

1888  
December 19.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.*

JAGANNATH PRASAD (DEFENDANT) v. SITA RAM (PLAINTIFF)\*

*Hindu Law—Joint Hindu family—Money-decree against deceased member—Execution after judgment-debtor's death against joint family property not allowed.*

The mere obtaining of a simple money decree against a member of a joint Hindu family without any steps being taken during his lifetime to obtain attachment under or execution of the decree, does not entitle the decree-holder, after the judgment-debtor's death and a subsequent partition, to bring to sale in execution of the decree, the interest which the judgment-debtor had in the joint family property. *Suraj Bansi Koer v. Sheo Pershad Singh* (1), *Rai Balkishen v. Rai Sita Ram* (2) and *Balbhadar v. Bisheswar* (3) referred to.

THIS was a suit brought under the following circumstances. The plaintiff, Rai Sita Ram, was the father of one Rai Manohar Das, who died on the 11th September, 1874. The plaintiff and his son were members of a joint Hindu family, and no partition took place until some time after the death of Rai Manohar Das. The defendant Jagannath Prasad held a simple money decree which he had obtained on the 24th August, 1874, in the Court of the Subordinate Judge of Benares, against Rai Manohar Das alone. After the judgment-debtor's death, the decree-holder for the first time applied for execution of his decree against the joint family property. Execution was resisted by the plaintiff, but his objections were disallowed, and ultimately he brought the present suit for a declaration that the property in question was not liable to attachment and sale in execution of the defendant's decree.

The Court of first instance (Subordinate Judge of Meerut) decreed the suit, referring to the cases of *Balbhadar v. Bisheswar* (3), *Suraj Bansi Koer v. Sheo Parshad Singh* (1), *Debi Parshad v. Thakur Dial* (4), and *Goor Pershad v. Sheodeen* (4). The defendants appealed to the High Court.

Mr. G. T. Spankie, for the appellant.

Pandit Bishambhar Nath, for the respondent.

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\* First Appeal No. 60 of 1887, from a decree of Babu Mirtonjoy Mukarji, Subordinate Judge of Benares, dated the 21st March, 1887.

(1) I. L. R., 5 Calc., 148.

(3) I. L. R., 8 All., 495.

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

(4) I. L. R., 1 All. 105.

(5) N.-W. P. H. C. Rep., 1872, p. 137.

EDGE, C.J., and TYRRELL, J.—The plaintiff in this suit was the father of one Rai Manohar Das, against whom the defendant had obtained a simple money-decree on the 24th August, 1874. The plaintiff and his son were members of a joint Hindu family. The defendant here has entirely failed to prove that the son had separated from the family. Rai Manohar Das died on the 11th September, 1874. After the death of Rai Manohar Das there was a partition of the family property between the plaintiff and another son or member of the family. No steps had been taken in the lifetime of Rai Manohar Das to obtain attachment under or execution of the decree. The defendant has sought, since the death of Rai Manohar Das, to have his decree executed against the family property. This suit was brought to have it declared that no part of the family property in the hands of the plaintiff was liable in execution of the decree of the 24th August, 1874. It is contended by Mr. *Spankie* for the appellant, defendant below, that the mere fact of the defendant having obtained a money-decree against Rai Manohar Das in his lifetime entitled him to bring to sale the interest which Manohar Das had during his life in the family property. It appears to us that there is no authority to support that contention. In the case of *Suraj Bansi Koer v. Sheo Pershad Singh* (1) their Lordships of the Privy Council, at page 174 of the report, decided that execution proceedings, which had gone as far as an attachment and an order for sale under a money-decree, did create a charge which entitled the judgment-creditor to proceed against the interest which the judgment-debtor had in his lifetime in the property which was attached. It appears to us that that judgment was based on the ruling that an attachment and order for sale did create a charge. If the obtainment of a mere money decree would have entitled the judgment-creditor in that case to bring the property then in dispute to sale, it would not have been necessary for their Lordships to have based their judgment on the fact that the attachment had taken place, and the order for sale had been made. The judgment in that case by implication shows that in a

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case such as this the judgment-creditor could not bring to sale after the death of the judgment-debtor the interest which the judgment-debtor had in the joint property of the Hindu family. The same principle is to be found in the judgment in the case of *Rai Bal Kishen v. Rai Sita Ram* (1), and in the case of *Bulbhadar v. Bishashar* (2). Under these circumstances the appeal must be dismissed, and the decree below confirmed with costs.

*Appeal dismissed.*

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December 21.

*Before Mr. Justice Straight and Mr. Justice Mahmood.*

MADAN GOPAL (PLAINTIFF) v. BHAGWAN DAS (DEFENDANT).\*

*Civil Procedure Code, s. 646B—Reference by District Judge of proceedings in Small Cause Court attached for want of jurisdiction.*

Before a District Court can make a reference under s. 646B of the Civil Procedure Code, it must be of opinion that the subordinate Court has erroneously held upon the point of jurisdiction in regard to the particular suit before it, and that therefore the matter is one in which the interference of the High Court should be sought.

The word "shall" in s. 646B., clause (1) is not mandatory but directory.

THIS was a suit which was brought in the Court of Small Causes at Mirzapur for recovery of a sum of Rs. 114, alleged to be the balance due upon a partnership account. The defence was that the partnership accounts had not yet been adjusted, and that the suit would not lie. The Court decreed the claim in part, and held that the debt which the plaintiff sought to recover was one which had "nothing to do with the partnership account."

An application was then presented on behalf of the defendant to the District Judge of Mirzapur, purporting to be made under s. 646B of the Civil Procedure Code, and praying that the record of the case might be submitted to the High Court for orders. The application was based upon the contention that the suit was not cognizable by the Court of Small Causes. The District Judge thereupon passed the following order:—

\* Reference under Civil Procedure Code, s. 646B by W. T. Martin, Esq., Judge of the Court of Small Causes, Mirzapur.

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

(2) I. L. R., 3 All. 495.