

(1876) 06 CAL CK 0005

Calcutta High Court

Case No: None

Johurra Bibee

APPELLANT

Vs

Sreegopal Misser and
OthersRESPONDENT

Date of Decision: June 19, 1876**Citation:** (1876) ILR (Cal) 470**Hon'ble Judges:** Pontifex, J**Bench:** Single Bench

Judgement

Pontifex, J.

The plaintiff in this case is the widow of Monohur Lall, who died in the lifetime of his father Luehmeenarain Kuppooor Khettry. Luehmeenarain left a brother joint in estate, Hurrynarain Kuppooor Khettry, who subsequently became insolvent. The parties were and are governed by the Mitakshara law.

2. The plaintiff" claims that, as the widow of Monohur Lall, she has a right to be maintained and supplied with money for the performance of her religious ceremonies out of the rents and profits of the house, No. 13 Roopchand Roy's Street, in Calcutta as property which belonged to the joint family, and that any interest which passed to the Official Assignee as representing Hurrynarain the surviving member of the joint family passed subject to such rights. A great many cases have been cited in support of the proposition, that a widow has what is called a lien for maintenance on the joint estate and particularly in a Mitakshara family. It is not necessary for me to give any opinion on the ordinary case, where the surviving members of a joint family contract to convey without reserving the widow's rights, for in my opinion the present is a special case which does not fall within the ordinary rule. The plaintiff, in her plaint, admits that the property, out of which she claims maintenance, was acquired by her father-in-law partly by money supplied to him by his father, and partly out of the profits of a business for the sale of shawls, silks, and Benares piece-goods which he carried on with moneys, portions of which were given to him by his father, and portions received by him from his estate. In my

opinion, the business established and carried on with moneys so derived must be treated as a joint family business, and in fact the insolvent was carrying on such business at the date of his insolvency as appears by the written statement of the Official Assignee.

3. It was in respect of his debts incurred in such business that Hurrynarain was adjudicated insolvent. And it was not alleged that any of the debts were incurred improperly, or otherwise than in the due course of business. The debts of the family business became greater than could be provided for by the insolvent or the joint family property, and the insolvent accordingly filed his petition. It seems to me that the law is correctly laid down in the case of *Ramlal Thakursidas v. Lakmichand* 1 Bom. H.C App. 51 that persons carrying on a family business in the profits of which all the members of the family would participate must have authority to pledge the joint family property and credit for the ordinary purposes of the business. And therefore that debts honestly incurred in carrying on such business must override the rights of all members of the joint family in property acquired with funds derived from the joint business. In other words, it seems to me that those who claim to participate in the benefits must also be subject to the liabilities of the joint business, and by the plaintiff's own admission, the joint family title to the house, in respect of which she claims, would not have existed, except for the profits of the business. I had some difficulty at first in seeing how the house could vest in the Official Assignee without being subject to the claim of the plaintiff; but the debts being joint business debts and as such, debts for which business creditors could have attached the property, the whole interest in the property vested in my opinion in the Official Assignee; for the proceedings in insolvency are in fact substituted for separate suits by creditors. In this case, the property was put up for sale by the Official Assignee, subject to the plaintiff's right (if any) to maintenance, and was so conveyed. The effect of such conveyance is that the purchaser took only such estate as the Official Assignee could give, but if the plaintiff had no right the purchaser would take an absolute estate. In my opinion, the plaintiff, under the circumstances of this case, has no right as against joint creditors to maintenance or residence, out of or in the house in question, and as the plaint is confined to this particular house, there is no case made for any further enquiry. At all events the enquiry can't be made in this suit against the present defendants, though there may be a right to an enquiry against the Official Assignee separately. I am however of opinion that the plaintiff has no claim which can be enforced against any part of the joint estate, until after payment of the joint trade debts. The Official Assignee must have his cost out of the estate of the insolvent, and Mr. Evans client must have his costs from the plaintiff.