APPELLATE CIVIL.

Before Sir M. Venkatasubba Rao, Kt., Officiating Chief Justice, and Mr. Justice Horwill.

1936, September 16.

RAMANATHAN CHETTIAR, MINOR, BY NEXT FRIEND C. T. RM. CHIDAMBARAM CHETTIAR (PLAINTIFF), APPELLANT,

v.

S. RM. M. CT. M. FIRM (DEFENDANT), RESPONDENT.*

Hindu Law—Ancestral, self-acquired and separate property—Distinction between—Joint family—Sole surviving member—Property in the hands of—Character of—Act of such member—Effect of.

The property in the hands of a sole surviving member of a joint Hindu family is his separate property which however must not be confused with his self-acquired property; what is separate property becomes, on the introduction of a fresh member into the family, ancestral property with all its incidents. Similarly, although when debts are incurred the family consists of a single male member, he must be deemed in contracting debts to be acting on behalf of a potential joint family which is capable by expansion of comprising more than one member. Viewed in this light, the act of the last single survivor must be deemed as that done in a representative capacity, that is to say, as representing a potential joint family.

APPEAL from the judgment and decree of LAKSHMANA RAO J., dated 30th day of July 1935 and made in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in Civil Suit No. 378 of 1934.

B. Sitarama Rao for *K. Rajah Ayyar* and *V. Ramaswami Ayyar* for appellant.

S. Doraiswami Ayyar for *K. S. Rajagopala Ayyangar* for respondent.

Cur. adv. vult.

* Original Side Appeal No. 27 of 1935.

The JUDGMENT of the Court was delivered by VENKATASUBBA RAO OFFG. C.J.—This suit has been brought by the plaintiff for a declaration that he is not bound by the decree obtained in the High Court by the first defendant against the second in Civil Suit No. 448 of 1932. The facts may be briefly stated. Chidambara, the undivided brother of the second defendant (Vairavan), died in 1907. The plaintiff who was born in 1922 is the natural-born son of the second defendant but was adopted in 1924 to the deceased Chidambara by his widow, Valliammal. A mortgage by the deposit of title deeds was granted on 30th May 1927 by the second defendant to the first to secure a debt of Rs. 50,000 and on that mortgage the first defendant brought the suit above-mentioned and obtained a decree. It is this decree that the plaintiff impeaches and seeks to get rid of.

The learned trial Judge on the Original Side has found (i) that Chidambara and Vairavan, who were members of a Nattukottai Chetti Hindu family, inherited a banking concern which till Chidambara's death they both conducted and which thereafter the second defendant continued ; (ii) that the plaintiff's family, while carrying on business as bankers, had dealings with the first defendant and the mortgage in question was granted in respect of a debt that had become due in the course of such dealings. Holding on these findings that the mortgage is binding upon the plaintiff and that he is bound by the decree, the learned Judge dismissed the suit.

The first contention urged by Mr. Sitarama Rao is that his client (the plaintiff) is not bound by the decree, as he was not made a party to the

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mortgage suit, and the second defendant was not sued in a representative capacity, that is, as representing the family of which he was the manager. There is some evidence to show that R. M. M. S. T. Vairavan Chetty, impleaded as the defendant in the mortgage suit, is not the individual Vairavan but the family firm of which he was the manager. Granting, however, that the initials "R. M. M. S. T." do not convey this meaning and that the second defendant alone was individually impleaded, there can be no question on the authorities that he effectively represented in the suit the entire family, which has therefore become bound by the decree. In *Doulat Ram* v. *Mehr Chand*(1), the leading case on the point, their Lordships point out that, where the mortgage extends to the entire interest of the family and is not confined to the share of any particular member and where in the plaint the mortgagee claims not only to recover against the individual mortgagor the amount of the mortgage but asks that the debt may be satisfied out of the mortgaged property (where these conditions are fulfilled), although the manager alone is impleaded, he effectively represents all the members, who therefore become bound by the decree; see also *Sheo Shankar Ram* v. *Jaddo Kunwar*(2), *Sankaranarayana Pillai* v. *Rajamani*(3) and *Unnamalai Ammal* v. *Abboy Chetty*(4). This contention of Mr. Sitarama Rao therefore fails.

Mr. Sitarama Rao next contends that, if any part of the sum of Rs. 50,000 had been utilized in

(1) (1887) I.L.R. 15 Cal. 70 (P.C.).
(2) (1914) I.L.R. 36 All. 383 (P.C.).
(3) (1923) I.L.R. 47 Mad. 462. (4) (1925) 50 M.L.J. 172.

paying off a debt incurred before the plaintiff's adoption, for that portion of the debt the plaintiff would not be liable. Whether this as a proposition of law is correct or not, we shall examine presently, but the contention receives no support from the evidence on the record. The question put to the first defendant's agent and his answers on this point may be here reproduced:

"Q.—So far as you know, you do not know what for he (Vairavan) borrowed this money?

A.—I know; for paying bank dues, for lending to others.

Q.—So the debts he borrowed were for discharging his old liabilities?

