

1880  
January 19.

*Before Mr. Justice Spinkie and Mr. Justice Oldfield.*

DEVA SINGH (PLAINTIFF) v. RAM MANOHAR AND ANOTHER (DEFENDANTS)\*

*Hindu Law—Mitakshara—Mortgage by father of joint ancestral property—Sale of joint ancestral property in the execution of a decree against father—Liability of Son's share.*

The undivided estate of a joint Hindu family consisting of a father and his sons, while in the possession and management of the father, was mortgaged by him, with the knowledge of the sons, as security for the re-payment of moneys borrowed and lent for the use and benefit of the family. The lender of these moneys sued the father to recover them by the sale of the family estate, and obtained a decree against him directing its sale, and sought to bring the family estate to sale in the execution of this decree. *Held*, in a suit by one of the sons to protect his share in such estate from sale in the execution of such decree, that such decree could not be regarded as against the father only, and his share in such property was not alone saleable in execution of it, but such suit and decree must be regarded as against the father as representing the joint family, and the whole of the family estate was saleable in the execution of such decree. *Bissessar Lall Sahoo v. Lachmessur Singh* (1) followed. *Deendyal Lall v. Jugdeep Narain Singh* (2) distinguished.

THIS was a suit, instituted in the Court of the Munsif of Balia, zila Ghazipur, to establish the plaintiff's proprietary right to a one seventh share of certain zamindari shares of four villages called severally Koel, Narainpur, Lakhmi Pab, Kharauli, and Mahatpal, situated in that zila. These shares had been attached in execution of a decree against the plaintiff's father, the defendant Sheo Narain Singh, dated the 6th July, 1877, held by the defendant Ram Manohar. The plaintiff objected to this attachment, claiming that a one-seventh share of the property was his and should be excluded from attachment and sale, but his objection was disallowed, and he accordingly brought the present suit to establish his claim. The plaintiff stated in his plaint that these zamindari shares were joint ancestral property in which his share according to Hindu law was one-seventh; the share of the remaining four sons of the defendant Sheo Narain Singh four-sevenths, the share of the wife of that defendant one-seventh, and the share of that defendant himself one-seventh; that each member of the family

\* Second Appeal, No. 793 of 1879, from a decree of Maulvi Mahmud Bakhsh, Additional Subordinate Judge of Ghazipur, dated the 22nd March, 1879, affirming a decree of Maulvi Kumar-ud-din, Munsif of Balia, dated the 13th December, 1878.

(1) L. R., 6 Ind. Ap., 233; 5 Calc. (2) L. L. R., 3 Calc., 158.  
L. R., 477.

as a member of a joint and undivided Hindu family was in the possession and enjoyment of the property in suit; and that the defendant Ram Manohar had, in execution of his decree of the 6th July, 1877, which was against the defendant Sheo Narain Singh only, the other members of the family not being parties to it, caused to be attached and notified for sale the whole of the family property as the property of the defendant Sheo Narain Singh.

The decree of the 6th July, 1877, had been obtained under these circumstances: On the 17th June, 1874, the defendant Sheo Narain Singh executed in favour of the defendant Ram Manohar an instrument called a "*zar-i-peshgi*" lease, by which he transferred to him the zamindari shares before-mentioned, in consideration of an old loan of Rs. 49-15-0 and a fresh loan of Rs. 50. This instrument recited that the executant was "in possession of the shares and by payment of government revenue enjoying the income and profits thereof", and that the further advance to him of Rs. 50 was made "to meet his wants." It further recited that the executant had put the "lessee" into possession of the shares, and then proceeded as follows:—"I declare that the said lessee shall, until the payment of the principal mortgage-money, without being offered resistance by any person, remain in possession of the property leased, and plough, settle, collect, and cultivate the same, and enjoy the income of the shares in lieu of his *zar-i-peshgi*, and pay Rs. 4 to me the executant on account of the Government revenue every year: I the executant have no claim to the mesne profits nor has the mortgagee to the interest: that whenever at the close of the month of Jaith in any year, I the executant or my heirs pay the principal mortgage-money, Rs. 99-15-0, mentioned in the deed to the banker, then by taking back the instrument I shall enter upon possession of the property leased". The instrument concluded by stating that if the "mortgagee" was ejected "in any way without the payment of the mortgage-money, he should be at liberty to recover the mortgage-money, with interest at four rupees per cent. per mensem, from the zamindari shares in suit." On the 26th May, 1877, the defendant Ram Manohar instituted a suit against the defendant Sheo Narain Singh, in the Court of the Munsif of Balia, on this instrument, claiming to recover Rs. 230-0-0, prin-

188

---

 DEVA S  
 v.  
 RAM M.  
 H.

