ORIGINAL CIVIL.

Before Panckridge J.

1935

June 21, 24, 25, 26; *July* 3.

BRIJMOHAN

v.

MAHABEER.*

Contract—Agreement to pay debt in specified manner, Validity of—Revival of original promise—Suit to recover debt due to joint family business—Parties—Retiring coparcener, if must assign actionable claim—Suit against grandson for grandfather's debt—Parties—Insolvency of father of defendants, Effect of—Insolvency court, Jurisdiction of—Immoral debt, What must be proved to constitute—Indian Contract Act (IX of 1872), s. 62—Provincial Insolvency Act (V of 1920), s. 28(2).

Where, after adjustment of accounts, the debtor acknowledged a certain sum as due and agreed to repay it in a specified manner, namely, by conveying to the creditor certain properties earmarked against specified sums due and by paying the balance still due, with interest, within a certain time,

held that the agreement was a valid and unconditional agreement by reason of the general provisions of the law, quite apart from section 62 of the Indian Contract Act.

Manohur Koyal v. *Thakur Das Naskar* (1) distinguished.

Held, further, that no stipulation that the failure to carry out the new promise would revive the original promise could be inferred in the circumstances.

Har Chandi Lal v. *Sheoraj Singh* (2) distinguished.

No assignment of a co-sharer's interest in actionable claims is necessary when such co-sharer retires from the membership of a joint *Mitâkshará* family business and renounces his share therein; and the legal representative of such retiring member is not a necessary party to a suit based on such actionable claim.

Palani Ammal v. *Muthuvenkatachala Moniagar* (3) relied on.

Where A, as *kartâ* of a joint *Mitâkshará* family business, agrees to pay a certain debt, and, after his death, his son B is adjudged an insolvent, and the creditor sues B's sons for recovery of the debt,

held that neither B nor his receiver in insolvency is a necessary party to the suit and section 28(2) has no application to such suit or legal proceedings.

Narayanan Chettiar v. *Veerappa Chettiar* (4) distinguished.

*Original Suit No. 1255 of 1934.

(1) (1888) I. L. R. 15 Cal. 319.
(2) (1916) I. L. R. 39 All. 178; L. R. 44 I. A. 60.
(3) (1924) I.L.R. 48 Mad. 254; L. R. 52 I.A. 83.
(4) (1916) I. L. R. 40 Mad. 581.

Held, also, that the insolvency court has no jurisdiction to determine the liability of the grandson to discharge the debt created by the grandfather, and if it had such jurisdiction it is not exclusive.

Maharana Kunwar v. *E. V. David* (1) relied on.

Where grandsons seek to avoid liability for a personal debt of the grandfather on the ground that such debt was incurred for immoral purposes, they must be able to trace a distinct connection between the debt and the immorality.

Bhagbut Pershad Singh v. *Girja Koer* (2) and *Shyam Narain Singh* v. *Suraj Narain Pandey* (3) followed.

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The plaintiff and his coparceners were the owners of a joint family business named Debibux Brijmohan. The other coparceners retired from the business and renounced their shares in it, prior to suit.

On an adjustment of loan accounts, on October 12, 1931, the firm of Jankidas Daluram was found indebted to Debibux Brijmohan, the sum due being admittedly Rs. 60,516-4. On the same day, Daluram as *kartâ* of Jankidas Daluram entered into an agreement for repayment of the debt in a specified manner. The relevant terms of the said agreement appear from the judgment.

Daluram died before the agreement dated October 12, 1931, had been fully performed and soon thereafter his son Murlidhar was adjudged an insolvent at Arrah. The plaintiff attempted to specifically enforce the said agreement against the receiver in insolvency and failed.

Thereafter, the plaintiff filed this suit, against the grandsons of Daluram, for money lent and advanced.