A.—I do not know all these details. He was taking all these things for his banking purposes."

This evidence remains uncontradicted and there is nothing to show that any portion of the amount borrowed was utilized for the payment of the debts incurred before the plaintiff's adoption. Here I must point out that the finding of the trial Judge, that the debt was incurred for a legitimate purpose in the course of the carrying on of a family concern, has not been attacked. The evidence extracted above shows that the amount was borrowed "for paying bank dues, for lending to others", these being the natural incidents of a banking concern. Mr. Sitarama Rao's contention therefore is opposed to the facts proved and cannot be accepted.

Granting for a moment that a portion of the debt was incurred before the plaintiff's adoption, does that circumstance make any difference? Mr. Sitarama Rao has had to assume for his contention that the debts were incurred not only before the plaintiff's adoption but also before his

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birth. Before dealing with this contention we may usefully refer to certain principles which may be regarded as fundamental and have not been and cannot be controverted. The doctrine, that a son is liable to pay his father's debts not incurred for immoral or illegal purposes, applies as much to debts incurred previous to, as after, his birth. Similarly, a nephew subsequently born is liable for the debts incurred by his uncle for purposes recognized by the Hindu law as proper. This principle is incontestable and has been tacitly assumed or acted upon in several decisions; *Muttayan Chetti* v. *Sivagiri Zamindar*(1), *Muttayan* v. *Zamindar of Sivagiri*(2) on appeal from *Muttayan Chetti* v. *Sivagiri Zamindar*(1), *Ponnambala Pillai* v. *Sundarappayyar*(3) and *Maharaja of Bobbili* v. *Zamindar of Chundi*(4) ; and Mr. Sitarama Rao, as already stated, far from disputing it, affirms its correctness. There is a distinction in this respect between alienations and debts. In the case of alienations, whether they are for justifiable purposes or not, the person subsequently born or adopted cannot question them, *Ponnambala Pillai* v. *Sundarappayar*(3) and *Veeranna* v. *Sayamma*(5), but in the case of debts, as already pointed out, the character of the debt when incurred becomes the decisive element. Mr. Sitarama Rao, acceding to these propositions, puts his argument thus: From *Veeranna* v. *Sayamma*(5) it follows that the second defendant as the sole survivor of the family (this argument implies that the plaintiff had not even been born at the material time, that is, when a portion of the debts was incurred) was the absolute

(1) (1878) I.L.R. 3 Mad. 370, 378. (2) (1882) I.L.R. 6 Mad. 1 (P.C.).
(3) (1897) I.L.R. 20 Mad. 354, 356. (4) (1910) I.L.R. 35 Mad. 108.
(5) (1928) I.L.R. 52 Mad. 398.

owner of the business assets. If that be so, the learned Counsel proceeds to argue, the second defendant, when contracting those debts, acted on his own behalf and not as representing any Hindu coparcenary, which may be likened to a corporation. The next step in the argument is, that, as the second defendant never purported to act on behalf of a coparcenary, the debts incurred by him cannot be binding upon the plaintiff who, having been subsequently born, became by adoption his nephew. This position, which is said to be a logical deduction from *Veeranna* v. *Sayamma*(1), is untenable and we cannot accept it as sound. That case related to an alienation and not to a debt. There, it was argued that, so long as any widow remained in the family possessing an unexercised power of adoption, no alienation by way of gift made by the last surviving male member could be binding upon the son subsequently brought into the family by adoption. This contention was repelled as being opposed to the basic principles of Hindu law. In the judgment delivered in that case, the theory, that the last survivor is no more than the provisional heir, based upon the fiction of relation back in the case of such adoptions, was repudiated. The effect of the decision is no doubt that for the purpose of alienations the sole survivor is regarded as the absolute owner, but we agree with Mr. DoraisWami Ayyar that it would be wrong to apply the principle to the case of debts by extending the analogy. The property in the hands of the sole survivor is separate property, which, however, must not be confused with self-acquired property ; what is separate property becomes, on

(1) (1928) I.L.R. 52 Mad. 398.

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the introduction of a fresh member into the family, ancestral property with all its incidents. Similarly, although, when the debts are incurred, the family consists of a single male member, he must be deemed in contracting debts to be acting on behalf of a potential joint family, which is capable by expansion of comprising more than one member. Viewed in that light, the act of the last single survivor must be deemed as that done in a representative capacity, that is to say, as representing a potential joint family. Mr. Sitarama Rao has been driven to concede that, if at the time a debt is incurred there happen to be two or more members instead of a single surviving member, the foundation on which his contention rests disappears. That is the reason why he has had to confine his argument to the period not before the plaintiff's adoption which was in 1924, but before his birth which was in 1922. It would be a strange thing to hold in a matter of this sort that, where there are two or more survivors, a different legal consequence would follow than from where there is a single survivor. Indeed to accept Mr. Sitarama Rao's contention would lead to grave anomalies and leave this branch of the Hindu law in a most confused state. Nothing that has been shown compels us to take such a view.

In the result, the appeal fails and is dismissed with costs.

G.R.