

1877  
May 2.

APPELLATE CIVIL.

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.*

BASANT RAM (PLAINTIFF) v. KOLAHAL AND OTHERS (DEFENDANTS)\*

*Act XXIII of 1861, s. 4—Defendants not all within jurisdiction—Bankruptcy of acceptor of hundi—Holder's option.*

IN a suit on a hundi payable at Calcutta, the acceptor there having become bankrupt before the hundi reached maturity, brought by the holder in the place where the hundi was drawn against the two partners of the firm that drew the hundi, and also the acceptor, who resided at the time of suit, beyond the local jurisdiction of the Court passing the decree, the lower appellate Court having dismissed the suit on the ground that the Court of first instance could not without the sanction provided by s. 4 of Act XXIII of 1861 pass a decree against the defendant who resided beyond its jurisdiction. *Held*, following the English law, that it was not necessary to sue the bankrupt defendant, and that the holder of a hundi is not bound, in the event of its dishonour, to sue all the parties liable under it, but may select any one or more of them.

THE plaintiff in this case was the payee of a hundi drawn by two of the defendants who resided at Basti, on the third defendant Ram Kishen, who managed a branch of the firm at Calcutta. After due presentation and acceptance of the hundi by the third defendant at Calcutta, the latter became insolvent before the hundi matured, the payee of the hundi, accordingly, sued all three defendants for the recovery of the amount which he had paid to the first and second defendants on obtaining the said hundi.

All three defendants pleaded that, plaintiff having sold the hundi could no longer sue on it, that the suit was barred by limitation, and that the suit as brought, was not cognizable by the Munsif's Court. The Munsif, finding that the hundi had not been paid, and that the three defendants carried on the same business together within his jurisdiction, decreed the suit against them. The Subordinate Judge of Gorakhpur, on appeal by the defendants, held that, inasmuch as the third defendant did not reside within the local jurisdiction of the Munsif's Court, the Munsif was not competent to pass a decree against all three defendants, without obtaining the

\* Special Appeal, No. 1354 of 1876, from a decree of Maulvi Sultan Hasan, Subordinate Judge of Gorakhpur, dated the 21th August, 1876, reversing a decree of Maulvi Muhammad Kamil, Munsif of Basti, dated the 25th March, 1876.

permission of the District Court, within the limits of which the third defendant resided. The Subordinate Judge, accordingly, dismissed the suit as brought. The Plaintiff preferred a special appeal to the High Court, on the ground that all three defendants being engaged in a joint business within the jurisdiction of the Court of first instance, the suit was properly brought in the Court of the Munsif, and that even if, by reason of the third defendant's residing beyond the jurisdiction of that Court, the Munsif had no power to pass a decree against all three defendants, yet that this defect did not warrant the Subordinate Judge in dismissing the suit altogether.

The *Senior Government Pleader* (Lala Juala Prasad), Munshi Hanuman Prasad, and Mir Zabár Husain for appellant.

The *Junior Government Pleader* (Babu Dwarka Nath Banerji) for respondent.

JUDGMENT.—If it had been necessary to make Ram Kishen a defendant in this case, the procedure should have been as provided by s. 4 of Act XXIII of 1861, and the sanction of the proper Court in Calcutta obtained, but we do not consider that it was necessary to implead him at all. even if he had not declared his bankruptcy, which it appears he did, when the hundi was presented to him for payment. The holder of a hundi, or in other words of a bill or note, is not bound, in the event of its dishonor, to sue all the parties liable to him under it, but he may, at his option, select his defendant or defendants, as he may judge best for recovery of the money. This is the law of England, where, although the holder of a bill may have issued the writs, or a writ, against all or any of his debtors, he is not bound to sign judgment against them all, but may select any one or more of them, and I am not aware that the law is different here. Besides, in the present case, the two defendants, Kolahal Ram and Gobind Ram, were those who got the whole Rs. 600 from the plaintiff, and it would have been sufficient to have proceeded against them, and to have left their bankrupt representative in Calcutta alone, especially as his declared bankruptcy, which was tantamount of itself to a refusal to pay, gave the plaintiff a cause of action against the other two. This view of the law also avoids objection on the ground of misjoinder.

1877.

---

BASANT RAM  
v.  
KOLAHAL.

1877

BASANT RAM  
v.  
KOLAHAL.

We set aside the decrees of both the lower Courts, and remand the case under s. 351 of Act VIII of 1859, for trial of the suit on its merits against the two defendants, Kolahal Ram and Gobind Ram, for the whole amount claimed under the hundi. The costs of this appeal to abide the result.

*Decree reversed and case remanded*

1877  
May 9,

## APPELLATE CIVIL.

*Before Mr. Justice Spankie and Mr. Justice Oldfield.*

SITAL AND ANOTHER (DEFENDANTS) v. MADHO (PLAINTIFF).\*

*Acts done not void—Exclusive gift—Father's powers—Hindu law—Mitakshara—Implied prohibition—Self-acquired immoveable property—Son's rights—Smriti Chandrika—Spiritual responsibility.*

A Hindu son, subject to the Mitakshara law of inheritance, sued to obtain a declaratory decree for a moiety of a house which the father had conveyed by deed of gift to plaintiff's brother, being the self-acquired immoveable property of his father, on the ground that under the Hindu law, a father is not permitted to make a gift of immoveable property to one son, to the injury of the other.—*Held*, (reviewing all the authorities and precedents on the subject,) that although prohibition of such a gift, on moral or spiritual grounds, may be implied by the texts of Hindu law, yet, where it is not declared that there is absolutely no power to do such acts, those acts, if done, are not necessarily void, and that, therefore, an exclusive gift to one son by the father, of self-acquired immoveable property, is not illegal.

Pandit *Ajudhia Nath* and Babu *Barodha Prasad* for appellants.

The *Senior Government Pleader* (*Lala Juala Prasad*) and *Munshi Hanuman Prasad* for respondent.

THE facts of the case out of which the present appeal arose, and was decreed by the High Court, will be found fully set forth in the Court's judgment which was delivered by:—

SPANKIE, J:—The plaintiff, and defendant Sadho, in this suit, are the sons of one Sital, also a defendant.

The property in dispute is a dwelling-house, purchased by Sital in 1861, and transferred by gift on the 13th September 1875, by him to Sadho.

\* Special Appeal, No. 308 of 1877, from a decree of H. Lushington, Esq., Judge of Allahabad, dated the 10th December, 1876, affirming a decree of Babu Mritoujoy Mukerji, Munsif of Allahabad, dated the 4th July, 1876.