

CALCUTTA HIGH COURT

Muttyjan

Vs

Ahmed Ally

(Morris, C.J. O'Kinealy, J.)

10.02.1882

JUDGMENT

Morris, J.

1. This was a suit to set aside certain decrees on the ground of fraud. One Mahomed Wasil died in January 1878, leaving a widow, a daughter, and two married sisters. The two latter did not reside in the family-house, but the house with the other property of the deceased remained in the possession of his widow and daughter. Subsequently, and in the same year, three suits were brought by different plaintiffs against the widow and daughter to recover certain sums borrowed by the deceased, and in execution of the decrees obtained in them, the property left by the deceased was sold and purchased by the defendants Kamdar Ali and Asgar Ali. The sisters, the plaintiffs in the present case, were not parties to these suits, and the claim now put forward by them is--1st, that the decrees were fraudulent, and 2nd, that, even in the absence of fraud, their shares, amounting to six annas, could not pass to the purchaser. They ask for a declaration to this effect. The daughter also seeks to obtain a similar declaration on the ground that she was not properly represented in the creditor's suits.

2. The charge of fraud has not been established, and the argument put forward on behalf of the daughter is, in our opinion, untenable. The only point, therefore, now in issue is, whether the sisters are entitled to the declaration which they seek. This subject has been dealt with from different points of view in the decisions of our Courts. They all support the contention now raised on behalf of the respondents, that the sisters cannot obtain their shares of the property sold. The first is that of *Mussamut Nuzeerun v. Moulvie Ameerooddeen*¹ according to which, following the analogy of the Hindu law in the case of a Hindu widow, the defendants in the former suit may be considered as having been sued in their representative character only and what passed at the sale in execution was the property of Mahomed Wasil. A second case--that of *Assamathemnessa Bibee v. Roy Lutchmeeput Singh*² ignores the extension of this principle of Hindu law to Mahomedans, and approves of the procedure provided in the Hedaya for the guidance of Mahomedan law officers, and the judgments thereon are apparently to the effect that one of the

heirs in possession may stand as litigant on behalf of all the other heirs with respect to anything done to or by the deceased, whether it be debt or substance.

3. The third view is opposed to dealing with this question on either of these grounds, but recognizes all creditors' suits as in the nature of administration-suits. This principle was laid down, so far back as in 1799, by the Sadr Dewany Adalat, in the case of *Kishwur Khan v. Jewun Khan* Sel. Rep. 25. A creditor's suit is there declared to be in the nature of an administration-suit, and, as such, an heir in possession is bound to account for any assets that may have come into his hands, and to that extent is liable to pay the creditors; the residue, if any, being divided among the heirs. This form of decree has been approved by their Lordships of the Privy Council in the case of *Khajah Hidayutoollah v. Rai Jan Khanum*³ subsequently again by their Lordships, in the case of *Bazayet Hossein v. Dooli Chund*⁴ We think that this is the proper principle that must guide us in the decision of the present suit, because in the former suits by the creditors, the property of the deceased Mahomed Wasil was attached and sold in payment of his debts. We, therefore, affirm the judgment of the lower Appellate Court, and dismiss the appeal with costs.

Cases Referred.

124 W.R. 3

2I.L.R. 4 Cal. 142

33 Moore's I.A. 295

4I.L.R. 4 Cal. 402