DHARAPURAM JANOPAKARA NIDHI, LTD. v. LAKSHMI-NARAYANA.

VARADA-CHARIAR J.

even be mischievous, as it may mislead an unwary purchaser into thinking that he was buying a subsisting interest. In this view, I am inclined to agree with *Seetharami Reddi* v. *Venku Reddi*(1) and *Ranganatha Aiyar* v. *Srinivasa Aiyangar*(2) in preference to *Vasudeo Atmaram Joshi* v. *Ekanath Balkrishna Thite*(3) and *Pandiyan Pillai* v. *Vellayappa Rowther*(4). The appeal fails and is dismissed with costs.

LAKSHMANA RAO J.—I agree.

GENTLE J.—I agree.

V.V.C.

APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Somayya.

1939, February 23.

A. L. MEENAKSHI ACHI AND ANOTHER (DEFENDANTS 4 AND 5), APPELLANTS,

v.

S. T. L. R. M. *alias* L. R. M. RAMASWAMI CHETTIAR AND EIGHTEEN OTHERS (PLAINTIFF AND DEFENDANTS 1, 2, 6 TO 20 AND LEGAL REPRESENTATIVE OF THIRD DEFENDANT), RESPONDENTS.*

Administration suit—Joint Hindu family—Deceased father in—Creditor of—Suit for administration of deceased's estate by—Maintainability of—Deceased leaving no property apart from his interest in family estate.

A creditor of a deceased Hindu who was joint with his son and died leaving no property apart from his interest in

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* Letters Patent Appeal No. 67 of 1937.

(1) (1901) 11 M.L.J. 344.

(2) (1925) 49 M.L.J. 656. (3) (1910) I.L.R. 35 Bom. 79.

(4) (1917) 33 M.L.J. 316.

the family estate has no right to maintain a suit for the administration of the estate of the deceased.

Under the Mitakshara law the father's interest in the family estate devolves by survivorship on his son or sons as the case may be. If the father dies leaving no property apart from his interest in the joint estate he dies leaving no estate. There is nothing in sections 50, 52 and 53 of the Code of Civil Procedure which justifies the conclusion that a suit for administration will lie where a Hindu father dies leaving no property of his own.

Kavuri Anjayya v. *Alapati Ankamma*(1) overruled.

Desu Manavalla Chetty, In the matter of(2) distinguished.

LETTERS PATENT APPEAL preferred under Clause 15 of the Letters Patent against the judgment and decree of LAKSHMANA RAO J., dated 23rd March 1937 and passed in Second Appeal No. 515 of 1935 preferred against the decree of the Court of the Subordinate Judge of Devakottai in Appeal Suit No. 58 of 1934 (Original Suit No. 397 of 1932, District Munsif's Court, Devakottai).

V. Ramaswami Ayyar and *N. G. Krishna Ayyangar* for appellants.

M. Patanjali Sastri for first respondent.

T. M. Ramaswami Ayyar for tenth respondent.

Other respondents were not represented.

The JUDGMENT of the Court was delivered by LEACH C.J.—The question which is raised in this appeal is whether a creditor has the right to bring a suit for the administration of the estate of a deceased Hindu who was joint with his son and died leaving no property apart from his interest in the family estate. One Arunachalam Chettiar, a member of the Nattukottai Chettiar community, died in February

(1) (1936) 44 L.W. 836. (2) (1909) I.L.R. 33 Mad. 93.

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1930, being survived by a widow and a son (the second respondent). The first respondent, who claims to be a creditor of the deceased, filed a suit in the Court of the District Munsif of Devakottai for the administration of his estate. The widow and the son and eighteen creditors were made defendants. The appellants who were the fourth and fifth defendants challenged the right claimed by the first respondent to bring a suit for administration. In addition to denying that the plaintiff-respondent was a creditor of the father they averred that a suit for administration would not lie because the family estate had devolved upon the son by survivorship under the Mitakshara law and consequently there was no separate estate to administer. The case of the plaintiff-respondent was that the property in the possession of the son was the self-acquired property of the father and he had ample estate. The District Munsif found that the property was the self-acquired property of the father and granted a decree for administration. The appellants appealed to the Subordinate Judge of Devakottai, who reversed the finding of the District Munsif, holding that the property was family property and that it had passed by survivorship to the son. It is not open to the plaintiff-respondent to challenge this finding. The Subordinate Judge, however, was of opinion that despite the fact that the father left no separate estate the plaintiff-respondent was entitled to maintain the suit. The appellants then appealed to this Court. The appeal was heard by LAKSHMANA RAO J. who upheld the decision of the Subordinate Judge, but gave leave to appeal under Clause 15 of the Letters Patent. The learned Judge in holding that the administration suit could be maintained relied on the provisions of sections 50, 52 and 53 of

the Code of Civil Procedure and on the decision of HORWILL J. in *Kavuri Anjayya* v. *Alapati Ankamma*(1).

Section 50 of the Code of Civil Procedure allows a decree-holder to execute his decree against the legal representative of a deceased judgment-debtor, and provides that the legal representative shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of. Section 52 relates to the position where a decree has been obtained after the death of the judgment-debtor and has been passed against his legal representative. Where the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of his property. Section 53 says that for the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be the property of the deceased which has come to the hands of the son or other descendant as his legal representative. Section 50 was section 234 of the Code of 1882 and section 52 was section 252. Section 53 is new. It was inserted in the present Code because there was a conflict of judicial opinion in India on the question whether it was necessary for the holder of a decree against a Hindu father to bring a suit to realize his decree after the death of the judgment-debtor or whether he could proceed to execute against the family property in the hands of the son without filing a suit. There is nothing in these sections which justifies the conclusion that a suit for administration will lie where a Hindu father dies leaving no property of his own.