Mahabeer Prasad and *B. Agarwal* for the defendants. This is a debt provable in insolvency and the suit is maintainable having regard to section 28 (*2*) of the Provincial Insolvency Act. *Narayanan Chettiar* v. *Veerappa Chettiar* (4).

(1) (1923) I. L. R. 46 All. 16.
(2) (1888) I. L. R. 15 Cal. 717; L. R. 15 I. A. 99.
(3) (1932) 37 C. W. N. 293.
(4) (1916) I. L. R. 40 Mad. 581.

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Further, the power to sell the share of the defendants in the joint family estate having vested in the receiver in insolvency, he is a necessary party to the suit.

Sanyasi Charan Mandal v. *Krishnadhan Banerji* (1).

And Murlidhar is a necessary party, for while he is living his sons cannot be sued on their pious obligation to discharge Dalurams' debt, without making him a party. *Chet Ram* v. *Ram Singh* (2), *Narayanan Chettiar* v. *Veerappa Chettiar* (3).

Under section 4 of the Provincial Insolvency Act, the insolvency court had jurisdiction to determine all questions raised in this suit. Hence, such questions ought to have been raised in the proceedings in insolvency and this suit is barred by the principle of *res judicata*.

Lastly, in the absence of an assignment in writing, within the meaning of section 130 of the Transfer of Property Act, by the retiring co-sharers in the plaintiffs' business the suit is bad for non-joinder of such co-sharers or their legal representatives.

On the facts, the plaintiff has failed to prove joint family purpose for the loan. The debts were incurred by Daluram in a new and speculative business and cannot bind the minor grandsons: *Sanyasi Charan Mandal* v. *Krishnadhan Banerji* (1). In Hindu law these debts were *avyavaharika* and therefore immoral.

[The following cases were also cited: *Nagappa Chettiar* v. *Brahadambal Ammani* (4); *Biswanath Singh* v. *Kayastha Trading and Banking Corporation, Limited* (5); *Benares Bank, Ltd.* v. *Hari Narain* (6); and *Mahadeo Prasad Singh* v. *Mathura Chaudhari* (7).]

(1) (1922) I. L. R. 49 Cal. 560; L. R. 49 I. A. 108.
(2) (1922) I. L. R. 44 All. 368; L. R. 49 I. A. 228.
(3) (1916) I. L. R. 40 Mad. 581.
(4) (1935) I. L. R. 58 Mad. 350; L. R. 62 I. A. 70.
(5) (1928) I. L. R. 8 Pat. 450.
(6) (1932) I. L. R. 54 All. 564; L. R. 59 I. A. 300.
(7) [1931] A. I. R. (All.) 589.

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Shambhunath Banerji (with him *B. C. Ghose* and *D. N. Sinha*) for the plaintiff. The liability of sons and grandsons in such cases are not joint but co-extensive. Therefore, the creditor may proceed against such of them as he likes. Thus, Murlidhar is not a necessary party and the receiver in insolvency is in the same position. *Masit Ullah* v. *Damodar Prasad* (1); *Brij Narain* v. *Mangal Prasad* (2). In the case of *Narayanan Chettiar* v. *Veerappa Chettiar* (3) the debt was that of the insolvent and is therefore clearly distinguishable, and *Chet Ram* v. *Ram Singh* (4) is overruled by *Masit Ullah* v. *Damodar Prasad* (1). Although the power of disposal of the sons' share in the estate may vest in the Receiver in insolvency, the estates do not so vest. *Sat Narain* v. *Behari Lal* (5). So this suit is competent. [*Vide* Mullah's Law of Insolvency, pages 351-2.]

Section 4 of the Provincial Insolvency Act does not confer exclusive jurisdiction on the insolvency courts. *Maharana Kunwar* v. *E. V. David* (6). Therefore, this suit cannot be barred by *res judicata.*

A member of a *Mitâkshará* joint family may retire from the joint business and relinquish his interest therein. No assignment of his right is necessary under section 130 of the Transfer of Property Act or at all. *Palani Ammal* v. *Muthuvenkatachala Moniagar* (7); *Budha Mal* v. *Bhagwan Das* (8).

