

APPELLATE CIVIL.

Before Mr. Justice Boddam and Mr. Justice Bhashyam Ayyangar.

CHIDAMBARA MUDALIAR (PLAINTIFF), APPELLANT,

1903.
August 28.

v.

KOOTHAPERUMAL (SECOND DEFENDANT), RESPONDENT.*

Hindu Law—Father's debt binding on sons even during father's life-time—Alienations for its discharge binding on sons—Nature of mortgage debt—No distinction between mortgage given for antecedent debt and mortgage given for debt then incurred.

It is established by a uniform course of decisions under the Hindu Law that a debt incurred by the father which is not shown to be illegal or immoral is, even during the life-time of the father, binding on the son's interest in the family property; and that any alienation, voluntary or involuntary, made to discharge the debt is binding on the son.

In the case of a mortgage-debt incurred by the father, the debt is the primary obligation and the mortgage is only a collateral security for its discharge.

If the debt is binding on the son, its discharge by making an usufructuary mortgage or by enforcing the security by sale is equally binding on the son inasmuch as he is thereby exonerated from liability to discharge the debt of the father by means of other family property.

There is no distinction, in principle, between a mortgage given for an antecedent debt and a mortgage given for a debt then incurred, for in either case the debt is binding on the son and the enforcement of the security exonerates the son from the burden of his father's debts.

SUIT for money due on two simple mortgage bonds. Defendants Nos. 1, 3 and 4 had executed the bonds in plaintiff's favour, first defendant also signing as guardian of second defendant, his minor son. The defence filed on behalf of second defendant was that the debts were not incurred for purposes which were binding on him and that neither he nor his interest in the mortgaged property was liable for plaintiff's claim. The first issue was whether second defendant was liable to pay the debt. The District Munsif passed a decree in plaintiff's favour as against defendants Nos. 1, 3 and 4 personally, and against the property of the family of defendants Nos. 1 and 2. The facts were complicated, but the money appeared

* Second Appeal No. 108 of 1902 presented against the decree of O. Sivarama Krishnamma, Subordinate Judge of Trichinopoly, in Appeal Suit No. 20 of 1901 presented against the decree of S. Doraiswami Ayyar, District Munsif of Trichinopoly, in Original Suit No. 280 of 1899.

to have been advanced at the time when the mortgage bonds were executed. The defendants Nos. 1, 2 and 3 appealed to the Subordinate Judge, who exonerated the second defendant's share in the family property, but in other respects confirmed the decree. Dealing with second defendant's liability he remarked that though second defendant had not pleaded that the debt had been contracted for immoral or illegal purposes, plaintiff had adduced no evidence as to the purposes for which the loans had been taken.

Plaintiff preferred this second appeal.

P. R. Sundara Ayyar for appellant.

P. S. Sivaswami Ayyar for respondent.

JUDGMENT.—It is now established by a uniform course of decisions that a debt incurred by the father which is not shown to be illegal or immoral is, even during the life-time of the father, binding upon the son's interest in the family property and that any alienation, voluntary or involuntary, made to discharge the debt is binding upon the son. In the case of a mortgage debt incurred by the father the debt is the primary obligation and is binding upon the son if it is not for an illegal or immoral purpose and the mortgage is only a collateral security for the discharge of the debt either by the receipt of the rents and profits by the mortgagee or by causing it to be sold after the debt has become payable. If the debt is binding upon the son the discharge of the debt either by making a usufructuary mortgage or by enforcing the security by sale, is equally binding upon the son inasmuch as he is thereby exonerated from liability to discharge the debt of the father by means of other joint family property. If a sale of joint family property made by the father for the purpose of discharging his debt which is not illegal or immoral is binding, it is difficult to see on what principle it can be held that a mortgage executed by the father as security for the discharge of the debt will not bind the son simply because the debt was not anterior to the mortgage but was incurred at the same time as the mortgage and the mortgage was executed as security therefor. In the case of *Sami Ayyangar v. Ponnammal*(1) it was, no doubt, held that the mortgage as such will not bind the son's share unless it was executed as security for an antecedent debt, that is, for a debt that existed independently of the mortgage transaction. The authority

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(1) I.L.R., 21 Mad., 28.

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of this decision has been considerably shaken by the two later decisions of this Court in *Ramasamayyan v. Virasami Ayyar*(1) and *Palani Goundan v. Rangayya Goundan*(2) which decide that unless the son shows that the mortgage executed by the father on which decree was passed against the father alone was for an illegal or immoral debt the mortgage decree, as such, will bind also the son's share in the mortgage-property. The same view has been taken by the Calcutta High Court in *Lala Suraj Prasad v. Gopal Chand*(3) and by the Allahabad High Court in *Debi Dat v. Jadu Rai*(4) and by the Bombay High Court in *Ramchandra v. Fakirappa*(5).

On principle it is difficult to make any distinction between a mortgage given for an antecedent debt and a mortgage given for a debt then incurred, for in either case the debt is binding upon the son and the enforcement of the security exonerates the son from the burden of the father's debt. Such a distinction does not really afford any protection to the son, for his share in the mortgage property can, as a general rule, be seized and brought to sale, even in the latter case, for the recovery of the debt as a personal debt due by the father (though also secured by a mortgage) unless such share has been validly alienated in favour of a third party, since the date of the mortgage but prior to its attachment.

We therefore allow this appeal, and, reversing the decree of the Lower Appellate Court in so far as it modifies the decree of the District Munsif, we restore the decree of the District Munsif with costs in this and in the Lower Appellate Court.

(1) I.L.R., 21 Mad., 222.

(3) I.L.R., 28 Cal., 517.

(5) 2 Bom. L.R., 450.

(2) I.L.R., 22 Mad., 207.

(4) I.L.R., 24 All., 459.