(1) (1936) 44 L.W. 836.

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Under the Mitakshara law the father's interest in the family estate devolves by survivorship on his son or sons as the case may be. If the father dies leaving no property apart from his interest in the joint estate he dies leaving no estate. If there is only one son, the son becomes entitled to the whole of the family property in his own right, subject to any lawful charges which may have been created and to the conditions imposed by his personal law. Under his personal law he has to satisfy out of the family property coming into his hands debts incurred for a family necessity. By reason of the pious obligation rule he can also be called upon to pay the debts of his father if they have not been incurred for immoral or unlawful purposes. These conditions do not, however, derogate from the nature of the son's estate on his father's death. If he is the only son the family estate becomes his entirely, subject to the conditions which I have indicated. This being the position, a suit for the administration of the father's estate cannot be maintained unless the father leaves separate property. It does not mean that a suit may not be filed. A creditor cannot be prevented from filing a suit for the administration of the father's estate and may get a preliminary decree for account, but if it appears on the taking of accounts and the making of the usual inquiries that there is no property apart from what was before the father's death the joint family estate, the proceedings cannot be carried further.

There is considerable authority in support of the view which I have just expressed. In *Gangaram* v. *Nagindas*(1) a joint Hindu family consisted of a

(1) (1908) I.L.R. 32 Bom. 381.

father and two sons. The father died having incurred certain debts. Later, the elder of the two sons died. A creditor of the father then filed a suit for the administration of the father's estate. It was shown that the father had left no separate estate. The Court treated the suit as a suit for the administration of the estate of a living person and therefore did not lie. The Calcutta, Allahabad, Patna, Rangoon and Lahore High Courts have all held that a surviving member of a joint Hindu family is not entitled to letters of administration in respect of the estate of a deceased member of the family when he has left no separate property; vide *Durgaprasad Barhai* v. *Jewdhari Singh*(1), *In the goods of Balmukund Dube*(2), *Kali Kumar* v. *Mt. Nunabali Kumari*(3), *T. R. Gopalaswamy Pillay* v. *Meenakshi Ammal*(4) and *Mt.Uttam Devi* v. *Dina Nath*(5). The same principle is involved here. To quote from the judgment in *T. R. Gopalaswamy Pillay* v. *Meenakshi Ammal*(4):

"A member of an undivided Hindu family during his life is entitled to the beneficial interest in the family estate, but on his death that interest immediately ceases and the whole beneficial interests in the estate belong to the other members of the family. There is no succession to the deceased's estate because he has left nothing to succeed to. No part of the joint family estate is therefore the deceased's estate within the meaning of section 218 of the Succession Act."

In *Kavuri Anjayya* v. *Alapati Ankamma*(6) HORWILL J. held that a creditor of a Hindu father dying undivided from his son is entitled to bring a suit for administration against the son. The learned Judge considered that the obligations of the son are

(1) (1935) I.L.R. 62 Cal. 733.
(2) A.I.R. 1930 All. 82.
(3) A.I.R. 1923 Pat. 96.
(4) (1929) I.L.R. 7 Ran. 39.
(5) A.I.R. 1919 Lah. 235.
(6) (1936) 44 L.W. 836.

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precisely those of an heir, for he is liable for the lawful debts of his father to the extent of the assets of the joint family property which come into his hands. He also expressed the opinion that the very reason that would make it equitable and desirable to enable a creditor to file an administration suit would make it equitable and desirable that a creditor should be allowed to bring an administration suit against an undivided son of the debtor. We must express our dissent. The son is not the father's heir so far as the family property is concerned and "equitable consideration" cannot turn his property into his father's estate. The decision in *Kavuri Anjayya* v. *Alapati Ankamma*(1) will therefore be overruled.

In the course of the argument our attention has been drawn to the Full Bench decision of this Court in *In the matter of Desu Manavalla Chetty*(2). In that case the family property consisted in part of shares standing in the name of the father. On the father's death these shares devolved upon the son under the rule of survivorship, but the company which had issued the shares refused to recognize the son's right to them unless he obtained letters of administration. In these circumstances he applied for letters of administration of his father's estate and the question which the Court was called upon to decide was what amount he should be called upon to pay as stamp fee. It was held that as he wanted letters of administration the letters would only be issued to him on paying the stamp fee based on the full value of the shares. The Court consisted of BENSON, MILLER and SANKARAN NAIR JJ. BENSON J. made no reference to the right of the son to apply for letters

(1) (1936) 44 L.W. 836. (2) (1909) I.L.R. 33 Mad. 93.

of administration nor did SANKARAN NAIR J. They regarded the question involved as relating merely to the amount of stamp fee the applicant should pay. MILLER J. did say that the son was a person to whom letters could be issued, but in spite of this we cannot regard this case as being an authority in support of the contention of the plaintiff-respondent that the present suit can be maintained. The decision was merely concerned with the amount of stamp duty to be paid for letters of administration which were required to enable the son to get possession of the shares which were his by right.

Mr. Patanjali Sastri on behalf of the plaintiff-respondent has asked us to regard the family estate in a case of this nature as representing a fund from which a father's debts can be paid, and he says that in these circumstances the family estate should be looked upon as being his estate. This argument cannot be accepted in face of the very definite rule of the Mitakshara law that on the death of the father the son takes the father's interest in the joint estate not as his heir but by the right of survivorship.

The appeal succeeds and the suit will be dismissed with costs in favour of the appellants both here and below.

A.S.V.