The grandsons cannot get out their pious obligation to pay their grandfather's debt unless they can prove conclusively the connection between the advances made and the act of immorality. *Bhagbut Pershad Singh* v. *Girja Koer* (9); *Shyam Narain Singh* v. *Suraj Narain Pandey* (10).

(1) (1926) I. L. R. 48 All. 518; L. R. 53 I. A. 204.
(2) (1923) I. L. R. 46 All. 95; L. R. 51 I. A. 129.
(3) (1916) I. L. R. 40 Mad. 581.
(4) (1922) I. L. R. 44 All. 368; L. R. 49 I. A. 228.
(5) (1924) I. L. R. 6 Lah. 1; L. R. 52 I. A. 22.
(6) (1923) I. L. R. 46 All. 16.
(7) (1924) I. L. R. 48 Mad. 254 (258); L. R. 52 I. A. 83 (86).
(8) (1890) I. L. R. 18 Cal. 302.
(9) (1888) I. L. R. 15 Cal. 717; L. R. 15 I. A. 99.
(10) (1932) 37 C. W. N. 293.

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Novation of a contract under section 62 of the Contract Act means a complete substitution of the liability in the existing one and not a mere promise to be liable in some way which remains executory or has to be specifically enforced. *Manohur Koyal* v. *Thakur Das Naskar* (1); *Har Chandi Lal* v. *Seoraj Singh* (2).

Section 62 has no application after there has been a breach of the original contract. In such a case, when the substituted contract is not performed the parties are relegated to the original contract. *Manohur Koyal* v. *Thakur Das Naskar* (1).

Cur. adv. vult.

PANCKRIDGE J. The plaintiff in this case claims to be the sole proprietor of a business known as Debibux Brijmohan, the *gadi* of which is at No. 61, Cross Street. This business was formerly a joint family business, the proprietors being the plaintiff, his brother Debibux, and Basudeo, the son of a deceased brother.

In 1930, Basudeo separated taking his share of the assets of the business which was thenceforward carried on by the plaintiff and Debibux.

Debibux is now dead, but before his death he too separated from the plaintiff. The dates of these two separations are October 21, 1930, and February 28, 1932. The public was informed of them by a notice appearing in the Calcutta Exchange Gazette of August 23, 1932, and with regard to Debibux, retirement, the entry in the firm's *nakal* has also been tendered (Ext. B1). The plaintiff says that Debibux left all his property to Basudeo's son, Basantkumar.

For some time prior to 1931, Debibux Brijmohan had dealings with a firm of the name of Jankidas Daluram, carrying on business at Buxar in country produce. Jankidas Daluram were also a joint family firm. After the death of Janakidas, Daluram became the *kartâ* of the joint family. In the course of the dealings it was common for Debibux Brijmohan to

(1) (1888) I. L. R. 15 Cal. 319. (2) (1916) I. L. R. 39 All. 178; L. R. 44 I. A. 60.

advance considerable sums to Jankidas Daluram. The plaintiff says that adjustments were made from time to time at such places as happened to be convenient, and that, by the terms upon which the business was carried on, outstandings bore interest at 9 annas per cent. per mensem and were payable at the Cross Street *gadi*.

The loans seem as a rule to have been quickly paid off. The advances were usually taken in the spring and repayments were usually made in the months of July or August. In the *Sambat* year 1987, the business of Jankidas Daluram appears to have collapsed, for, whereas at the close of 1986 there was a small balance in their favour, on an adjustment on *Ashwin Sudi* 1st, 1988 (October 12, 1931), Rs. 60,516-4 were found to be due from them. They were not in a position to pay cash and an agreement in writing (Ext. E) was come to, signed by Daluram, the terms of which it will be necessary to set out in some detail. The agreement recites the sum admitted to be due and continues:—

> In exchange whereof we shall sell our properties and estate to you..... We shall complete the transactions within two months. If there be any default on our part in this respect, then you shall be entitled to have the same completed by taking legal proceedings.

