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remanded to the lower appellate Court with instructions to re-admit it upon its original file of pending appeals and to dispose of it according to law. Costs will abide the event.

Appeal decreed and cause remanded.

FULL BENCH.

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July 16.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Knox, Mr. Justice Blair, Mr. Justice Banerji and Mr. Justice Aikman.

LACHMAN DAS (PLAINTIFF) *v* KHUNNU LAL AND OTHERS (DEFENDANTS).*

Hindu law—Joint Hindu family—Liability of grandsons to pay interest on their grandfather's debts—Mortgage.

The mortgagee from a Hindu of the joint ancestral property of the latter can enforce his mortgage against the grandson of the mortgagor for the realization of the interest secured by the mortgage in addition to the principal amount of the mortgage. *Narasimharav Krishnarav* v. *Antaji Virupaksh* (1), *Nanomi Babuasin* v. *Modhun Mohun* (2), *Hanooman Persaud Panday* v. *Mussamat Babooee Munraj Koonweree* (3) and *Girdharee Lall* v. *Kunto Lall* (4) referred to.

THE facts of this case sufficiently appear from the judgment of the majority of the Court.

Pandit *Sundar Lal* and Babu *Jogindro Nath Chaudhri* for the appellant.

Mr. *D. N. Banerji* for the respondents.

The Judgment of EDGE, C. J., BLAIR, BANERJI and AIKMAN, JJ., was delivered by BANERJI, J.—

This appeal has arisen in a suit brought by the appellant under section 88 of Act No. IV of 1882 for sale under two mortgages dated, respectively, the 25th of October 1881 and the 1st of November 1881, executed by one Murlidhar, now deceased. The defendants are the grandsons of Murlidhar, being the sons of his deceased son Ajudhia Prasad.

There is no dispute in this appeal in regard to the mortgage bond dated the 1st of November 1881. It is the other bond with

* First Appeal No. 139 of 1894, from a decree of Maulvi Ahmad Ali, Subordinate Judge of Aligarh, dated the 13th April 1894.

(1) 2 Bom. H. C. Rep., 64.
(2) I. L. R., 13 Calc., 21.
(3) 6 Moo. I. A., 393.
(4) L. R., 1 I. A., 321.

which we are concerned. The amount claimed under that bond is Rs. 1,000, on account of principal, and Rs. 2,334-7-9 on account of interest, total Rs. 3,334-7-9.

The defendants urged that they were not liable under Hindu law to pay as interest any sum in excess of the principal amount secured by the bond, and they paid into court Rs. 2,000, for payment to the plaintiff.

The lower Court found that the mortgaged property was the joint ancestral property of the family, that the debt had not been incurred for a family necessity, but was a personal debt of Murlidhar, and that it was not tainted with immorality. The Court held that the defendants were liable to pay the debt "by reason of their pious duty as Hindus;" that "their obligation to pay the debt arises out of a rule of Hindu law and is therefore limited by the restrictions imposed by that very same law," and that under Hindu law a grandson was "not bound to pay any interest at all." It accordingly made a decree for the principal amount only and dismissed the whole of the claim for interest, although the defendants had paid into court Rs. 1,000 on account of interest.

The correctness of this judgment and decree has been assailed in this appeal on behalf of the plaintiff. The findings of fact of the Subordinate Judge have not been questioned, but it is urged that he has erred in dismissing the claim for interest on the authority of Hindu law and that he has misapplied the rules of that law on the subject.

The following authorities were referred to in the course of the argument:—Vrihaspati, Chapter XI (Sacred Books of the East, Vol. XXXIII, pages 319 and 328); Narada (*Ib.* p. 42); Vishnu Smritis, Chapter VI (*Ib.* Vol. VII, p. 44); Colebrooke's Digest, Vol. I, Madras edition, pp. 185, 207, 208 and 227; the Viramitrodaya (p. 154, Golap Chandra Sarkar's translation); the Vayavahara Mayukha (Mandlik's Edition, p. 112); the Vayavastha Chandrika, Vol. I, pp. 238 and 240; Mayne's Hindu Law and Usage, paragraph 282, p. 324, 5th Edition; *Girdharee Lall* v.

