

(1880) 04 AHC CK 0013

Allahabad High Court

Case No: None

Lachman Singh and
Others

APPELLANT

Vs

Bika Singh and Others

RESPONDENT

Date of Decision: April 5, 1880

Citation: (1880) ILR (All) 800

Hon'ble Judges: Straight, J; Pearson, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Pearson, J.

In the case of Girdharee Lall v. Kantoo Lall L.R. IA 321 : 14 B.L.R. 187 and Muddun Thakoor v. Kantoo Lall L.R. IA 321 : 14 B.L.R. 187, decided by the Privy Council on the 12th May 1874, it was ruled that ancestral property which descends to a father under the Mitakshara law is not exempted from liability to-pay his debts because a son is born to him, that it would be a pious duty on the part of the son to pay his father's debts, unless they had been illegally contracted or for immoral purposes, and that, it being a son's pious duty to pay his father's debts, the ancestral property in which the son, as the son of his father, acquires an interest by birth, is liable to the father's debts. In the later case of Suraj Bunsu Koer v. Sheo Persad Singh I.I.L.R. Cal. 148, decided by the Privy Council on the 1st February 1879, reference is made to the above mentioned decision as an authority for the following proposition, viz., that when a joint ancestral property has passed out of a joint family either under a conveyance executed by a father in consideration of an antecedent debt or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they show that the debts were contracted for immoral purposes and that the purchasers had notice that they were so contracted.

2. In the case of Deendyal Lal v. Jugdeep Narain Singh I.L.R. Cal. 198, decided by the Privy Council in July 1877, it was ruled that the right and interest of one co-sharer in a joint ancestral estate may be attached and sold in execution of a decree obtained against him personally under the Mitakshara law, and that the purchaser at such a sale acquires merely the right to compel a partition as against the other co-sharers which the judgment-debtor possessed.

3. The rulings in the two cases of 1874 and 1877 appear to be perfectly consistent, and, in our opinion, the lower Appellate Court has erred in holding that they are at variance with each other, and that the decision in the earlier case supports the appellants' contention. In that case the whole of the taluqa in which the plaintiffs were co-sharers had been sold by their fathers. The ruling in that case is therefore inapplicable to the present in which it has been distinctly found that the appellants only acquired by their auction-purchase the rights and interests of their judgment-debtor Gulab Singh in the joint ancestral estate in mauza Kishorepur. That finding assimilates the case to that of Deendyal Lal v. Jugdeep Narain Singh I.L.R. Cal. 198.

4. The reason why it is unnecessary to inquire into the nature of Gulab Singh's debts on account of which his rights and interests were sold is that the rights and interests of the plaintiff's are found not to have been sold to the appellants. The appeal fails and is dismissed with costs.