The document then provides that Rs. 2,500 shall be liquidated by the transfer of a plot of land at Madowa, Rs. 3,500 by the transfer of a house at Madowa, Rs. 20,000 by the transfer of a *golâ* at Buxar, Rs. 10,000 by the transfer of a house at Buxar, and Rs. 3,300 by the transfer of a debt due to Jankidas Daluram. By these means the sum outstanding would be reduced by Rs. 39,300. Finally, Jankidas Daluram undertake to pay the balance Rs. 21,216, with interest at the rate of 9 annas per cent. per month in Calcutta.

In pursuance of the agreement Jankidas Daluram conveyed the Madowa immoveable properties and arranged for the payment of the debt of Rs. 3,300. They did not, however, convey the Buxar properties nor make any payment in reduction of the outstanding cash balance.

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A little more than a month after the adjustment Daluram died, the surviving members of the joint family being Daluram's son, Murlidhar, and Murlidhar's three sons, who are the first, second and third defendants in this suit.

In December, 1931, Murlidhar applied, under the Provincial Insolvency Act, to the District Court of Arrah, to be adjudicated an insolvent and he was so adjudicated on September 8, 1932. In November, 1932, the present plaintiff made an application in the insolvency proceedings to compel the receiver to convey the Buxar properties. The District Judge made the order asked for by the plaintiff; the defendants, however, appealed to the Patna High Court and the District Judge's order was set aside and the plaintiff's application dismissed.

The suit was filed on July 16, 1934. The concise statement describes it as a suit to recover Rs. 60,781 from the defendants on account of moneys lent and advanced and due from them as members of a joint family. The fourth defendant is Murlidhar's wife and against her no relief is claimed. The material facts are set out in the plaint wherein it is stated that Rs. 60,781 are still due. This sum is arrived at by calculating the interest up to the date of suit and giving credit for Rs. 6,000 on account of the Madowa properties, and for Rs. 3,300 on account of the transferred debt. In paragraphs 18 and 19 it is stated that the male defendants are liable to pay the sum claimed as money borrowed for the purpose of the joint family business, or in the alternative under the principle of Hindu law whereby grandsons are under a pious obligation to repay their grandfather's debts. It only remains to add that while this suit was pending, the plaintiff on December 11, 1934, filed a suit in the court of the Subordinate Judge of Arrah for specific performance of the agreement to convey the Buxar properties. The receiver in Murlidhar's insolvency was one of the defendants, and the Subordinate Judge rejected the plaint because it did not appear

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that the necessary notice under section 80, Code of Civil Procedure, had been served on him. On appeal the Patna High Court upheld the Subordinate Judge's order.

A number of issues have been raised by the defendants. I prefer to deal first with the issue whether the suit is maintainable having regard to the agreement of October 12, 1931.

The concise statement, as I have said, describes suit as one for money lent and advanced, and the description is clearly correct, that is to say, the plaintiff's cause of action is the promise, express or implied, to repay the advances made to Jankidas Daluram.

Is this promise still operative? I am of opinion it is not. Section 62 of the Contract Act has been discussed at some length. The evidence here is that the plaintiff, prior to the execution of the agreement, demanded payment of his dues but failed to obtain it. It is suggested that this was a breach of the promise to repay and that after breach section 62 has no application. Reference was made to *Manohur Koyal* v. *Thakur Das Naskar* (1). There it was laid down that the provisions of the section do not apply after there has been a breach of the original contract. It was there also said that as the defendant had not satisfied the plaintiff under the terms of the new agreement, the plaintiff was relegated to his rights under the old contract and was entitled to bring the suit on the basis of the old obligation.

