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they may, under the provisions of the s. 188, Criminal Procedure Code, be dealt with in respect of such offences as if they had been committed at any place within British India at which the accused may be found. In the present case the accused were found at a place in the Ahmedabad district. They can, therefore, be tried in that district: See *Empress* v. *Maganlal* (1). The proviso to s. 188 has no application to the present case, as there is no Political Agent in the Portuguese territories of Daman, where the offences charged against the accused are said to have been committed. The Court, therefore, reverses the Joint Sessions Judge's order of acquittal, and directs that the accused be tried by the Court of Sessions at Ahmedabad, to which they have been duly committed.

Order reversed.

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13 B. 150.

[150] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

KHUBCHAND (*Original Plaintiff*), *Appellant v.* BERAM AND OTHERS (*Original Defendants*), *Respondents.** [10th July, 1888.]

Bond—Money borrowed for immoral purposes—Naikins *or dancing girls of Nasik.*

The father of *naikins*, (dancing girls) in Nasik by two bonds mortgaged certain property as security for money lent to him by the plaintiff. The bonds stated that the object of the loan was to enable the mortgagor to get his daughters taught singing and for household expenses. In a suit brought by the plaintiff upon the bonds it was contended that they were void on the ground that the loan was for an immoral purpose. The District Judge was of opinion that the object of teaching the girls to sing was to make them more attractive as prostitutes, and, therefore, to further an immoral purpose, which could not be separated from the legal part of the purpose for which the loan was contracted. He accordingly held that the bonds were void, and could not be enforced. On appeal,

Held, that the bonds were not void, inasmuch as, amongst the community of *naikins*, singing was not necessarily acquired by the woman with a view of practising prostitution. It was a distinct mode of obtaining a livelihood not necessarily connected with prostitution, although it might be true, as a fact, that most of those who sing lead a loose life. The District Judge, therefore, went too far in concluding that the singing was necessarily intended, to the knowledge of the plaintiff, to increase the attractiveness of the mortgagor's daughters as prostitutes.

THIS was a second appeal from a decision of M. B. Baker, District Judge of Nasik reversing the decree of the Subordinate Judge at the same place.

A *naikin*, (dancing girl), named Latiba died at Nasik, possessed of some immoveable property, leaving her surviving two illegitimate children, namely, a son named Beram and a daughter Mushaf, who inherited her property and lived in union. By two bonds, purported to have been executed by him as manager of the family, Beram mortgaged the dwelling-house to the plaintiff Khubchand. The bonds set forth that the money was borrowed for the purpose of enabling Beram to get his daughters taught singing and to meet household expenses. Beram died without paying the mortgage-debt.

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* Second Appeal, No. 507 of 1885.

(1) 6 B. 622.

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The plaintiff now sued the defendants, who were the children [151] of Mushaf and Beram's children, upon the aforesaid bonds, to recover the debt by the sale of the house.

Beram's children did not appear.

The defendants appeared, and contended (*inter alia*) that Beram was not the owner of the house and was not living in union with them or managing the family estate. They contended that, by their custom, females succeeded to the exclusion of the males; that the debt contracted by Beram was contracted for improper and immoral purposes; and that they were not liable on the bonds as they were not parties to them.

The Subordinate Judge, who tried the suit, directed by his decree that the defendants should pay Rs. 1,000 with costs and interest within six months from the date of the decree, in default of which the sum was to be recovered by sale of two-thirds of the house to which Beram was entitled.

The defendants appealed to the District Judge, who held the bonds sued on to be void, and reversed the lower Court's decree. The following is a portion of his judgment:—

"* * * According to the Gazetteer, the Nasik *naikins* are mostly converted Hindus, with a certain number of foreigners, who have got themselves enrolled in the community. They have a head who is generally the girl whose ancestors are the oldest residents. If those *naikins* or *kalwantins*, as they are called in the deeds of mortgage, are to be treated as governed by Hindu usage, Beram would have no title to the house, a daughter by birth succeeding in preference to a son * * *. The next question is, whether the ordinary rule of Mahomedan law, under which a brother takes double the share of a sister, applies. A bastard child, as Beram is acknowledged to be, belongs under Mahomedan law legally to neither of its parents * * *. Bastard children have also no right of inheritance between one another * *. Beram's title can only be based upon inheritance from his mother. It is not shown how the whole of the house devolved upon his mother. There is evidence that Beram lived in the house, but it is not shown that he did so as owner or as manager of the family * * *. Under these circumstances I hold that the ordinary rule of Mahomedan law does not apply, [152] and Beram did not acquire part of the house by inheritance * * *. The last question is, whether the mortgage-bonds are void by reason of the consideration being immoral. The money is said to have been borrowed for the sake of teaching Beram's daughters to sing and defray household expenses. It is not shown how much was borrowed for the former and how much for the latter purpose, so that the legal cannot be separated from the illegal part of the consideration * * * *. The object of teaching Beram's daughter to sing was to make her more attractive as a prostitute. I think * * that money lent with the object of giving a prostitute a good start in her profession is an immoral consideration. The agreement was intended to further an immoral purpose, and was known by both parties to be so intended."

From this decision the plaintiff preferred a second appeal to the High Court.

