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passed .I may here quote what Markby, J., said in *Goluck Chunder Mussant* v. *Gunga Narain Mussant* (1) :—"It is the duty of the parties, or rather of their pleaders, when they obtain a decree, to see that it is drawn up in the proper form, and it has been ordered by a circular order of this Court of the 19th July, 1867 (8 W. R. Civ. Cir. 2), that the Judges should obtain the signatures of the pleaders before the decree is finally signed. If the parties chose to allow so long a time as that allowed in this case to elapse, before they take any steps upon the decree, without taking any precaution to see that the decree is properly drawn up, it seems to us that it may be fairly presumed that they acquiesced in the decree, and that no alteration ought to be made subsequently." The rule laid down by Couch, C. J., in *Prince Mahomed Ruhim-ood-din* v. *Babu Beer Protab Suhai* (2) has almost a stronger tendency in the same direction.

Again, a Division Bench of this Court, in *Goya Prasad* v. *Sikri Prasad* (3) held that an application for an amendment of decree under s. 206, Civil Procedure Code, was governed by three years' limitation under art. 178, sch ii of the Limitation Act. But I respectfully doubted the accuracy of the rule in the case of *Raghunath Das*, to which I have already referred; and my view was supported by the principle upon which the rulings of the other High Courts proceed—*vide Roberts* v. *Harrison* (4), *Kylasa Goundan* v. *Ramasami Ayyan* (5), *Vithal Janardan* v. *Rukmi* (6).

These observations may possibly prove of some service to the Legislature when considering the question of the amendment of the Civil Procedure Code.

Appeal dismissed.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

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January 22.

BALBHADAR AND OTHERS (DEFENDANTS) *v.* BISHESHAR (PLAINTIFF).*

Hindu Law—Joint and undivided Hindu family—Joint and undivided property—Death of deceased member—Liability of his interest.

J, a member of a joint Hindu family, left two sons, *B* and *S*. *S* borrowed money upon a simple bond, and, after his death, the obligee sued his

* Second Appeal No. 1469 of 1885, from a decree of R. J. Leeds, Esq., District Judge of Gorakhpur, dated the 16th May, 1885, confirming a decree of Maulvi Abdul Razak, Munsif of Bansi, dated the 15th November, 1884.

(1) 20 W. R. 111.
(2) 18 W. R. 363
(3) I. L. R., 4 All. 23.
(4) I. L. R., 7 Calc. 333.
(5) I. L. R., 4 Mad. 172.
(6) I. L. R., 6 Bom. 586.

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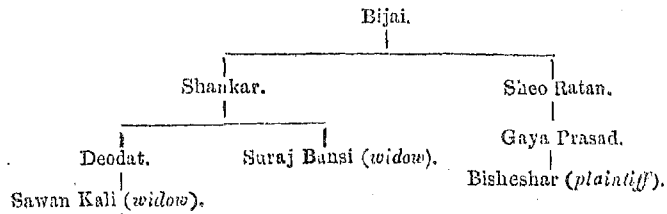
widow and daughter-in-law upon the bond, obtained a decree against them, and, in execution thereof, brought to sale S's interest in the property. *B*, the grandson of *R*, thereupon sued the purchaser to recover the same, on the ground that it was the joint property of S and himself, and could not be attached and sold in satisfaction of *S*'s debt.

Held that on the death of *S*, his interest passed to the plaintiff by survivorship, and was not liable after his death to any personal debt he had incurred, inasmuch as no charge had been made on the property, and the creditor could not recover his money from the joint property after the death of *S* when he had not obtained judgment against *S*, and taken out execution by attachment against him. *Suraj Bansi Koer* v. *Sheo Persad Singh* (1) and *Rai Bal Kishen* v. *Rai Sita Ram* (2) referred to.

The following table throws light upon the facts of this case :—



Deodat died in the lifetime of his father Shankar, leaving a widow Sawan Kali. On the 11th March, 1877, Shankar executed a bond in favour of Ram Sahai defendant, the payment of which was not secured by the mortgage of property. Subsequently Shankar died, leaving a widow, the defendant Suraj Bansi. It appeared that Ram Sahai then sued Suraj Bansi and Sawan Kali, as the legal representatives of the deceased Shankar, on the bond mentioned above. The suit was decreed on the 8th March, 1881, and in execution of the decree the rights and interests of Shankar, in the property now in suit, were sold on the 20th June, 1884, and were purchased by the defendant Sheo Sewak.

The plaintiff brought the present suit to be maintained in possession of the property purchased by Sheo Sewak, alleging that he, as the grandson of Shankar's brother Sheo Ratan, was a member of a joint Hindu family with Shankar up to the time of his death; that the deceased, as a matter of fact, did not die indebted at all; that the bond of the 11th March, 1877, had been fraudulently executed by Suraj Bansi; that the decree of the 8th March, 1881, passed on the aforesaid bond, was likewise collusively obtained by

(1) I. L. R., 5 Calc. 148; L. R., 6 Ind. Ap. 88. (2) I. L. R., 7 All. 731.

confession of judgment; that the sale of the 20th June, 1884, could not therefore affect the share of Shankar, which it purported to convey to the purchasers, the property being the undivided estate of a joint Hindu family, of which the plaintiff was the surviving member.