I think that if one does not go beyond the actual language of section 62 there is something to be said for this view; "parties to a contract" ordinarily signifies parties to an existing contract rather than parties to a contract that has already been discharged by breach. I find some difficulty, however, in applying this principle to a debt, for it appears strange if the mere failure to pay an outstanding debt on demand brings the case out of the scope of section 62.

(1) (1888) I. L. R. 15 Cal. 319.

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In my judgment, the agreement of October 12, 1931, was a valid and unconditional agreement by reason of the general provisions of the law of contract quite apart from section 62.

Release from an existing obligation is unquestionably good consideration for a promise to undertake a fresh obligation. I cannot see that it makes any difference whether the original obligation is an obligation to do something *in futuro*, or is an obligation to pay a debt already due, or is an obligation to pay compensation for the breach of a contract.

With regard to the argument that failure to carry out the substituted promise revives the original promise, I should hold that this depends upon the intention of the parties. It is always open to the parties to make an express stipulation of this nature, for example, it is frequently provided that failure to pay any instalment will revive the original debt. The law, however, does not imply any such term. Looking at the document of October 12, 1931, I do not think such a term can be inferred from the fact that the various properties are earmarked against specific sums. On the contrary the words "in exchange thereof" are strong evidence that the parties intended to wipe out the debts, as such, once for all and to substitute for them the new and permanent obligations set out in the document.

On this question of revival the plaintiff relies on the decision of the Judicial Committee in *Har Chandi Lal* v. *Sheoraj Singh* (1). In that case, joint owners to the extent of five-sixths and one-sixth had separately mortgaged their respective shares to secure separate loans. Subsequently, in supersession of the original deeds the mortgagees executed two new mortgages, making the whole property liable for each debt. The subsequent mortgage by the owner of the five-sixths share was held to be invalid. In a suit on the first mortgage created by that owner it was held

(1) (1916) I. L. R. 39 All. 178 ; L. R. 44 I. A. 60.

not to be consistent with equity and good conscience that those who had successfully maintained that the subsequent mortgage was not binding on them should claim the benefit of the transaction as a release from the earlier mortgage.

It will be seen that the facts here are entirely different. Neither party has impeached the agreement of 1931. It has been performed in part by the conveyance of the Madowa property and the payment of the transferred debt. The plaintiff has twice endeavoured as regards the Buxar properties to enforce it by his application in the insolvency and by his suit for specific performance. It certainly does not lie in his mouth to say that the agreement has lapsed and that the original debt is revived. It follows that the most that the plaintiff can recover, in this suit, is a decree for the money payable under the agreement. Indeed, I have been in some doubt whether, as the suit is framed, he can get anything at all. Mr. Mahabir Prasad for the defendants submits that before the claim can be considered on the basis of the agreement the plaintiff must apply for leave to amend. He says that he has addressed his arguments to the Court on the basis of the suit being one for debt, and that he has other weapons wherewith he can attack the plaintiff, if his claim is for money due by virtue of the agreement. The factum of the agreement is not questioned as the pleadings show, nor is its legality *inter partes* disputed. How far the defendants are liable on it, if at all, is another matter. I think, from this point of view, the agreement must be regarded as one to pay a debt in a specified manner, and that the defendants can repudiate liability under the agreement on the grounds that they could have repudiated it on the original debt, and on no other grounds. It is often difficult to keep a middle course between undue laxity on the one hand and oppressive technicality on the other. In the circumstances, I have come to the conclusion that no useful purpose would be served by insisting on an amendment, and the defendants will

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be in no way prejudiced by my treating the suit as based on the agreement of October, 1931.

I will now deal with some preliminary points of law raised by the defence.

