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February 7.*Before Mr. Justice Banerji, and Mr. Justice Richards.*BABU SINGH AND ANOTHER (DEFENDANTS) v. BIHARI LAL (PLAINTIFFS).^a*Hindu law—Joint Hindu family—Liability of sons for father's debts—**Defence that debts were incurred for immoral purposes—Burden of proof.*

According to the Hindu law of the Mitakshara school it is not necessary in order to establish a son's liability for his father's debt that it should be shown that the debt was contracted for the benefit of the family. It is sufficient, in order to establish the liability of a son to pay a personal debt of his father, if the debt be proved, and the son cannot show that it was contracted for immoral purposes or was such a debt as does not fall within the pious duty of the son to discharge. *Maharaj Singh v. Balwant Singh* (1) distinguished. *Kishan Lal v. Garuruddhwaja Prasad Singh* (2) and *Karan Singh v. Bhup Singh* (3) followed. *Nanoni Babuasin v. Modhun Mohun* (4) referred to.

Where, in such a case as above, the son sets up the defence that the debt was incurred for immoral purposes, the burden of proof is on him and not on the creditor. *Debi Dat v. Jadu Rai* (5) followed. *Jamna v. Nain Sukh* (6) dissented from.

And merely general evidence of profligacy on the part of the father is not sufficient. *Chintamanrav Mahendale v. Kashinath* (7) referred to.

THIS was a suit brought by the mortgagee respondents to recover money due upon eight mortgage bonds by sale of the property hypothecated in each bond. There were two brothers, Rup Singh and Mahtab Singh, who formed members of a joint Hindu family. A portion of the family property was recorded in the name of their mother Indar Kunwar, and for this reason she joined her sons in executing some of the bonds. Of the eight bonds in suit two were executed by Mahtab Singh alone; two by Mahtab Singh and Indar Kunwar; one by Rup Singh and Mahtab Singh; another by Rup Singh and Indar Kunwar; another by Rup Singh, Mahtab Singh and Indar Kunwar, and one by Rup Singh and Indar Kunwar. Rup Singh and Mahtab Singh being dead the suit was brought against their sons, who disputed the claim mainly on the ground that the debts in respect of which the eight bonds were executed had been incurred by Rup Singh and Mahtab Singh for immoral purposes, and that the interests of the sons in

* First Appeal No. 283 of 1905 from a decree of Maula Bakhsh, Subordinate Judge of Moradbad, dated the 18th of August 1905.

(1) (1906) I. L. R., 28 All., 508. (4) (1885) I. L. R., 13 Calc., 21.
 (2) (1899) I. L. R., 21 All., 238. (5) (1902) I. L. R., 24 All., 459.
 (3) (1904) I. L. R., 27 All., 16. (6) (1887) I. L. R., 9 All., 493.
 (7) (1889) I. L. R., 14 Bom., 330.

the family property were not therefore liable. This plea was overruled by the Court of first instance (Subordinate Judge of Moradabad), which was of opinion that it had not been proved that the debts were tainted with immorality. That Court accordingly made a decree in favour of the plaintiff. The defendants appealed to the High Court.

Mr. *W. Wallach*, for the appellants.

The Hon'ble Pandit *Sundar Lal* and Dr. *Tej Bahadur Sapru*, for the respondents.

BANERJI and RICHARDS, JJ.—The suit which has given rise to this appeal was brought by the respondent to recover money due upon eight mortgage bonds by sale of the property hypothecated in each bond. There were two brothers, Rup Singh and Mahtab Singh, who formed members of a joint Hindu family. A portion of the family property was recorded in the name of their mother Indar Kunwar and for this reason she joined her sons in executing some of the bonds. Of the eight bonds in suit two were executed by Mahtab Singh alone; two by Mahtab Singh and Indar Kunwar; one by Rup Singh and Mahtab Singh; another by Rup Singh and Indar Kunwar; another by Rup Singh, Mahtab Singh, and Indar Kunwar, and one by Rup Singh and Indar Kunwar. Rup Singh and Mahtab Singh being dead, the suit was brought against their sons, who disputed the claim mainly on the ground that the debts in respect of which the eight bonds were executed had been incurred by Rup Singh and Mahtab Singh for immoral purposes, and that the interests of the sons in the family property were not therefore liable. This plea was overruled by the Court below, which was of opinion that it had not been proved that the debts were tainted with immorality. That Court accordingly made a decree in favour of the plaintiff. It is admitted that the decree as framed is not strictly accurate. It purports to direct the sale of all the property mortgaged in all the eight bonds for the total amount secured by those bonds, whereas the property mortgaged in each bond was liable only for the amount of that bond. This is what the plaintiff claimed in his plaint. The learned advocate for the respondent concedes that in this respect the decree of the Court below must be varied.