The Court of first instance gave the plaintiff a decree. On appeal by the sons of Sheo Sewak, who had died, the lower appellate Court decided that the plaintiff and Shankar were members of a joint and undivided Hindu family; that the question of Shankar's indebtedness under the bond of the 11th March, 1877, was not important, because the share of a member of a joint Hindu family could not be brought to sale in this manner after his death; and that the question of *bona fides* did not need determination in the case, as the plaintiff, who did not stand in the relation of lineal descent from Shankar, was not bound to pay his debts; and it accordingly upheld the decree of the Court of first instance.

In second appeal by the sons of Sheo Sewak it was contended on their behalf that the finding of the lower appellate Court as to the joint nature of the estate of Shankar with the plaintiff was erroneous; that the Court was bound to determine the *bona fides* of the bond of 1877; that the decree of the 8th March, 1881, was properly obtained by impleading Shankar's widow Suraj Bansi, who, according to the Hindu law, was a proper legal representative of her deceased husband, for the purposes of such a suit; and that the auction sale of the 20th June, 1884, therefore duly conveyed Shankar's share to the appellants.

Munshi *Hanuman Prasad* and Lala *Juala Prasad*, for the appellants.

Mr. *C. H. Hill* and Munshi *Kashi Prasad*, for the respondent.

MAHMOOD, J.—I may at once state that I am not at all disposed to disturb in second appeal the concurrent findings of the Courts below as to the joint and undivided nature of the family and of the property in suit. Nor do I think it is necessary for us to investigate the *bona fides* of the debt which the bond of 1877 purported to secure, because the case for the defence has all along been that the debt was a personal debt of Shankar, who

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was separate and divided from the plaintiff. There is absolutely no plea to the effect that the money was borrowed by Shankar as a managing member of a joint Hindu family, for the joint purposes of such family; and no such question having been raised, I think the learned Judge acted rightly in not entering into the merits of the *bona fides* of the bond, for the simple reason that the Hindu law imposes no liability upon the plaintiff to pay off the debts of his grand-uncle under such circumstances. Nor do I think it is necessary for us in this case to consider whether Musammat Suraj Bansi, the widow of Shankar, was rightly impleaded, as the representative of her deceased husband, in the suit which ended in the decree of the 8th March, 1881. For I think that the whole question in the present case is, whether, after the death of Shankar, any such estate was left by him as could be made liable for the payment of his debts, such as the one for which the auction-sale of the 20th June, 1884, took place.

In *Appovier* v. *Rama Subka Aiyan* (1) Lord Westbury, in delivering the judgment of the Privy Council, observed that "according to the true notion of an undivided family in Hindu law, no individual member of that family, whilst it remains undivided, can predicate of the joint and undivided property, that he, that particular member, has a certain definite share. No individual member of an undivided Hindu family could go to the place of the receipt of rent, and claim to take from the collector or receiver of the rents a certain definite share. The proceeds of undivided property must be brought, according to the theory of an undivided family, to the common chest or purse, and then dealt with according to the modes of enjoyment by the members of an undivided family. But when the members of an undivided family agree among themselves, with regard to particular property, that it shall thenceforth be the subject of ownership, in certain defined shares, then the character of undivided property and joint enjoyment is taken away from the subject-matter so agreed to be dealt with; and in the estate each member has thenceforth a definite and certain share, which he may claim the right to receive and enjoy in severalty, although the property itself has not been actually severed and divided" (p. 90). Such being the nature of the rights

(1) 11 Moo. I. A. 75.

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and interests of a member of a joint Hindu family in the joint property, it was for a long time an unsettled question, whether such rights and interests could, on the one hand, be alienated by private sale by any individual member; and on the other hand, whether they could be brought to sale for his personal debts in execution of a decree. The former part of this question would seem to be still unsettled by the highest authority, unless the ruling of the Privy Council in *Lakshman Dada Naik* v. *Ramchandra Dada Naik* (1) be taken to afford a settlement of the matter; for the Lords of the Privy Council in *Phoolbas Koonwur* v. *Jogeshur Sahoy* (2) only referred to it, but abstained from giving any ruling. The question was again referred to by their Lordships, but not determined, in *Deendyal Lal* v. *Jugdeep Narain Singh* (3), which, however, settled the latter part of the question enunciated by me. In that case their Lordships drew a distinction between the power of private alienation possessed by a member of a joint Hindu family and the power of a Court to seize his share, at the instance of a judgment-creditor, in execution of a decree for personal debts. And I take that case to have finally decided the question in the affirmative, and to have ruled that the share of a member of a joint Hindu family possesses a seizable character for purposes of execution, and that when it is brought to sale, the purchaser at such execution-sale possesses the right of compelling the other members of the joint family to separate the debtor's share by partition. The same I understand to be the effect of a more recent ruling of their Lordships in *Hardi Narain Sahu* v. *Ruder Perkash Misser* (4). But the case which needs special reference here is the ruling of their Lordships in *Suraj Bunsi Koer* v. *Sheo Persad Singh* (5), which carried the rule somewhat further, inasmuch as it was there held that seizure by attachment in execution is sufficient to constitute, in favour of a judgment-creditor, a valid charge upon property to the extent of the joint member's undivided share and interest, and that such charge could not be defeated by his death subsequent to such attachment, though antecedently to the actual sale. In laying down this rule their Lordships disapproved of the