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Kantoo Lall (1); *Nanomi Babuasin* v. *Modhun Mohun* (2); *Narasimharav Krishnarav* v. *Antaji Virûpaksh*, (3); *Ponnappa Pillai* v. *Pappuvayyangar* (4); *Muddun Gopal Lall* v. *Mussammat Gowrunbutty* (5); *Bissessur Lall Sahoo* v. *Luchmessur Singh* (6); *Muttayan Chettiar* v. *Sangili Vira Pandia Chinnatambiar* (7); and *Lachmi Narain* v. *Kunji Lal* (8).

The question we have to determine is whether the mortgagee from a Hindu of the joint ancestral property of the latter can enforce his mortgage against the grandson of the mortgagor for the realization of the interest secured by the mortgage, in addition to the principal amount of the mortgage, or whether the liability of the mortgaged property in the hands of the grandson extends only to the principal amount. The question is a novel one and is not covered by the authority of decided cases, except a case in the Bombay High Court to which we shall refer hereafter.

The obligation of a Hindu son or grandson to pay the debt of his ancestor, the debt not being of an immoral character, is founded on the following texts:—

Narada says:—"The father being dead, it is incumbent on the sons to pay his debt each according to the share (of inheritance), in case they are divided in interests. Or if they are not divided in interests, the debt must be discharged by that son who becomes manager of the family estate.

"If a debt has been legitimately inherited by the sons, and left unpaid by them, such debt of the grandfather must be discharged by his grandsons. The liability for it does not include the fourth in descent." (Sacred Books of the East, Vol. XXXIII, pp. 41 and 42.)

According to Vrihaspati, the father's debt must be paid first of all, and after that a man's own debt; but a debt contracted by the paternal grandfather must always be paid

(1) L. R. 1 I. A., 121, s.c. 22 W. R. 56.
(2) I. L. R., 13 Calc., 21.
(3) 12 Bom. H. C., Rep., 64.
(4) I. L. R., 4 Mad., 1.
(5) 15 B. L. R., 264.
(6) 5 C. L. R., 477.
(7) L. R., 9 I. A., 128.
(8) I. L. R., 16 All., 449.

before these two even." (Chapter XI, v. 48: Sacred Books of the East, Vol. XXXIII, p. 328).

The texts of Vishnu, Yajnavalkya and Katyayana are also to the same effect.

The reason for the above rule appears from the following text of Narada:—"Fathers desire male offspring for their own sake, reflecting 'this son will redeem me from every debt whatsoever due to superior and inferior beings.' Therefore a son begotten by him should relinquish his own property, and assiduously redeem his father from debt, lest he fall into a region of torment." (Colebrooke's Digest, Vol. I, p. 202; Book I, CLXXXIX).

In the case of the grandson, the obligation to pay the debt of the grandfather is limited to the principal amount of the debt by the following text of Vrihaspati:—

"The father's debt, on being proved, must be paid by the sons as if it were their own; the grandfather's debt must be paid (by his son's sons) *without interest*." (Chapter XI, v. 49, Sacred Books of the East, Vol. XXXIII, p. 328.) Katyayana also ordains that "a debt of the grandfather shall be paid by his grandsons *without interest*." (Colebrooke's Digest, Vol. I, p. 207. Book I, Chapter V. CXCVII.) The same rule was adopted by the Vyavahara Mayukha. (Mandlik's translation, p. 113.)

It is contended on behalf of the respondents that as the Hindu law which imposes on the grandson the obligation to pay the debts of his grandfather limits that obligation to the principal amount of the debt only, the courts in enforcing the obligation should not enforce it unfettered by the limitation.

It may be observed that the liability imposed by the texts of Hindu law referred to above on the son or grandson to pay the debt of his father or grandfather is a personal liability, irrespective of the existence of assets. The courts, however, except in the single case which arose in the Presidency of Bombay, have held that the liability is only proportionate to the extent of the assets which have come to the son or grandson. The courts were evidently of opinion that the texts of the sages on the point contain

