to sue on behalf of all the creditors. This the association did not do and it has only itself to blame for the failure of the suit.

The appeal will be allowed with costs in this Court and below.

KRISHNASWAMI AYYANGAR J.—I agree.

N.S.

APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Krishnaswami Ayyangar.

1939, December 12.

REDDI KRISHNAN NAIDU AND THREE OTHERS (RESPONDENTS), APPELLANTS,

v.

CHINTALA SOMI NAIDU AND THREE OTHERS (APPELLANTS AND RESPONDENTS 5 AND 6), RESPONDENTS.*

Hindu Law—Debt—Suit against father and sons—Sons exonerated and dismissed from suit—Decree against father alone—Executable against son's interests in joint family property, if.

A decree obtained against a Hindu father after his sons who were impleaded in the suit had been exonerated and dismissed therefrom, can be executed against the sons' interests in the joint-family property. The decision of the Privy Council in *Raja Ram* v. *Raja Bakhsh Singh*(1) has not overruled in any way the decision of the Full Bench in *Periasami Mudaliar* v. *Seetharama Chettiar*(2).

APPEAL under clause 15 of the Letters Patent from the Judgment of KING J., dated 28th October 1938 and passed in Appeal Against Appellate Order No. 39

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* Letters Patent Appeals Nos. 97 and 98 of 1938.

(1) (1937) I.L.R. 13 Luck. 61 (P.C.). (2) (1903) I.L.R. 27 Mad. 243 (F.B.).

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of 1936 preferred against the order of the Court of the Subordinate Judge of Vizagapatam, dated 21st August 1935 and made in Appeal Suit No. 181 of 1935 (Appeal Suit No. 283 of 1935, District Court, Vizagapatam) preferred against the order of the Court of the District Munsif of Parvatipur, dated 3rd September 1934 and made in Execution Application No. 611 of 1934 in Execution Petition No. 754 of 1933 in Original Suit No. 52 of 1931 and Appeal under clause 15 of the Letters Patent from the Judgment of KING J., dated 28th October 1938 and made in Appeal Against Appellate Order No. 40 of 1936 preferred against the order of the Court of the Subordinate Judge of Vizagapatam, dated 21st August 1935 and made in Appeal Suit No. 180 of 1935 (Appeal Suit No. 282 of 1934, District Court, Vizagapatam) preferred against the order of the Court of the District Munsif of Parvatipur, dated 3rd September 1934 and made in Execution Application No. 599 of 1934 in Execution Petition No. 754 of 1933 in Original Suit No. 52 of 1931.

V. Govindarajachari for appellants.

D. Narasaraju for *Y. Suryanarayana* for respondents 1 and 2.

Other respondents were not represented.

The JUDGMENT of the Court was delivered by

LEACH C.J.

LEACH C.J.—These two appeals arise out of the same suit and they can be disposed of here in one judgment. The appellants obtained a money decree against the third respondent in the Court of the District Munsif of Parvatipur. The appellants made the third respondent's sons parties to the suit and they are respondents 1, 2 and 4. The suit was on a promissory note executed by the father alone. The sons were joined as defendants on the ground that the debt was incurred for family necessities. The District Munsif dismissed

the suit, as he was not satisfied that the promissory note was genuine, but on appeal to the District Judge a decree was passed against the father. In the District Court the appellants decided not to ask for a decree against the sons who were dismissed from the suit. In due course the appellants instituted execution proceedings and asked for the attachment and sale of the sons' interests in the family property. The sons objected on the ground that as they had been dismissed from the suit they could not be held liable for their father's debt. The District Munsif upheld their objection, but on appeal the Subordinate Judge held that they could be held liable in execution proceedings. The sons then appealed to this Court. The appeal was heard by KING J. who allowed it, but granted leave to appeal under clause 15 of the Letters Patent.

The Subordinate Judge found that there was no intention on the part of the appellants in allowing the sons to be dismissed from the suit to exonerate them altogether. KING J. reversed the Subordinate Judge's decision because he considered that the authorities which support the Subordinate Judge's decision had in effect been overruled by the decision of the Privy Council in *Raja Ram* v. *Raja Bakhsh Singh*(1). The appellants contend that the learned Judge has misconceived the effect of this decision. They say that it has not in any way altered the law as stated in the decisions of this Court.

It is not necessary to examine all the judgments of this Court which have a bearing on the question; it is sufficient to refer to the Full Bench decision in *Periasami Mudaliar* v. *Seetharama Chettiar*(2) and

(1) (1937) I.L.R. 13 Luck. 61 (P.C.). (2) (1903 I.L.R. 27 Mad. 243 (F.B.).