It is said that necessary parties have not been joined because (*i*) a representative of Debibux, and (*ii*) Murlidhar, or his receiver in insolvency, should be on the record. As regards Debibux it is true there is no explicit assignment in favour of the plaintiff of his share in the actionable claims due from Jankidas Daluram. I assume that the entry in the books, Ex. B1, which is signed by Debibux, does not amount to an assignment which would satisfy the provisions of the Transfer of Property Act, although I am by no means convinced that it does not. In any case, in my opinion, no assignment is necessary where one co-sharer retires from the membership of a joint *Mitâkshará* family business and renounces his share therein. Any member can do what Debibux did in this case—drop out of the business for a cash consideration, and the business will thenceforward belong to the members who remain. There is no need for a formal partition nor for a formal transfer, at any rate with regard to moveables and debts. I think this follows from the essential characteristic of a *Mitâkshará* family, that no member is entitled to a definite share in the joint property. Mulla's Hindu Law, 7th Edition, 264. *Palani Ammal* v. *Muthuvenkatachala Moniagar* (1). I hold that Debibux on his retirement relinquished and lost all interest in the joint business, and that, accordingly, the presence of his representative, presumably Basantkumar, is unnecessary.

Neither Murlidhar nor the receiver of his estate is, in my opinion, a necessary party. It would be otherwise if Murlidhar had been the creator of the debt, for in that case on his discharge the debt would be wiped out, and neither he nor his descendants would

(1) (1924) I. L. R. 48 Mad. 254 (258); L. R. 52 I. A. 83 (86).

be liable to pay it. *Narayanan Chettiar* v. *Veerappa Chettiar* (1). Inasmuch, however, as the debt was created by Debibux it cannot be discharged in this fashion. Sons, grandsons and great grandsons who receive ancestral assets are *prima facie* liable to discharge debts created by the father. *Masit Ullah* v. *Damodar Prasad* (2). Whether the liability depends on the debt having been incurred for family purposes, or upon the pious obligation placed on the descendants to discharge the ancestors' debt, the creditor may elect to proceed against any descendant liable he pleases. He is not bound to join all the descendants down to the third generation.

I think similar considerations dispose of the submission that the suit is not maintainable by reason of section 28 (*2*) of the Provincial Insolvency Act, 1920. That section forbids a creditor, to whom the insolvent is indebted in respect of any debt provable under the Act, during the pendency of the insolvency proceedings, to commence any suit or other legal proceeding except with the leave of the Court.

The suit or other legal proceeding contemplated must, I think, be one against the insolvent himself or against persons whom it is sought to render liable through him. In this case the liability of the defendants does not depend on their being the sons of Murlidhar but on their being the grandsons of Daluram. In these circumstances, the section referred to has no application.

This also appears to me to be an answer to the connected argument that the suit is barred on the principles of *res judicata*, because it is suggested that the plaintiff should have included his claim in his application to the insolvency court to have the Buxar properties conveyed. Extensive as is the jurisdiction conferred on the insolvency court, by section 4 of the Act, I cannot see how that court would have

(1) (1916) I. L. R. 40 Mad. 581. (2) (1926) I. L. R. 48 All. 518; L. R. 53 I. A. 204.

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jurisdiction to determine the liability of the defendants in this suit to discharge the debts created by their grandfather. Even if it has jurisdiction, such jurisdiction is not exclusive. *Maharana Kunwar* v. *E. V. David* (1). Accordingly, since the suit is properly constituted and the court has jurisdiction to determine it, there remains to be considered the issue of fact raised by the defendants.

They say that the evidence shows that the money lent by Debibux Brijmohan was not borrowed for the purposes of the business, and that in so far as the debt was a personal debt of Daluram it was an immoral (*Avyavaharika*) debt, repugnant to good morals. Their case is that after Jankidas' death Daluram gradually abandoned the legitimate business in ready country produce, such as linseed, which the firm had previously been doing, and became addicted to speculating in *sâttâ* and *fatkâ* transactions, that is to say, in forward contracts in cotton and silver in which there was no intention to give or take delivery on either side, only the payment of differences being contemplated.

