APPELLATE CIVIL.

Before Mr. Justice Seshagiri Ayyar and Mr. Justice Napier.

ANKALAMMA (SECOND PLAINTIFF), APPELLANT,

v.

B. CHENCHAYYA AND TEN OTHERS (DEFENDANTS NOS. 1 TO 11), RESPONDENTS.*

1917, December, 14.

Hindu Law—Coparceners—Junior member of a joint Hindu family—Bond in the name of manager—Payment to a junior member during lifetime of manager—Liability of promisor—Discharge—Rule as to co-heirs and co-promisees—English Law.

Payment, made to a junior member of a joint Hindu family during the lifetime of its manager in whose favour a bond has been executed, will not discharge the promisor from his liability under the bond.

Rule as to co-heirs applied, and the rulings as to co-promisees considered, and cases reviewed.

SECOND APPEAL against the decree of G. GANGADHARA SOMAYAJULU, the Temporary Subordinate Judge of Cuddapah, in Appeal No. 87 of 1916, preferred against the decree of S. NILAKANTAM PANTULU, the District Munsif of Proddatur, in Original Suit No. 647 of 1910.

The material facts appear from the judgment.

M. O. Parthasarathy Ayyangar and *M. O. Thirumala Achariyar* for the appellant.

A. Narasimha Achariyar for *V. V. Srinivasa Ayyangar* and Messrs. *Venkata Subba Rao* and *Radhakrishnayya* for the respondents.

The judgment of the Court was delivered by

SESHAGIRI AYYAR, J.

SESHAGIRI AYYAR, J.—The bond sued on was executed to the father of the first plaintiff. The first plaintiff's case was that it was assigned to him by the father. After filing the suit he died and the second plaintiff is his legal representative. The first defendant is the son of the mortgagor. Defendants Nos. 2 to 11 are alienees of some of the properties mortgaged. The twelfth defendant is the eldest son of the mortgagee. The defendants pleaded that the mortgage bond was discharged by the payment made to one Chinna Narayana Reddi. This Chinna Narayana

* Second Appeal No. 1949 of 1916.

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Reddi was another son of Byreddi Venkata Reddi, the original mortgagee. In the written statement, the case for the defence was that in a partition between the father and the sons this bond fell to the share of Chinna Narayana Reddi and that after it came to him, there was a complete discharge of the obligation under the bond.

The District Munsif gave a decree to the plaintiff. In appeal after remand in which the District Judge asked for certain findings upon some subsidiary issues, the Subordinate Judge who heard the appeal finally has come to the conclusion that the payment to Chinna Narayana Reddi discharged the first defendant from liability and that the plaintiff is not entitled to claim anything under the bond.

The facts found are (*a*) that Venkata Reddi was alive at the time that the alleged payment was made to Chinna Narayana Reddi. Venkata Reddi and his son, the twelfth defendant, were sentenced to transportation for life somewhere near 1880 and the discharge is alleged to have been in the year 1883. At that time the father is alleged to have given a power of attorney to a person called Narayana Reddi. (*b*) It is further found that there was no partition as alleged by the defendants. The District Munsif has stated that there was no allegation that Chinna Narayana Reddi was the manager of the family and that it was not sought to establish it before him. In this Court, an attempt was made both by Messrs. Narasimha Achariyar and Radhakrishnayya to show that Chinna Narayana Reddi was actually managing the family affairs. But the circumstances mentioned by the Subordinate Judge negative any such presumption. After the father and the eldest son were convicted and sentenced to transportation for life apparently every member of the family was endeavouring to get as much family property as was possible into his own hands. In these circumstances, it is unlikely that any one of the members was looked up to as manager of an undivided family.

