

(1932) 12 CAL CK 0004

Calcutta High Court

Case No: None

Ashutosh Basu

APPELLANT

Vs

Gouri Sankar Saha and Others

RESPONDENT

Date of Decision: Dec. 12, 1932**Citation:** AIR 1934 Cal 118**Hon'ble Judges:** Mitter, J**Bench:** Division Bench

Judgement

@JUDGMENTTAG-ORDER

Mitter, J.

This Rule was issued on the opposite parties to show cause why the order of the Munsif of Lalbagh dated 30th April 1932 dismissing the decree holder's application for delivery of possession should not be set aside. It appears that the decree-holder obtained a decree against one Ram Das Saha for a certain sum of money and in execution of this decree be sold certain properties which are claimed by his sons to be their ancestral properties. The parties are governed by the Mitakshara School of Hindu law and the sons claim that as the debt of the father was not incurred for family purposes the entire joint family property could not be taken in execution. The property which was attached in execution of the decree was joint land or ejmali land and on that there has been constructed a house or a bari. The Munsif gave effect to the objection that the debt not having been incurred for family purpose the property which was the ancestral property could not be taken in execution. The Munsif accordingly came to the conclusion that the decree-holder purchaser could not get khas possession by ejecting the sons. It is contended on behalf of the petitioner that the view taken by the Munsif is clearly wrong. It is said that the view that the property of a Mitakhsara joint family cannot be taken in execution of, a decree against a father although the debt might not have been incurred for family purposes can no longer be sustained as has now been finally and conclusively laid down by their Lordships of the Judicial Committee of the Privy Council in the case of

Brij Narain v. Mangla Prasad AIR 1924 PC 50, where all the earlier authorities both of this Court and of the Judicial Committee of the Privy Council have been considered. The relevant passage runs as follows:

If the managing member of a joint undivided family governed by the Mitakshara law is the father and the other members are the sons, the father may by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceedings upon a decree for payment of that debt (see p. 139 of 51 IA).

2. It is however contended by the opposite parties that having regard to the circumstances in which they were called upon to meet this case of delivery of possession sought by the decree-holder they were taken by surprise and could not raise appropriate defence to such proceedings, namely that the debt was incurred for an immoral purpose so as not to bind the sons. I think an opportunity should be given to the sons to show that the debt was, as they claim now, tainted by immorality. If they succeed in proving that the debt was an immoral one and therefore not binding on them then possession would not be delivered of the family property and the decree-holder must seek out his remedy by partition of the share of the father for the purpose of recovering possession thereof. If on the other hand the sons are unable to establish that the debts were incurred for immoral purposes the decree-holder will obtain khas possession of the property in dispute. The Munsif will determine the objection of the sons in the light of the observations I have made. The petitioner is entitled to the costs of this Rule as the defence of immorality which is now sought to be set up was never pleaded before the Munsif. The hearing fee of this Rule is assessed at one gold mohur.