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rules of moral obligation only, directory and not imperative. Most of the rulings bearing on the point have been cited in the note to paragraph 280 of Mayne's Hindu Law and Usage (5th edition, p. 322). The solitary case in the Bombay Presidency to which we have referred is that of *Narasimharav* v. *Krishnarav Antaji Virupaksh*, decided on the 8th of March 1865 (1), in which according to the head note, it appears to have been held that "the grandson of a Hindu is bound to pay the debt of his grandfather, independent of assets, but without interest, according to the doctrine of the Maharashtra School." The judgment itself as reported does not contain any reasons for the above ruling, and, even if it can be regarded as an authority at all, it may be an authority in the province governed by the Maharashtra School and not in those provinces where the doctrines of the Benares School of the Mitakshara Law prevail. This decision, however, led to the enactment of the Bombay Act No. VII of 1866 by which the liability of the son or grandson of a deceased Hindu for the debts of the deceased was limited to the extent of the property of the deceased received or taken possession of by the son or grandson and not duly applied. We have not been referred to, nor are we aware of, any other ruling in which it was held that a grandson was liable only for the principal amount of the debt of his grandfather. The texts of Vishnu and Yajnavalkya do not place any such limit on the extent of a grandson's liability, but treat the liability of the son and the grandson to discharge the debt of their ancestor as co-extensive. (See Colebrooke's Digest, Vol. I., Book I, Chap. V, CLXVIII and CLXX.) It is true, that, according to the decisions of their Lordships of the Privy Council, the pious obligation of a Hindu son or grandson to pay the debt of his father or grandfather, not tainted with immorality, creates a legal liability; but their Lordships have not limited the extent of the liability, in the case of the grandson, to the principal amount of the debt only, or, in the case of the son, to the principal and interest not exceeding the principal. In *Nanomi Babuasin* v. *Modhun Mohun*

(1) 2 Bom. H. C. Rep., 64.

(1) their Lordships said.—"The decisions have for some time established the principle that the sons cannot set up their right against their father's alienation for an antecedent debt or, *the creditors' remedies for their debts*, if not tainted with immorality." The words we have emphasized clearly show that in the opinion of their Lordships the creditors of the father are entitled to pursue their remedy against the joint ancestral estate for the realization of the amount of the debt due from the father under the contract entered into by him, that is, for the principal and the stipulated amount of interest, where interest has been agreed to be paid. Whatever the texts of the authorities on Hindu Law may be, we are bound to administer that law as interpreted and enforced by their Lordships of the Privy Council. In *Hunooman Persaud Panday* v. *Musammat Babooee Munraj Koonweree* (2) in which the question of the son's liability arose, their Lordships held:—"The freedom of the son from the obligation to discharge the father's debt has respect to the nature of the debt and not the nature of the estate, whether ancestral or acquired by the creator of the debt." This rule has been followed in all subsequent cases beginning with the case of *Girdharee Lal* v. *Kantoo Lal* (3). In all these cases their Lordships confined their observations to the nature of the debt of the father and not to the amount of it, and held that if the debt was one which it was the pious duty of the son to pay, the creditor could pursue against the estate in the hands of the son the same remedy that he could have pursued against the father had he been alive. There can be no question that the creditor was entitled to recover from the father the principal amount of the debt as well as interest on that amount, at the contracted rate. He is equally entitled to recover the same from the son, and it is not competent to the son to say that he is not liable to pay a larger amount of interest than that enjoined by the texts of Hindu sages. The same principle applies to the case of the grandson, and it is not open to him to contend that his liability extends only to the principal amount of the debt.

(1) I. L. R., 13 Calc., 21. (2) 6 Moo. I. A., 421.
(3) L. R. I., I. A. 321, s. c. 22 W. R., 56.

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The particular question now before us was not, it is true, considered and determined by the Lords of the Privy Council; but the effect of their rulings is, in our opinion, to render the sons and grandsons of a Hindu debtor liable to the same extent as the debtor himself, provided they were possessed of sufficient family property or assets of the debtor not otherwise duly applied. Any other conclusion will, in our judgment, lead to numerous and serious complications in the framing of a decree for sale under section 88 of Act No. IV of 1882 in the case of a mortgage of joint ancestral property made by a Hindu who has sons and grandsons and whose sons and grandsons have, under section 85, been made parties to the suit for sale according to the ruling of the Full Bench in *Badri Prasad* v *Madan Lal* (1).

In our judgment the Court below has erred in dismissing the claim for interest. We allow the appeal and vary the decree below by adding to the amount of that decree Rs. 2,334-7-9, as interest on the bond of the 25th of October 1881. The appellant will get his costs in the Court below and in this Court.

We extend the time for payment of the mortgage money to the 15th of January 1897.

The objection under section 561 of the Code of Civil Procedure is not pressed and is dismissed with costs.

