

Before Mr. Justice Burkitt and Mr. Justice Henderson.

HARI RAM (DEFENDANT) v. BISHNATH SINGH (PLAINTIFF).*

Hindu law—Liability of member of joint family though not made a party to the suit—“Personal” decree, meaning of.

Where a decree provided for the sale of specified property of a joint family and, in the event of the amount of the decree not being thereby satisfied, for the realization of the balance from the defendants personally: Held that a junior member of the joint family, who was liable for his share of the debt sued on, but who was not made a party to the suit, could not successfully plead that the decree being a personal one in regard to the unsatisfied balance, he was not liable in regard to such unsatisfied balance. *Beni Madho v. Basdeo Patak* (1) and *Bhawani Prasad v. Kallu* (2) referred to.

THE facts appear sufficiently from the judgment of the Court.

Babu *Jogindro Nath Chaudhri* (for whom Babu *Satya Chandra Mukerji*) for the appellant.

Munshi *Jwala Prasad* (for whom *Munshi Kalindi Prasad*) for the respondent.

BURKITT and HENDERSON, JJ.—In this case the plaintiff-respondent before us, sought to have it declared that he was entitled to a one-fourth share of the ancestral property of the family, and further to have it declared that his one-fourth share in certain property which had been attached and advertised for sale was not liable to be sold.

It appears that in 1835 a decree was obtained by the defendant-respondent upon a bond by which two houses of the joint family had been hypothecated. This bond was executed by the plaintiff's father and uncle and other younger members of the family, not including the plaintiff, who was very young at the time, to secure a debt which had been incurred many years before by the plaintiff's deceased grandfather, and a small sum advanced at the time of the execution of the bond. In a suit upon the bond to which the plaintiff was not made a party a decree was given for Rs. 1,363, for principal and interest and costs, and it directed that this amount should be realized in the first instance by the sale of the two houses hypothecated, and that, in the event of the proceeds of sale not being sufficient to satisfy the

* Second Appeal No. 230 of 1898 from a decree of R. Greeven, Esq., District Judge of Benares, dated the 17th December 1897, reversing a decree of Babu Nilmadhab Roy, Subordinate Judge of Benares, dated the 4th August 1897.

(1) (1890) I. L. R., 12 All., 99.

(2) (1895) I. L. R., 17 All., 537.

amount of the decree, the balance should be realized from the defendants personally.

The two houses were sold, and, after the application of the sale proceeds towards payment of the decree, there remained a considerable balance. To recover that balance certain property of the joint family has been attached. The plaintiff objected to the attachment, but his objection having been disallowed, he filed the present suit, claiming that his one-fourth share in the property attached was not liable to be sold. The lower appellate Court has found that the original debt was contracted for the benefit of the family, and not for immoral purposes, and that according to Hindu law the plaintiff was under a pious obligation to pay the same. Having so found, the learned District Judge, after referring to the case of *Beni Madho v. Basdeo Patak* (1) in his judgment, goes on to say :—“ If, therefore, I had to decide this matter upon principles of Hindu common law, I should dismiss this appeal without hesitation. In perusing the terms of the decree under section 90 (of the Transfer of Property Act), however, I notice that the relief granted in the event of non-realization by sale of the hypothecated property is specifically worded as *personal* against the then existing defendants. It is perfectly true that by reference to the plaint and the language of section 90 there does not appear to be sufficient reason for the limitation of the decree to a purely personal relief against the defendants ;” and again he says :—“ This case is limited to the enforcement of a specific decree against the defendants, and I am compelled to hold that under its explicit wording it cannot be enforced against them.” In our opinion the District Judge in his interpretation of the effect of a *personal* decree is wrong. The decree, so far as it provides for the recovery of the balance after the sale of the property hypothecated, is a personal decree as distinguished from a decree which directs that the amount decreed is to be realized by the sale of specific property. Under such a decree any property of the judgment-debtors may be attached and sold.

The lower appellate Court rightly held, as a matter of law, that to be liable for the original debt it was not necessary that the plaintiff should have been a party to the suit in which the

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decree was made; but taking an erroneous view of the effect of the personal decree, it held that the plaintiff's one-fourth share was not liable to be attached and sold. Having regard to the finding, however, that the original debt was not contracted for immoral purposes, and to the fact that the decree for the balance due after the sale of the hypothecated property, though a personal decree, might have been enforced against other property of the joint family belonging to the judgment-debtors, we think that the plaintiff's one-fourth share in the property attached is liable, with the shares of the other members of the joint family, to be sold in execution of the decree.

Another question was raised in the lower appellate Court based upon the decision in the case of *Bhawani Prasad v. Kallu* (1). That case has no application to the circumstances of the present case. It was not alleged that plaintiff in the original suit upon his bond had any notice of the existence or interest of the plaintiff who, at the time when the suit was instituted, could not have been more than one or two years old.

We set aside the decree of the lower appellate Court and restore that of the Court of first instance. The appellant before us will have his costs in all Courts.

Appeal decreed.

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June 29.

Before Mr. Justice Burkitt and Mr. Justice Henderson.

THE MUIR MILLS COMPANY, LIMITED, OF CAWNPORE (OPPOSITE PARTY) v. T. H. CONDON AND A. BUTTERWORTH (APPLICANTS).*

Act VI of 1882 (Indian Companies Act), sections 20, 58, 92—Application to compel registration of transfers of shares—Discretionary power of Directors to refuse registration—Articles of Association—Interference of the Courts.

Where the Directors of a Company (the Muir Mills) refused to register the transfer of shares and relied on Article 21 of the Articles of Association which empowered the Directors to "decline to register any transfer of shares "to any person of whom they may for any reason disapprove"—

(1). *Held*, that it is not necessary under section 58 for the applicants to join their vendors in their applications. *Ex parte Penney* (2) distinguished; *Skinner v. City of London Marine Insurance Company* (3); *London Founders'*

* First Appeal from Order No. 88 of 1899, from an order of J. Sanders, Esq., District Judge of Cawnpore, dated the 18th July 1899.

(1) (1895) I. L. R., 17 All., 537. (2) (1872) L. R., 8 Ch., 446.
(3) (1885) 14 Q. B. D., 882.