there was a partition between them, and that they cannot be said to be members of a joint undivided Hindu family.

The costs of this appeal will be costs in the cause, and will abide the final result.

*Case remanded.*

---

[FULL BENCH.

---

*Before Mr. Justice. Norman, Offg. Chief Justice, Mr. Justice Loch, Mr. Justice Bayley, Mr. Justice Macpherson, and Mr. Justice Mitton.*

RAM CHANDRA TANTRA DAS (PLAINTIFF) v. DHARMO NARAYAN CHUCKERBUTTY (ONE OF THE DEFENDANTS).\*

*Sale in Execution—Act VIII of 1859, s. 205—Property—Right of a Hindu Heir expectant on the Death of a Widow. •*

The interest of an heir, according to the Hindu law, expectant on the death of a widow in possession, is not property, and therefore not liable to attachment and sale in execution of a decree under section 205 of Act VIII of 1859.

ONE Jagatdual died, possessed of a 1 anna, 6 gandas, 2 cowries, and 2 krants share out of an 8-anna share in a certain talook call Radhaballab Rutnessur, leaving him surviving three sons and a widow. These three sons succeeded equally to the share of the property left by their father. Two of the brothers died unmarried and without issue between the years 1247—49 B. S. (1840—1843), and their shares were inherited by their mother. The plaintiff, the other surviving son, and the mother, lived jointly and in commensality. The mother died in the year 1270 B. S. (1863). Before the death of the mother, in 1266

Special Appeal, No. 407, of 1870 from a decree of the Subordinate Judge of Mymensingh, dated the 7th December 1869, reversing a decree of the Moonsiff of that district, dated the 12th April 1869.

1871

RAMHARI  
SARMA  
v.  
TRHIRAM  
SARMA.

1871  
April. 17.

1871  
 RAM CHANDRA  
 TANTRA DAS  
 v.  
 DHARMO  
 NARAN  
 CHUCKER-  
 BUTTY.

B. S. (1859), the right, title, and interest of the plaintiff in the talook were sold in execution of a decree, and purchased by the defendants Nos. 1 and 2. After the mother's death, the plaintiff alleged that he remained in possession for one year, up to 1271 (1864) of the shares of his two brothers as heir next in succession to his mother, when he was dispossessed of them by the defendants under color of the sale in execution of the decree against him in 1266 B. S. (1859). He therefore brought this suit to recover possession as heir next in succession to his mother of the estate of his brothers.

The defence was that the plaintiff never had any brothers, and was the sole heir of his father Jagatdual; that as sole heir the plaintiff's right, title, and interest in the property sold in execution of a decree against him in 1266 B. S. (1859) consisted of the entire share of Jagatdual in the talook; that at least at the time of the execution-sale, the plaintiff held himself out to the world to be the proprietor of the entire share of Jagatdual, and as such was not now entitled to set up a different title and that as the plaintiff's mother was never in possession, the suit was barred by the law of limitation.

The Moonsiff found that Jagatdual died, leaving three sons, one of whom was the plaintiff, and a widow behind him; that the three sons succeeded equally to the estate of their father; that on the death of the two brothers, their shares were inherited by their mother till her death; and that during her life-time, the plaintiff and his mother lived jointly, and the former managed the estate. He therefore held that the suit was not barred by lapse of time, and that the plaintiff was heir to the property of his two brothers next in succession to the mother; and that as the sale under which the defendants claimed to hold took place during the mother's life, and when she was in possession of the share of the property now sued for, the sale did not and could not have passed the latter, for the plaintiff had at that time no vested interest in it, but only an expectant one after the death of his mother. The Moonsiff therefore gave a decree in favor of the plaintiff.

Against this decree the defendants appealed, and the Subordinate Judge, before whom the appeal was tried, dismissed the