It is pointed out that at the beginning of 1987, Jankidas Daluram had Rs. 1,00,000 in hand which was more than sufficient to finance the purchase of Rs. 60,000 worth of linseed which seems to have been the principal legitimate transaction of that year. It is suggested that the balance of the lakh of rupees in hand at the beginning of the year and all the borrowings from the plaintiff must have gone in the liquidation of *sâttâ* debts. If gambling can properly be termed a "business" at all, it is not within the powers of a *kartâ* to start a new business in addition to the existing ancestral business so as to impose a liability on those members of the joint family who do not acquiesce. (*Sanyasi Charan Mandal* v. *Krishnadhan Banerji* (2).

(1) (1923) I. L. R. 46 All. 16.

(2) (1922) I. L. R. 49 Cal. 560; L. R. 49 I. A. 108.

A considerable body of correspondence has been put in the shape of letters addressed by the plaintiff to Daluram after the money was due protesting against the action of Daluram in involving himself in *sâttâ* transactions, and there are admissions on Daluram's part that there had been such transactions.

On the other hand, the witnesses called by the defendants prove very little. Jugal Kishore, a former *gomastâ* of Jankidas Daluram, says that the money borrowed from Debibux Brijmohan was put into the general till from which funds were drawn for the purposes of the business as well as for the purpose of paying the *sâttâ* losses. He says—

> It is impossible for me to say from which fund he (Duluram) met the losses, whether from the money borrowed or from the income of the firm or from where.

In cross-examination he admits from an examination of the books that from *Chait Sudi* 14 to *Asarh Sudi* 15, Rs. 77,177-15 were borrowed from Debibux Brijmohan. He also proves expenditure on linseed during the year to the extent of Rs. 82,000. Another *gomastâ* Basdeo speaking of the money borrowed from Debibux Brijmohan says some of it was applied towards the purchase of goods and some towards payment of *sâttâ* liabilities which were practically all liquidated. He professes to be able to trace one particular *sâttâ* debt as having been paid out of the advances, but I do not think this is satisfactorily established. The position, therefore, appears to be that it is quite impossible to earmark any particular advance as having been borrowed for legitimate business or to pay a *sâttâ* debt. I know of no principle which would justify me in attributing the legitimate expenditure to the cash in hand at the beginning of the year, and the liquidation of *sâttâ* debts to the advances.

In these circumstances, it may justifiably be said that the plaintiff has not proved affirmatively that the money was borrowed for the purposes of the business,

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and he might, therefore, be in some difficulty if his claim could only succeed on that basis.

There is, however, the alternative claim (paragraph 19 of the plaint) based on the pious obligation of Hindu grandsons to repay their grandfather's debt. This obligation is valid in the case of a personal debt provided it is not a debt incurred for immoral purposes. It is well settled that the burden of proving that the debt was so incurred lies on those who seek to avoid liability on that ground. They must be able to trace a distinct connection between the debt and the immorality. *Bhagbut Pershad Singh* v. *Girja Koer* (1), *Shyam Narain Singh* v. *Suraj Narain Pandey* (2). I have already given my reasons for holding that on the evidence it is quite impossible to say, affirmatively, either with regard to the entire sum advanced or with regard to any particular advance, that it was used to discharge a gambling debt.

In these circumstances, the defendants have failed to show that they are not subject to the liabilities which the law of the community to which they belong *prima facie* imposes on them.

There will be decree against the first three defendants for Rs. 21,216, the amount due in terms of the document of October 12, 1931, with interest at the rate of nine annas per cent. per month from that date until the institution of the suit, together with interest at 6 per cent. on decree and costs. It is conceded that the liability of these defendants is limited to their interest in the joint family property.

Suit decreed in part.

Attorney for plaintiff: *M. K. Bose.*

Attorneys for defendants: *Khaitan & Co.*

S. M.

(1) (1888) I. L. R. 15 Cal. 717; L. R. 15 I. A. 99.

(2) (1932) 37 C. W. N. 293.