Badrudin Tyabji and *Hakim* (*Daji Abaji Khare* with them), for the appellant:—If money is lent on the security of land, even if it be for immoral purposes, the security can be enforced. Here, however, it was lent for a legal purpose. There is nothing immoral in teaching a *naikin* to sing, to enable her to get her livelihood. The Subordinate Judge was

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right in allowing two-thirds of the house to which Beram under the Mahomedan law was entitled. See Baillie's Digest of Mahomedan Law, p. 411; Macnaghten's Mahomedan Law, 91. The Mahomedan law allows the succession of an illegitimate child to the estate of the mother, and Beram, therefore, rightly inherited his mother's property, and had a right to mortgage the house in dispute. The District Judge was wrong in concluding that the singing was necessarily for the purposes of prostitution. It is the occupation and profession of the dancing girls of Nasik: see Bombay Gazetteer, Vol. XVI, p. 84. Signing in itself is not immoral. The house had been mortgaged to the plaintiff by a registered deed. It is against it that the debt is being enforced.

Jardine (*Mahadev Chimnaji Apte* with him), for the respondents :—

There is no distinct finding by the lower Court that the house belonged to Latiba, and the plaintiff should make out his title to it. The defendants are not real Mahomedans, but [153] converted Hindus, and the Hindu law applies to them. They inherit by custom, which excludes males from inheritance, so that Beram had no right to this property. An illegitimate Mahomedan cannot inherit: see *Sahebzadee Begum* v. *Mirza Himmut* (1), and Beram being an illegitimate child could not inherit. The consideration for the bonds is immoral, as it was to teach Beram's daughter to sing and thus render her more attractive as a prostitute. The bonds, therefore, are void.

JUDGMENT.

SARGENT, C. J.—The District Judge found that the bonds sued on were void, on the ground that the loan "was intended to further an immoral purpose and was known by both parties to be so intended." In the bonds the money is said to have been borrowed for teaching Beram's daughters to sing and for defraying household expenses, and the District Judge has held that the object of teaching Beram's daughters to sing was to make them more attractive as prostitutes, and, therefore, to further an immoral purpose, which could not be separated from the legal part of the purpose for which the loan was contracted.

The cases of *Cannan* v. *Bryce* (2) and *M'Kinnell* v. *Robinson* (3) are authorities for the legal proposition upon which the District Judge's conclusion is based, *viz.*, that "the repayment of money lent for the express purpose of accomplishing an illegal object cannot be enforced." But the question yet remains, whether the fact of the immoral purpose and of the plaintiff's knowledge of it is established. In the Bombay Gazetteer, Volume XVI, p. 84, it is said, in describing the community of *kasbans* or *naikins* in Nasik, "singing and dancing or prostitution, or the three together, form the occupation of the greater number." It would seem, therefore, that singing is not necessarily acquired by these women with the view to practising prostitution. It is a distinct mode of obtaining a livelihood which is not necessarily connected with prostitution, although it may be true, as a fact, that most of those who sing lead a loose life. We think, therefore, that the District Judge went too far in concluding that the singing was necessarily intended, to the knowledge of the plaintiff [154] to increase the attractiveness of Beram's daughters as prostitutes, and was, therefore, wrong in holding that the bonds were void. However, the District Judge has also found that Beram, who mortgaged the house to the plaintiff, had no title to it on the ground that

(1) 12 W. R. C. R. 512. (2) 3 B. & Ald. 179. (3) 3 M. & W. 434.

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there was no evidence to show how the house had devolved on his mother Latiba, and in any case that Beram could not acquire any part of it by inheritance from his mother, whether by the custom of *kalwantins* or ordinary Mahomedan law. All the defendants claim through the son and daughter of Latiba, and it does not seem to have been disputed by the appellants in the Subordinate Judge's Court that she had become the owner of it, their allegation being that it was their ancestral property,—inheritance being in their caste confined to females. The District Judge ought, therefore, we think, to have started with the assumption that the house had devolved on Latiba. If that were so, Beram and Mushaf, although illegitimate, would, in the absence of usage, have inherited from their mother in the proportion of two shares to one, the presumption being that they are *sunis*, and no evidence having been given to the contrary: see Baillie's Digest of Mahomedan Law, p. 411, and Macnaghten's Principles of Inheritance, p. 91. In that case Beram would have been entitled to mortgage the house to the extent of his two-thirds share. As, however, the District Judge has not recorded a finding on the third issue, we must send the case back for a finding, to be transmitted to this Court within three months.

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13 B. 154.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

CHHAGANLAL (*Plaintiff*) *v.* FAZARALI AND OTHERS (*Defendants*).*
[2nd August, 1888.]

Civil Procedure Code (Act XIV of 1882), s. 295—Decree—Execution—Rateable distribution of proceeds of decree—Power of Court to inquire into bona fides of the decree-holders while distributing such proceeds—Practice.

In distributing the proceeds of execution under s. 295 of the Civil Procedure Code (Act XIV of 1882), the Court has power to inquire into the *bona fides* of the several decree-holders that apply for rateable distribution, if the same has [155] been called in question, and to decide it in the same manner as all other questions that arise in execution. The party aggrieved by such a decision is entitled, under the last clause of the section, to bring a regular suit to compel the successful judgment-creditor in execution to refund.

In re Sunder Dass (1) followed.

[F., 16 C L J. 582 = 17 C W.N 326 = 16 Ind. Cas. 795 ; **Doubted**, 1 C.W N. 633 (636).]

REFERENCE by Khan Bahadur B. E. Modi, Firs Class Subordinate Judge of Ahmedabad, under s 617 of the Civil Procedure Code (Act XIV of 1882).

The plaintiff Chhaganlal presented an application to the First Class Subordinate Judge of Ahmedabad to execute his simple money decree in suit No. 1185 of 1887 by the attachment and sale of certain immoveable property belonging to his judgment-debtors, Fazarali (deceased) and others.

The property was attached and sold on the 8th December 1887, and the proceeds were realized by the Court.

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* Civil Reference, No. 11 of 1888.

(1) 11 C. 42.