1880

SHEO NARAIN  
SINGH  
v.  
RAM MANOHAR.

principal and interest, by the sale of the zamindari shares, on the ground that on the 7th January, 1875, the defendant Sheo Narain Singh had resisted his making collections, and had made collections himself, whereby he, Ram Manohar, had been dispossessed. The Munsif gave Ram Manohar a decree for the amount claimed against Sheo Narain Singh "and the hypothecated property."

The defendant Ram Manohar set up the following defence to the present suit:—"That the plaintiff, notwithstanding his knowledge of the transaction, had kept quiet and admitted it; under these circumstances his claim is improper; that the justice of the defendant's claim is not denied and its nature is not open to any objection, therefore under Hindu law and precedents the defendant's debt is chargeable on the property advertised for sale as well as against the plaintiff and other sharers, and the property cannot be exempted: that the defendant Sheo Narain Singh, having borrowed the money secured by the bond for the maintenance and the benefit of the plaintiff and all other members of the family, had executed the document in question; that the defendant Sheo Narain Singh and all other members of the family benefited by the loan: that the defendant Sheo Narain Singh, having failed to fulfill the promise, the defendant obtained a decree; and that the defendant Sheo Narain Singh has caused his son to bring this suit, with a view to delay the recovery of the money due to this defendant."

The suit was not defended by the defendant Sheo Narain Singh. On the date fixed for the settlement of issues (11th December, 1878,) the plaintiff's vakil stated to the Munsif that he did not require to examine any witnesses. The defendant's vakil also stated on the same occasion that, if the plaintiff admitted that he had been living with his father, the defendant also did not require to examine any witnesses. The plaintiff's vakil then admitted "that the plaintiff lived as a member of a joint family in commensality, and that he derived benefit from the property in suit as one of the joint family." The second issue fixed by the Munsif was: "Whether the property in suit is actually owned and possessed by plaintiff or Sheo Narain Singh, defendant, and whether it is liable to be sold in satisfaction of the decree?"

1880

DEVA SINGH  
v.  
RAM MAHAR.

The Munsif decided this issue against the plaintiff and dismissed the suit, for the reasons which will appear from the following extract from his judgment :—“ The Court has deliberately taken into consideration the precedents cited by the parties. The Privy Council ruling relied on and quoted by the plaintiff’s pleader, *Deendyal Lall v. Jugdeep Narain Singh* (1), is inapplicable to the present suit for the following reasons :—(i) In that case the debt had been contracted by the father for his own personal use, and not to meet any legal necessity, such as maintenance of his family. Now the plaintiff in this case has not only failed to prove that the defendant No. 2 had borrowed the money for his personal use, and that he spent it for his own purposes (his wife and his sons, the plaintiff and others, not participating in the benefit), but it also appears, on the contrary, from the statement of his pleader recorded in the proceeding dated the 11th December, 1878, that the money secured by the bond was enjoyed by the plaintiff, his mother, and brothers, when they admittedly lived and messed together. Under these circumstances all the property pledged in the bond is liable for the debt and the plaintiff’s share cannot be exempted. (ii) The precedent applies to the case of a transfer made by the ancestor of an ancestral joint property without the consent of his co-sharers who did not benefit by the transaction. In this case the defendant No. 2 borrowed money of a banker while living and messing jointly, and spent it for the benefit of his wife and sons, and when the banker demanded the money he caused this suit to be brought under colour of the Hindu law. It is impossible that the son should remain ignorant of the act of his father with whom he lived. The plaintiff ought to have brought a suit when the defendant No. 2 had acted beyond his power in borrowing the money for his own use on the security of the ancestral property. But at that time the plaintiff, his brothers, and the wife of the defendant No. 2 jointly appropriated the money quietly. A decree was eventually passed for that money and the property having been advertised for sale the present suit has been instituted. There can be no doubt that the suit has been brought in collusion with the defendant No. 2 for a dishonest purpose.”

(1) I. L. R., 3 Calc., 198.

1889

DEVA SINGH  
v.  
RAM MANO-  
HAR.

On appeal by the plaintiff the Subordinate Judge affirmed the Munsif's decision and dismissed the appeal. The material portion of the Subordinate Judge's judgment was as follows:—"It appears from the proceeding dated the 11th December, 1878, referred to by the Munsif, that the plaintiff has admitted the fact of his living with his father. It is clear that the plaintiff and his father live together, and it is also clear that the plaintiff has been living in commensality with his father, who is the judgment-debtor, and that the debt was for the plaintiff's support and benefit. It is also clear that the property continued all along in possession of the plaintiff's father, the judgment-debtor, who hypothecated all that was in his possession. Under these circumstances no part of the property can be, in consideration of the plaintiff's right of inheritance, exempted from liability for the money lent for the use of the joint family by the defendant-respondent. As the judgment-debtor was in possession of the property which he had hypothecated in the bond, it was not necessary to implead the plaintiff. As the plaintiff was aware of the defendant-respondent's just demand, and of the decree, and the suit, and as he took no measures at that time for his protection from the demand which has not been paid off as yet, the claim of the plaintiff does not deserve any consideration. The precedents cited by the plaintiff cannot be applicable to a case in which a debt is contracted for the support and benefit of the children, and in which the father has possession of the whole property which he has pledged. The fact of the whole property being liable for the debt is apparent from the plaint, in which the plaintiff himself says that all the property has been hypothecated. In short, with reference to the facts of the case, the Munsif's decision deserves to be upheld. According to law, a son who wants the property of his father is bound to pay his father's debt. The debt was contracted for the support of the children including the plaintiff and it is a just debt. The debt being incurred in good faith for the support of the joint family, the liquidation thereof is incumbent on all persons. No plea against the validity of the debt is worthy of consideration. It being necessary for a son to pay his father's debt, and he having failed to do so, the property is in consequence advertised for sale by auction; the plaintiff's claim must be considered improper".

