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We have, therefore, to construe the wajib-ul-arz prepared in 1873. As that document confers a right of pre-emption upon shareholders in the patti, and next upon shareholders in the village, it evidently means that a person who does not own a share in the patti or mahal in which the property sold is situate but owns a share in the village is entitled to claim pre-emption as against an outsider, otherwise the provision as to the right of pre-emption existing in a shareholder in the village would be wholly meaningless. The case of a person who claims pre-emption under a wajib-ul-arz conferring a right of pre-emption only upon co-sharers in the village which has subsequently been divided into mahals is different. In the present instance, as we have already said, the village had already been sub-divided into pattis or mahals before the wajib-ul-arz was prepared, and in spite of such sub-division the right of pre-emption was given to a person who might own a share in the village, although he did not own a share in the patti. That state of things still exists in the village in question, and, therefore, as against an outsider to the village, a person holding a share in the village is entitled to pre-empt. The plaintiff being such a person has the right of pre-emption claimed by him. The appeal, therefore, fails, and is accordingly dismissed with costs.

Appeal dismissed.

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November 17.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

SHIAM LAL AND OTHERS (DEFENDANTS) *v.* GANESHI LAL (PLAINTIFF).*

Hindu law—Joint Hindu family—Suit against father and son on promissory note given by father—Son exempted from liability on note—Liability of son as member of a joint family.

In a suit brought against father and son in a joint Hindu family upon a promissory note executed by the father alone, the son was exempted from liability on the note on the ground that he was no party to it: in other words the suit as against the son was dismissed. A decree, however, was passed against the father, and in execution thereof the decree-holder's assignee caused a portion of the joint family property to be sold. *Held* on suit by the son for a declaration exempting his interest in the joint family property

* Appeal No. 31 of 1905 under section 10 of the Letters Patent.

that the dismissal as against him of the suit on his father's promissory note left him still liable as a Hindu son to pay his father's debt unless—which was not suggested here—the debt was tainted with immorality.

THE facts of this case are as follows:—

The plaintiff's father borrowed Rs. 300 from one Jainti Prasad, giving a promissory note as security. On foot of this note Jainti Prasad brought a suit against the plaintiff's father and impleaded also his minor son, the plaintiff. The Court (Munsif of Hathras) dismissed the suit as against the present plaintiff acceding to the defence that as the son was not a party to the note no decree could be passed against him. A decree was passed against the father and in execution the assignee of that decree caused a portion of the joint family property to be sold.

The present suit was thereupon instituted by Ganeshi Lal to have it declared that the decree so obtained could not be properly executed against his interest in the family property in view of the fact that the suit upon the promissory note had been dismissed against him. Both the Court of first instance (Additional Subordinate Judge of Aligarh) and the lower appellate Court (District Judge of Aligarh) held that there was no force in this contention; that Ganeshi Lal was liable as a Hindu son to pay his father's debt unless that debt was tainted with immorality; there was no suggestion in this case that there was any immorality.

A second appeal was preferred to the High Court, and the learned Judge before whom the appeal came for disposal reversed the decrees of the Courts below, holding that, in view of the dismissal of the suit upon the note as against the son, not merely was he personally exempted from liability in respect of the debt, but his interest in the family property could not be sold in execution of the decree passed against his father.

From that decision the present appeal arose.

Pandit *Moti Lal Nehru*, Hon'ble Pandit *Madan Mohan Malaviya* and Pandit *Mohan Lal Nehru*, for the appellants.

Munshi *Gobind Prasad*, for the respondent.

STANLEY, C.J. and BURKITT, J.—This is an appeal under section 10 of the Letters Patent against a decree of a learned

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SHIAM LAL v. GANESHI LAL.

Judge of this Court allowing an appeal from the decree of the District Judge which affirmed a decree of the Court of first instance. The facts out of which the litigation arose are shortly as follows:—Kishan Lal, the plaintiff's father, borrowed a sum of Rs. 300 odd from one Jainti Prasad and gave a *rukka* or promissory note as security for the loan. Jainti Prasad brought a suit on foot of this note, and impleaded not merely the executant of the note, but also his minor son, the plaintiff. On behalf of the son a defence was raised that he was no party to the note, and that, therefore, the suit could not properly be decreed as against him. The Court properly acceded to this defence and dismissed the suit as against him. As there appears to be some misconception as to the meaning and effect of the decree in that suit, we shall refer to the proceedings. The Munsif in his judgment, dated the 9th of May, 1894, says that the defendant, Ganeshi Lal, was not liable to pay the plaintiff's claim, "when he was not a privy to the promissory note debt contract," that is, that he being no party to the *rukka* a decree could not properly be passed against him. Accordingly the Munsif exempted Ganeshi Lal from the plaintiff's claim. In other words, he dismissed the suit as against Ganeshi Lal. A decree, however, was passed against the father, and in execution the assignee of that decree caused a portion of the joint family property to be sold.

The present suit was thereupon instituted by Ganeshi Lal to have it declared that the decree so obtained could not be properly executed against his interest in the family property in view of the fact that the suit upon the *rukka* had been dismissed against him. Both the Court of first instance and the lower appellate Court held that there was no force in this contention; that Ganeshi Lal was liable as a Hindu son to pay his father's debt unless that debt was tainted with immorality; there was no suggestion in this case that there was any immorality.

A second appeal was preferred from the decrees of the lower Courts to this Court, and the learned Judge before whom the appeal came for disposal reversed the decrees of the Courts below, holding that in view of the dismissal of the suit upon the *rukka*

as against the son, not merely was he personally exempted from liability in respect of the debt, but his interest in the family property could not be sold in execution of the decree passed against his father. The learned Judge says:—"The Court exempted the plaintiff, Ganeshi Lal, from liability from the debt and made no reservation that such exemption should extend only to his person and personal property other than the joint family property. The effect of his being exempted from liability was to dismiss the suit against him so that the decree which was passed in that suit could not be enforced against him or any property in which he had any interest. His share in the joint family property, therefore, could not under that decree be sold." We are unable to agree with the learned Judge in the conclusion at which he so arrived. In the first place we do not think that it was necessary for the Court below in dismissing the claim against Ganeshi Lal, to make any reservation to the effect that such exemption should extend only to his person and personal property. It was quite sufficient for the Court to say that Ganeshi Lal not being a party to the *rukka* could not be made personally liable for it. Then the learned Judge says that the effect of his being exempted from liability was to dismiss the suit against him. That is so; but the learned Judge goes on to say that the effect of this was that any decree which might be passed in that suit "could not be enforced against him or any property in which he had any interest." We think that this was not the effect of the decree. In our judgment it left the son exactly in the position in which he would have been if he had never been impleaded in that suit, that is, it left him liable as a Hindu son to pay any debts of his father not shown to be tainted with immorality. As we have already said, there is no suggestion that the debt, which was contracted by the father, the subject-matter of the litigation, was contracted for immoral purposes. We, therefore, must allow this appeal, set aside the decree of the learned Judge of this Court and restore the decree of the lower appellate Court. The respondent must pay the costs of this appeal and also the costs of the appeal to the learned Judge of this Court.

Appeal decreed.