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to *Periaswami* v. *Vaidhilingam Pillai*(1) and *Doraiswami* v. *Nagasami*(2) which were decided by Division Benches. In *Periasami Mudaliar* v. *Seetharama Chettiar*(3) BENSON, BHASHYAM AYYANGAR and RUSSEL JJ. held that, independently of the debt arising from the original transaction entered into by a father, a decree passed against him in respect of the transaction by its own force creates a debt as against him, which his sons are under the Hindu law under an obligation to discharge, unless they can show that the debt is illegal or immoral. BHASHYAM AYYANGAR J. said :

"But I can see no reason why a suit could not be brought against the son to recover a debt of record due by the father, which debt the father was under an obligation to discharge, quite independently of the cause of action or the alleged original debt on which the suit had been brought against him. . . The whole of the joint family property in the hands of the son must be held liable to satisfy the debt imposed upon the father by the judgment as a solemn debt of record, quite independently of the original cause of action or alleged debt on which the suit against the father had been brought ".

In *Periaswami* v. *Vaidhilingam Pillai*(1) VARADACHARIAR and PANDRANG ROW JJ. considered a case in which the suit was filed against the father and his sons but before judgment was passed the suit was withdrawn as against the sons. The question was whether the sons were liable inasmuch as the debt was a debt binding upon them under the rule of Hindu law. The learned Judges held that the withdrawal of the suit as against the sons did not exonerate them. The result of the withdrawal was not to bring into operation the rule of *res judicata* embodied in section 11 of the Code of Civil Procedure, but only to entail the statutory penalty enacted in Order XXIII, rule 1,

(1) (1937) 47 L.W. 60. (2) A.I.R. 1929 Mad. 898.
(3) (1903) I.L.R. 27 Mad. 243 (F.B.).

which was that no fresh suit could be instituted against the sons on the same cause of action. Therefore it could not be said that what had happened in the suit amounted to an adjudication that the sons were not liable in respect of the decree debt. *Doraiswami* v. *Nagasami*(1) was decided by COUTTS TROTTER C.J. and PAKENHAM WALSH J. who also held that a decree passed against a father personally after the sons had been exonerated could be executed against the sons' interests in the family property in respect of a decree debt passed against the father.

The facts in *Raja Ram* v. *Raja Bakhsh Singh*(2) on which KING J. based his decisions were these. After the death of a Hindu the sons and grandsons were made defendants in a suit filed by a creditor of the deceased to recover the amount of the debt from their interest in the family properties. Before judgment the grandsons were dismissed from the suit, but it was sought to realise their interests in the property in execution proceedings. The Privy Council held that they were not liable inasmuch as they had been dismissed from the suit. The question of their liability was directly raised and as they had been dismissed from the suit they could not be made liable under the decree passed in it. That case differs from the case now before us in that there the suit was brought against the grandsons after the death of the grandfather against whom no decree had been obtained. The dismissal of the grandsons from the suit amounted to a decision in their favour of the question of their liability. That is not the position here. A decree was passed against the father after the sons had been dismissed from the suit, and the passing of the decree gave to the decree-holders a new right which they could enforce against

(1) A.I.R. 1929 Mad. 898. (2) (1937) I.L.R. 13 Luck. 61 (P.C.).

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the sons. We do not consider that *Raja Ram* v. *Raja Bakhsh Singh*(1) had overruled the decision of the Full Bench in *Periasami Mudaliar* v. *Seetharama Chettiar*(2). In our opinion the decision of the Full Bench remains unaffected and a decree-holder in circumstances like we have here, may proceed to execute the decree against the sons' interests in the family property.

The appeals will be allowed with costs in this Court and in the second appeals but the Advocate's fee will be allowed only in Appeal No. 97 of 1938 of this Court and in the corresponding second appeal. The result is that the decrees of the Subordinate Judge will be restored.

N.S.

APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Krishnaswami Ayyangar.

1939, December 1[illegible]

WILFRID HAZELL SELL (PETITIONER), APPELLANT.*

Indian Succession Act (XXXIX of 1925), *ss.* 228, 241 *and* 291—*Principal obtaining probate of will in England—Agent applying in India for letters of administration with copy of will annexed—Grant in favour of, without security under sec.* 241.

Under section 241 of the Indian Succession Act letters of administration with a copy of the will annexed could be granted without security in favour of an agent who applies on behalf of his principal who had obtained probate of the will in England.

APPEAL from the order of SOMAYYA J., dated 14th day of September 1939, and made in the exercise of

(1) (1937) I.L.R. 13 Luck. 61 (P.C.). (2) (1903) I.L.R. 27 Mad. 243 (F.B.).

* Original Side Appeal No. 51 of 1939.