1880

---

 DEVA SING  
 v.  
 RAM MANO  
 HAR.

The plaintiff appealed to the High Court, contending that his right, title, and interest in the family property could not be sold in the execution of a decree against his father, to which he was not a party; and that the only question to be determined was whether the decree as made could be executed against him, and it was not proper to go behind the decree and inquire into the nature of the debt.

The *Senior Government Pleader* (Lala Juala Prasad), for the appellant.

Lala Lalta Prasad, for the respondent.

The judgment of the High Court (SPANKIE, J., and OLDFIELD, J.,) was delivered by

OLDFIELD, J.—It appears that the defendant Ram Manohar obtained a decree against the defendant Sheo Narain Singh, the father of plaintiff, upon a bond executed by him, and sought to execute the decree against certain joint family property pledged in the bond, and the plaintiff has brought this suit to exempt his share in the joint family property from sale on the ground that the defendant Ram Manohar only obtained a decree against his father, and it is only his father's rights that can be taken in execution under such a decree. The decree was passed against the property pledged in the bond, and the finding of the lower appellate Court on the facts is that father and son lived together as members of an undivided Hindu family, the property being in the father's possession and management, and that the debt was incurred for the plaintiff's support and benefit, and the money was lent for the use of the joint family by the defendant Ram Manohar, and the plaintiff was aware of the transaction.

It is undoubted that the whole ancestral property is liable for a debt contracted by a father under such circumstances, and there is no weight to be attached in the present case to the contention that, the decree being against the father only, it is only his interest that can be sold, for we cannot but hold that the suit and decree in this case must be regarded as against the father as representing the joint family.

In a recent case before the Judicial Committee of the Privy Council, *Bissessur Lall Sahoo v. Luchmessur Singh* (1), decided

(1) L. R., 6 Ind. Ap., 233; 5 Calc. L. R. 477.

1880  
 IVA SINGH  
 v.  
 M. HAN-  
 DAR.

15th July, 1879, where the question was whether certain family property could be held liable under decrees obtained against members of the joint family, their Lordships appear to consider that, where the family is joint, there may be a presumption that the party sued is sued as a representative of the family, and they held that, when the decrees are substantially decrees in respect of a joint family and against the representatives of the family, they may be properly executed against the joint family property. Such appears to be the case in the suit in which this appeal has been made. Much stress has been laid by the plaintiff-appellant's counsel on the case of *Deendyal Lall v. Jugdeep Narain Singh* (1). In that case it was held that the auction-purchaser, who was also the decree-holder, "could not acquire more than the right, title, and interest of the judgment-debtor; and if he had sought to go further, and to enforce his debt against the whole property, and the co-sharers who were not parties to the bond, he ought to have framed his suit accordingly, and have made those co-sharers parties to it; by the proceedings which he took he could not get more than that was seized and sold in execution, viz., the right, title, and interest of the father."

But our view of the case before us, which proceeds on the representative character of the judgment-debtor as representing the family, cannot be said to be in conflict with the principle laid down in the above case.

We affirm the decree of the lower appellate Court and dismiss this appeal with costs.

*Appeal dismissed.*

*Before Mr. Justice Pearson and Mr. Justice Oulfield.*

1880  
 February 24.

SHANKAR DIAL (DECREE-HOLDER) v. AMIR HAIDAR AND OTHERS (JUDGMENT-DEBTORS.)\*

*Objection to attachment of attached property by judgment-debtor—Order against decree-holder—Decree-holder's remedy—Appeal—Suit to establish right—Act X of 1877 (Civil Procedure Code), ss. 278, 279, 280, 281, 282, 283.*

An objection was made to the attachment of certain property in the execution of a decree, by the judgment-debtor, on the ground that such property was

(1) I. L. L., 3 Calc., 198.

\* First Appeal, No. 145 of 1879, from an order of Maulvi Abdul Majid Khan, Subordinate Judge of Ghazipur, dated the 18th July, 1879.