

APPELLATE CIVIL.

1895
June 3.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Banerji.
PATESHURI PARTAP NARAIN SINGH AND ANOTHER (DEFENDANTS) v.
BHAGWATI PRASAD (PLAINTIFF).

Act No. VII of 1889 (Succession Certificate Act) s. 4—Joint Hindu family—Suit by survivor for debt due to joint family—Evidence—Presumption as to nature of debt where the family is joint.

Where a debt is advanced from the funds of a joint Hindu family and is due to that family, no certificate under Act No. VII of 1889 is necessary to enable the survivor of such family to recover the said debt.

Such debt as above being a bond-debt, it is not necessary that it should appear in the bond that the funds were those of a joint family.

Jagmohandas Kilabhai v. Allu Maria Duskal (1) followed.

THIS was a suit for sale on a mortgage executed by the father of the defendants, the Raja of Basti and his brother, in favor of the plaintiff's father. With the Raja and his brother were joined as defendants several other persons who were purchasers or mortgagees of some of the villages mortgaged by the deed upon which the suit was brought. In the third paragraph of the plaint the plaintiff stated:—"That Babu Sarju Prasad, the father of the plaintiff, and the plaintiff, were the members of a joint Hindu family; and so long as the family was joint, he had no source of income. Babu Sarju Prasad, Mahajan, died on the 29th February, 1888, while the family was joint; and the plaintiff by right of survivorship obtained possession as owner of all the property of the joint family, including the bond sued on. He is therefore competent to maintain this suit."

The defendants, the Raja of Basti and his brother, pleaded *inter alia* that they and their father, the original mortgagor, had constituted a joint Hindu family; that the debt for which the mortgage had been given had been incurred for immoral purposes, and that therefore it was not chargeable on the ancestral property of the family. They also pleaded, in the fourth paragraph of their written statement, that "the plaintiff has not obtained a certificate of heirship, and his claim without doing so is inadmissible."

First Appeal No. 51 of 1893, from a decree of Babu Brijpal Das, Subordinate Judge of Gorakhpur, dated the 29th November 1892.

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The Court of first instance (Subordinate Judge of Gorakhpur) found that the debt was not tainted with immorality, and, disallowing the pleas of the various subsequent mortgagees and purchasers, passed a decree in favor of the plaintiff. The Subordinate Judge framed an issue on the question whether a certificate of succession was necessary, but came to no finding upon it.

The two principal defendants appealed to the High Court, and, the case coming on for hearing before Edge, C. J., and Banerji, J., the following order of reference was made:—"The defendants, who are appellants here, as their 4th plea in their written statement pleaded 'that the plaintiff has not obtained the certificate of heirship, and his claim without doing so is inadmissible.' The Subordinate Judge framed an issue, *viz.*, the 13th, on that plea. He did not try it. If the certificate was necessary, the plaintiff was not entitled to have a decree passed until he produced the certificate. Mr. *Reid* says that no certificate was necessary because it is alleged in paragraph 3 of the plaint that the father of the plaintiff and the plaintiff were members of a joint Hindu family, and that the plaintiff by right of survivorship obtained possession as owner of all the properties of the joint family including the bond sued on. If it be the law that the survivor of a joint Hindu family can, without producing a certificate under the Act, obtain a decree for a debt which on the face of it became due to a deceased member of the family, then paragraph 3 of the plaint was in effect put in issue by paragraph 4 of the written statement, and the issue ought to have been tried. We have been referred by Mr. *Vidya Charan Singh* to the case of *Venkataramanna v. Venkayya*(1) and to the case of *Vaidyanatha Ayyar v. Chinnasami Naik*(2). We express no opinion on either of those cases. We make an order under s. 566 of the Code of Civil Procedure, and direct the Subordinate Judge to try the 13th issue framed by the Subordinate Judge, Babu Brij Pal Das, and to return the finding to this Court. It appears that there is no evidence to the record on this issue one way or the other. The Subordinate Judge will permit the parties to produce evidence on this issue. Ten days will be allowed for filing objections on the return."

(1) I. L. R., 14 Mad., 377. (2) I. L. R., 17 Mad., 108.

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On this order the Subordinate Judge found "that the debt was due to the plaintiff and his father as members of a joint Hindu family."

The appeal being again put up with certain objections filed by the respondent.

Mr. T. Conlan and Munshi Gobind Prasad, for the appellants.

The Hon'ble W. M. Colvin, Mr. A. H. S. Reid, Munshi Jwala Prasad, Munshi Ram Prasad and Munshi Madho Prasad for the respondent.

The following judgment was delivered :—

EDGE, C. J., and BANERJI, J.—In first appeal No. 14 of 1893, in which the judgment was delivered on the 18th of December, 1894, we fully considered the question of the alleged immorality and the question of the alleged gift. It is not suggested that there is any feature in this case which would make us alter the view of the facts which we then took.

On the question of there being any necessity for a certificate under the Act No. VII of 1889, the findings on remand show that the debt was advanced from the funds of a joint Hindu family and is due to that family. There was consequently no necessity for a certificate in the suit by the survivors.

In our opinion it is not necessary in such a case that it should appear in the bond that the funds were those of a joint Hindu family, and we agree with the case of *Jagmohandas Kilabhai v. Allu Maria Duskal*(1).

The other grounds were not pressed. We dismiss this appeal with costs. We have given effect to the objections filed to the findings on remand.

Appeal dismissed.