

**(1903) 12 CAL CK 0008**  
**In the Calcutta High Court**

Punna Bibee

APPELLANT

Vs

Radha Kissen Das

RESPONDENT

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**Date of Decision :** 18-12-1903

**Acts Referred:**

**Citation :** (1904) ILR (Cal) 476

**Hon'ble Judges :** Sale, J

**Bench :** Single Bench

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### Judgement

Sale, J.—The plaintiff in this case seeks to establish her right to a share in certain property belonging to her husband and for partition.

2. The suit is against her husband Kartick Dass Khettry, and his father Radha Kissen Dass Khettry and also certain assignees of mortgages executed by both father and son and the defence is that the suit is not maintainable. The plea is in the nature of a demurrer, and it is therefore necessary to examine shortly the allegation upon which the claim is based. It appears that the property, the subject-matter of this suit, was originally joint family property, the family being governed by the Mitakshara Law. A partition was effected between various members of the family, and the result of the partition was that the property 18, Mullick Street--the property in suit--was allotted to Radha Kissen Dass Khettry as his separate property. After this Radha Kissen married, and a son, Kartick, was born. It appears that Radha Kissen executed a mortgage in respect of that property, upon which mortgage the mortgagee instituted a suit and obtained a decree. It appears that the son Kartick also executed mortgages in respect of his share or interest in the same property and subsequently an application was made in Radha Kissen's mortgage suit for an order for the sale of the property, the proceeds to be in the first place applied in payment of the mortgage debts and the balance to be divided between Radha Kissen or rather between the Official Assignee, Radha Kissen having then become an insolvent, and his son Kartick. The order was made on the consent of all parties, the defendant Kartick and his mortgagees coming into the suit for the purpose of consenting. The

plaintiff claims that this arrangement amounts to a partition of the property between Radha Kissen and Kartick. She says that she, her father-in-law, and her husband Kartick formed a joint Hindu family governed by the Mitakshara Law, and that as a result of the sale she has been deprived of her maintenance, and accordingly she files this suit to have it declared that she is entitled to a one-third share in the property and for a partition on that basis. Now it has been contended, and I think rightly contended, by the defendant that the plaintiff is not entitled to partition, that she is not a co-sharer with her husband nor a co-parcener in the family jointly with her father-in-law and her husband. No authority has been cited to show that the plaintiff can be regarded as a co-sharer in the family estate with her husband.

3. It is said, however, that there is authority for the proposition that she is entitled to be regarded as a co-sharer in some subordinate sense, and in support of that proposition the case of *Jamna v. Machul Sahu* ILR (1879) All. 315 has been cited. I think it is clear from that case that the expression "co-sharer" in a subordinate sense is used with reference to the right of a widow to maintenance out of her husband's estate, for it was held that the plaintiff in that case was entitled in respect of her maintenance to follow certain properties in the hands of the defendants to whom the properties had passed by virtue of a gift by the husband made in his lifetime. This case is followed in the later case of *Becha v. Mothina* I.L.R (1900) All. 86. There it was held that the widow was entitled to have her maintenance secured on certain property in the hands of the defendant obtained by them under the will of the plaintiff's deceased husband. These two authorities seem to me to be distinguishable from the present case upon two grounds. In the first place the present suit is instituted by the plaintiff to have her right to maintenance declared during her husband's lifetime as against a specific property assigned by her husband, and in the next place it is not against a person claiming under a gift made by the husband either inter vivos, or by will, but against the assignees for value of the husband. So far as I am aware there is no authority to show that a claim for maintenance by a wife in the lifetime of her husband is sustainable in the absence of any allegation that the husband refuses or has ceased to maintain her. There is no allegation of this character in the present suit. On the contrary it is admitted that the plaintiff is living with her husband as a member of the joint family.

4. Further it is admitted that the mortgagee defendants are assignees for value, although it is alleged that the moneys borrowed were used for immoral purposes and not for the benefit of the general family. These allegations are irrelevant for the purposes of the present case. It is conceded that, assuming the moneys borrowed on the mortgage were for selfish and improper purposes, still the mortgagees are not seeking to have their mortgage enforced against the joint estate, but only against the share of the husband.

5. It seems to me on the admitted facts and on the allegations made in the plaint itself that the plaintiff is not entitled either to claim or share in any portion of, the

properties of her husband, nor does she show any cause of action in respect of her right to maintenance. That being so it seems to me that the suit must be dismissed with costs.