On these facts, the question of law for decision is whether the payment to Chinna Narayana Reddi could discharge the first defendant from liability. Chinna Narayana Reddi was undoubtedly not a promisee. The learned vakils for the respondents argued, that as the money was advanced by the father while the family was still undivided every member of the family must be taken to be a co-promisee with the father. In

the first place, there is no evidence as to the source of the money which was lent. For all we know, it might have been the self-acquisition of the father. Even granting that it was from family funds that the father advanced the money it does not follow that the other members of the family were co-promisees with him. The definition of 'promisor' and 'promisee' contained in the Contract Act negatives any such presumption; prima facie, the word 'promisee' means a person in whose name the document has been executed. No authority has been cited before us for the broad proposition that where money had been advanced by the manager of a joint Hindu family, the other members of the family would become co-promisees with him. The fact that the other members of the family have an interest in the debt is not enough to constitute them promisees; that is a technical expression carrying with it certain rights; we are not prepared to hold that every person who has an interest in bonds or securities standing in the name of another is a co-promisee, even though that other may be the manager of the Hindu family of which he is a member. Therefore we must proceed on the footing that Chinna Narayana Reddi was not a promisee under the bond. He was one of the heirs of Venkata Reddi to whom the bond was executed. There were also other heirs including the plaintiff who were entitled to the money under this bond. The question therefore is whether payment to one of the co-heirs would discharge the obligor from liability. The principle regarding co-heirs would be equally applicable to co-parceners. In *Ahinsa Bibi* v. *Abdul Kader Saheb*(1) BHASHYAM AYYANGAR, J., accepts the proposition laid down by MAHMOOD, J., in *Surju Prasad Singh* v. *Khawhash Ali*(2) and says that the co-heir of a single promisee is not entitled to give a discharge, in respect of a bond executed to his ancestor. The Subordinate Judge has relied for his conclusion that payment to one of the co-heirs would discharge the obligor, upon *Sheik Ibrahim Tharagan* v. *Rama Ayyar*(3). That case only decided that where payment is made in fraud of the other co-heirs to one of the co-heirs, the obligor is not discharged. Further there are some observations in the judgment which are against the view taken by the Subordinate Judge. There is nothing in that judgment to support his

(1) (1902) I.L.R. 25 Mad., 27 at p. 39.
(2) (1882) I.L.R., 4 All., 512. (3) (1912) I.L.R., 35 Mad., 685.

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position. Mr. Parthasarathi Ayyangar has drawn our attention to the Full Bench decision in *Annapurnamma* v. *Akkayya*(1) where two learned Judges of this Court held that payment to one of the co-promisees would be a good discharge. The Chief Justice was against that view. Even the two learned Judges who held that payment to one of the co-promisees would amount to a discharge, guard themselves by saying that the case of a co-heir would stand upon a different footing. SANKARAN NAYAR, J., at page 549 says that the proposition which he enunciated would not cover the case of co-heirs. SADASIVA AYYAR, J., uses similar language in his judgment. In a later case *Muniandi Servai* v. *Ramasami*(2), SADASIVA AYYAR, J., sitting with HANNAY, J., held that payment to one of the co-heirs of the promisee would not amount to a discharge of the liability incurred under the bond. COUTTS TROTTER, J., in *Ponnusami Pillai* v. *Thayagaraja Pillai*(3) seems to doubt the correctness of the Full Bench decision in *Annapurnamma* v. *Akkyya*(1). If the question for decision were whether the payment made to one of the co-promisees would amount to a discharge of the bond, it might become necessary to refer the matter to a Full Bench, having regard to the fact that two cases in Calcutta, in which the question was fully argued and elaborately considered, took a different view; and to the fact that COUTTS TROTTER, J., is of opinion that the decision is opposed to the current of authorities in England. We refer to *Hussainara Begam* v. *Rahimannesa Begam*(4) and *Uemes Chandra Banerjee* v. *Dinabhandhu Mahanti*(5). But that question need not be considered in this case. The principle seems to be clear that payment to one of the co-heirs of the promisee would not discharge the promisor from his liability to pay under the bond. The same considerations govern payments made to a junior member of a Hindu family during the lifetime of its manager in whose favour the bond was executed. In the view we have taken, the decision of the Subordinate Judge must be reversed and that of the District Munsif restored with costs here and in the lower Appellate Court. Time for payment is extended to 9th April 1918.

K.R.

(1) (1913) I.L.R., 36 Mad., 544 (F.B.).
(2) (1915) 29 I.C., 586.
(3) (1916) 3 L.W., 22.
(4) (1911) I.L.R., 38 Calc., 342.
(5) (1915) 29 I.C., 956.