(1) I. L. R., 5 Bom. 48; L. R., 7 Ind. Ap. 181.
(2) I. L. R., 1 Calc. 226; L. R., 3 Ind. Ap. 7.
(3) I. L. R., 3 Calc. 198; L. R., 4 Ind. Ap. 247.
(4) I. L. R., 10 Calc. 626.
(5) I. L. R., 5 Calc. 148; L. R., 6 Ind. Ap. 88.

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ruling of this Court in *Goor Pershad* v. *Sheo Deen* (1), so far as that ruling ignored the seizable character of an undivided share in joint property, which had since been established by the ruling of the Privy Council in the case of *Deendyal Lal* v. *Jugdeep Narain Singh* (2), to which I have already referred. But the exact question here is not the same as in that of *Suraj Bunsi Koer* (3). Here, during the lifetime of Shankar, the bond of the 11th March, 1877, was never even sued upon: the decree of the 8th March, 1881, and the sale of the 20th June, 1884, took place when Shankar was no longer in existence. And in such circumstances the exact question before us is, whether Shankar left behind him any such rights at all as could either be seized in execution or be made the subject of an execution.

Fortunately this question needs no reference to original authorities, because I hold that the doctrine of the Lords of the Privy Council in the case of *Suraj Bunsi Koer* (3) is conclusive upon this point. Their Lordships observed:—"It seems to be clear upon the authorities that if the debt had been a mere bond debt, not binding on the sons by virtue of their liability to pay their father's debts, and no sufficient proceedings had been taken to enforce it in the father's lifetime, his interest in the property would have survived on his death to his sons, so that it could not afterwards be reached by the creditor in their hands."

These observations are, in my opinion, fully applicable to this case, and, indeed, go beyond the exigencies of what we have got to determine here, the plaintiff not being a son of the deceased Shankar, for whose personal debts his share was purported to be sold on the 20th June, 1884. And I hold that upon that date, Shankar having died even before the litigation which terminated in the decree of the 8th March, 1881, his share had already vanished and been taken by the plaintiff by right of survivorship, without being subject to the payment of Shankar's personal debts. I may perhaps also add that the family being joint, Musammat Suraj Bansi, the widow of Shankar, could have no such rights in her husband's share as could be affected by the sale in execution of the decree against her; whilst the fact of Musammat Sawan

(1) N.-W. P. H. C. Rep., 1872, p. 137.
(2) I. L. R., 3 Calc. 198; L. R., 4 Ind. Ap. 247.
(3) I. L. R., 5 Calc. 148; L. R., 6 Ind. Ap. 88.

Kali having also been impleaded in that suit, cannot, of course, help the defendants-appellants, purchasers of the execution-sale, she being the widow of Shankar's son who had pre-deceased his father.

For these reasons I would dismiss this appeal with costs.

OLDFIELD, J.—This suit relates to property left by one Bijai. He was succeeded by his sons Sheo Ratan and Shankar; the plaintiff represents the former. Shankar before his death borrowed money on a simple bond from one Ram Sahai, who after the death of Shankar sued his widow and daughter-in-law, and obtained a decree against them, and in execution brought to sale Shankar's interest in the property, and it was purchased by defendant-appellant.

The plaintiff is the grand-nephew of Shankar, and sues to recover the property sold at auction, on the ground that it was the joint property of Shankar and himself, and could not be taken and sold in execution of Shankar's debt.

The Courts have allowed the claim and the defendant has appealed.

The objection to the finding that the property was joint undivided property of Shankar and the plaintiff is not one which can be entertained in second appeal, the finding on this point by the Courts below being one of fact; and when it has been found that the property was undivided the appeal must fail. On the death of Shankar, his interest passed to plaintiff by survivorship, and was not liable after his death for any personal debt which he had incurred. No charge had been made on the property, and the creditor could not recover his money from the joint property after the death of Shankar, when he had not obtained judgment against Shankar, and taken out execution by attachment against him. I may refer on this point to the case of *Suraj Bunsi Koer* v. *Sheo Persad* (1) and *Rai Bal Kishen* v. *Rai Sita Ram* (2). The appeal will be dismissed with costs.

Appeal dismissed.

(1) I. L. R., 5 Calc. 148; L. R., 6 Ind. Ap. 88.

(2) I. L. R., 7 All. 731.