

1908.  
May 14.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.*

RAM RATAN (DEFENDANT) v. LACHMAN DAS<sup>a</sup> (PLAINTIFF).\*

*Hindu law—Joint Hindu family—Liability of other members of family for managing member's debts.*

R. R., a member with G. L., his uncle, of a joint Hindu family, got a decree for costs against G. L., and had him arrested in execution thereof. G. L., thereupon borrowed money on a mortgage of joint family property and procured his release. *Held* on suit by the mortgagee for sale of the mortgaged property that the mortgagee could not under the circumstances proceed against R. R.'s interest in the joint family property. *Dalip Singh v. Sri Kishan Pande* (1) distinguished.

THIS was a suit on a mortgage bond of the 31st of August 1902, executed by one Gendan Lal, who is said to have been the manager of a joint Hindu family, of which Ram Ratan, his nephew, and several others were members. Ram Ratan brought a suit against his uncle, Gendan Lal, and obtained a decree, and in order to provide money for the satisfaction of this decree, in connection with which Gendan Lal was imprisoned, Gendan Lal, purporting to act as manager of the joint family, executed the mortgage in suit. The Court of first instance (Munsif of Moradabad) decreed the plaintiff's claim, and this decree was affirmed by the Additional Judge. Ram Ratan appealed to the High Court, on the ground that he, though a member of the joint family at the time when the bond was executed, was in no way liable to pay Gendan Lal's debt, which was owing to himself, and that his share in the joint family property is not liable to be sold in execution of a decree on the mortgage executed by Gendan Lal.

Munshi Gokul Prasad and Dr. Tej Bahadur Sapru, for the appellant.

Babu Durga Charan Banerji, for the respondent.

STANLEY, C. J., and BANERJI, J.—This was a suit on a mortgage bond of the 31st August 1902, executed by one Gendan Lal, who is said to have been the manager of a joint Hindu family, of which Ram Ratan, his nephew, and several others were members. It appears that Ram Ratan brought a suit against his uncle,

\*Second Appeal No. 710 of 1907 from a decree of W. F. Kirton, Additional District Judge of Moradabad, dated the 9th of March 1907, confirming a decree of Abdul Ali, Munsif of Moradabad, dated the 11th of December 1906.

(1) N.-W. P., H. C. Rep., 1872, p. 83.

1908

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RAM RATAN  
v.  
LACHMAN  
DAS.

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Gendan Lal, and obtained a decree, and in order to provide money for the satisfaction of this decree, in connection with which Gendan Lal was imprisoned, Gendan Lal, purporting to act as manager of the joint family, executed the mortgage in suit. The Court of first instance decreed the plaintiff's claim, and this decree was affirmed by the lower appellate Court. Ram Ratan now appeals to this Court, and his case is that he, though a member of the joint family at the time when the bond was executed, was in no way liable to pay Gendan Lal's debt, which was owing to himself, and that his share in the joint family property is not liable to be sold in execution of a decree on the mortgage. The learned Additional Judge in his judgment was of opinion that the raising of the loan by Gendan Lal was a matter of necessity, and that, in view of the decision in *Dalip Singh v. Sri Kishen Pande* (1) the plaintiff was entitled to maintain his decree. That case decided that ancestral property may be sold by a father to effect his release from prison. Now there is no doubt that Hindu sons are liable for their father's debts, and that the sons in such a case are bound to satisfy the debts, and, if necessary, by payment of the father's debts, release him from custody. But this is an entirely different case. The appellant Ram Ratan was under no liability to pay Gendan Lal's debt—a debt which, as we have said, was due to himself. Therefore there is no analogy between this case and the case on which the learned Additional Judge rested his decision. We think that his decision is wrong and that the appeal must be allowed so far as Ram Ratan is concerned. The other defendants to the suit have not resisted the decree, and therefore it will hold good as to them. As regards Ram Ratan the suit must be dismissed as against him. We accordingly allow the appeal. We set aside the decree passed against Ram Ratan, and dismiss it as against him and as against his share of the mortgaged property, with costs in all Courts.

*Appeal decreed.*

(1) N.-W. P., H. C. Rep., 1870, p. 83.