KNOX, J.—The facts of this case have been fully recapitulated in the judgment just delivered and therefore I do not intend to go over them again. I only wish to add a few observations upon the question referred looked at from the standpoint of the texts of Hindu Law.

The question which has to be determined is whether a Hindu grandson who is prepared to pay a debt incurred by his grandfather is also bound to pay the interest which may have accrued and would in ordinary circumstances be due and payable in addition to the principal debt. The decision of their Lordships of the Privy Council in *Nanomi Babuasin* v. *Modhun Mohun* (2) to the effect that sons in a Hindu joint family cannot set up their rights against

(1) I. L. R., 16 All., 75. (2) I. L. R., 13 Calc., 21.

their father's alienation for an antecedent debt, or against his creditors' remedies for their debts, if not tainted with immorality, would appear to compel us to answer the question in the affirmative. But it was contended on behalf of the respondents that the case before their Lordships was not the case of grandsons being made responsible for the debts of a grandfather. It was pointed out that nowhere in that case or in the cases which were cited to their Lordships at the hearing of the case had any reference been made to the texts of Hindu Law which deal with the liability of grandsons under such circumstances. All that the respondents maintained in the present appeal was that they were not, according to Hindu Law, liable for interest, at any rate in excess of the principal debt. In support of the contention we were referred to several passages from Hindu text-books, the chief being one from Brihaspati, Chap. XI, Sloka 49. That sloka, as translated by Dr. J. Jolly in the Sacred Books of the East, Vol. XXXIII, p. 328, runs as follows:—

"The father's debt on being proved must be paid by the sons as if it were their own, the grandfather's debt must be paid by his son's sons without interest, but the son of a grandson need not pay it at all."

We were also referred to the same passage in the Digest of Hindu Law by Jagannatha Tarkapanchanana as translated by H. T. Colebrooke (Madras Edition, 1864, p. 185). On the authority of these and other texts to the same effect rests the contention that a grandson who may have to pay a debt incurred by his grandfather is not liable for the interest on such debt. A closer examination, however, of the passage quoted from Brihaspati shows that the contention rests upon insufficient grounds. Brihaspati divides the chapter in which he deals with debt into three portions. The first portion (slokas 1—38) deals with money lent upon the security of pledges or deposits; the second (slokas 39—53) is devoted to money lent upon "trustworthy sureties." The remainder of the chapter is taken up with recovery of money lent. If the case before us falls under any portion of the chapter it would fall under

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the first portion. The cardinal rule relating to the payment of interest upon money lent upon pledges or deposits is contained in Sloka 2 which, subject to restrictions which follow, lays down that interest shall be taken by the creditor so long as the principal remains unpaid. The limit in these cases to interest would appear to be interest equal in amount to the principal. The sloka upon which the learned counsel for the respondents relies is one which deals with debts not so secured, and in the absence of any contrary expressions it must and should be held to have reference to that class of debts alone.

On this ground too the contention of the respondents fails and I would allow the appeal.

Appeal decreed.

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July 22.

APPELLATE CIVIL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.

MAULA AND ANOTHER (DEFENDANTS) *v.* BAHALA AND OTHERS (PLAINTIFFS).*

Act No. XII of 1881, *N.-W. P. Rent Act, sections* 95 *(n)*, 99 *(j) and* 210—*Jurisdiction—Civil and Revenue Courts—Suit for recovery of possession by tenant dispossessed by a trespasser.*

Clause *(n)* of section 95 of Act XI of 1881 must be taken to apply to cases in which a tenant of agricultural land has been wrongfully dispossessed by the landlord, or, at the instance of the landlord, by some one claiming title through the landholder.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Baldeo Ram Dave* for the appellants.

Maulvi *Karamat Husain* for the respondents.

EDGE, C. J., and BLENNERHASSETT, J.—This was a suit for possession of an agricultural holding. The plaintiff alleged that he was a tenant of the holding; that, wanting capital, he took Bhika, through whom these appellants claim, into a kind of partnership in the cultivation, and that, after they had cultivated under

* Second Appeal No. 664 of 1894, from a decree of H. P. Mulock, Esq., District Judge of Moradabad, dated the 16th April 1894, confirming a decree of Babu Shiva Prasad, Munsif of Bijnor, dated the 30th September 1893.