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The present appeal has been preferred by the sons of Rup Singh alone. The son of Mahtab Singh has submitted to the decree. It is contended on behalf of the appellants that it has been established that the debts in question were incurred for immoral purposes, except the amount of one bond, namely, that for Rs. 400, dated the 25th of March 1898. In regard to the amount of that bond it has been shown that it was borrowed for payment of Government revenue, which was actually paid, and Mr. Wallach fairly concedes that as regards this bond he can urge nothing on behalf of the appellants.

As for the last four bonds, which were executed by Mahtab Singh, and to two of which his mother Indar Kunwar was a party, the son of Mahtab Singh has taken no exception, but, as said above, the decree must be varied to this extent that it should direct that the amount of those bonds should be recovered by sale of the property hypothecated in each of them, so that when the decree is so varied the appellants will have no reason to complain.

There remain then the bond dated the 5th of June 1896 for Rs. 2,400, that dated the 22nd of April 1897 for Rs. 900 and that dated the 25th of April 1897 for Rs. 200. As to these the learned counsel for the appellants contends that it was for the plaintiff to establish that the debts were incurred for family necessities and that the plaintiff made such inquiries as would lead a reasonable man to believe that the money was required for purposes of the family or for payment of antecedent debts which it would be the pious duty of a Hindu son to discharge. For this contention he relies on a recent ruling of a Bench of this Court in *Maharaj Singh v. Balwant Singh* (1), and specially on the following passage in the judgment at page 541:—"We may say in passing that in a case in which a creditor is endeavouring to establish a claim under a simple hypothecation bond given by a Hindu father, having a limited interest only, against his sons, it appears to us to be not unreasonable to require proof on the part of the creditor that before he entered into the transaction he at least made such reasonable inquiries as would satisfy a prudent lender that the money was required to pay off an antecedent debt or for the legal necessities of the family." With regard to this

(1) (1906) I. L. R., 28 All., 503.

passage it appears to us, and as the head note of the report shows, that it was not necessary for the purposes of that case to decide the question whether the burden of proof lay on the creditor. Furthermore we find that Mr. Justice Burkitt in delivering judgment in the case of *Kishan Lal v. Garurudhwaja Prasad Singh* (1) was clearly of opinion that the onus did not lie on the creditor. At page 240 our learned brother observed:—"Had it been proved that the debt had been contracted for immoral purposes and that the person who advanced the money was aware of the purpose for which it was being borrowed the son would not have been liable. There is, however, not a scrap of evidence to show that the debt which formed the consideration for the bond in suit was contracted for any such purpose." In the Full Bench case of *Karan Singh v. Bhup Singh* (2) the learned Chief Justice in delivering the judgment of the Court stated the law on the subject to be as follows:—"It is not necessary in order to establish a son's liability for his father's debt that it should be shown that the debt was contracted for the benefit of the family. It is sufficient, in order to establish the liability of sons to pay a personal debt of their father, if the debt be proved, and the sons cannot show that it was contracted for immoral purposes or was such a debt as does not fall within the pious duty of the sons to discharge." We think that this view is in consonance with the rulings of their Lordships of the Privy Council. We need only refer to the following observations of their Lordships in the well known case of *Nanomi Babuasin v. Modhun Mohun* (3):—"Destructive as it may be of the principle of independent coparcenary rights in the sons, the decisions have for some time established the principle that the sons cannot set up their rights against their father's alienation for an antecedent debt or against his creditor's remedies for their debts if not tainted with immorality."

In our judgment the burden of proof lies on the son and not on the creditor, and we are of opinion, in concurrence with the decision in *Debi Dat v. Jadu Rai* (4), that the view taken in the case of *Jamna v. Nain Sukh* (5) can no longer be supported.

(1) (1899) I. L. R., 21 All., 238. (2) (1885) I. L. R., 13 Cal., 21.

(3) (1904) I. L. R., 27 All., 16. (4) (1902) I. L. R., 24 All., 459.

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We have carefully considered the evidence in this case. In our opinion it has not been established that the debts in question were incurred for immoral purposes. The bond dated 5th June 1896 for Rs. 2,400 recites that Rs. 2,002-2-0 out of that amount was left with the creditor for payment to one Mohan Lal. It has been fully proved that this payment was actually made, and was made in discharge of prior bonds in favour of Mohan Lal dating as far back as 1889. It was alleged that the debts in favour of Mohan Lal had also been incurred for the purposes of a prostitute in the keeping of Rup Singh. But we find from the evidence of the prostitute herself that she had no connection with Rup Singh when the early debts of Mohan Lal were incurred. We are therefore unable to accept the statements of the witnesses who have deposed that the debts in favour of Mohan Lal had been incurred for purposes of immorality. A prostitute named Nauratan was produced who deposed in regard to Rs. 400, the balance of the amount of the bond for Rs. 2,400, that it was paid over to her. The lower Court disbelieved this witness, and we see no reason to come to a different conclusion as to her credibility. Her statements are too vague to be accepted. On the contrary, Hari Lal, a witness for the plaintiff, proved that this sum of Rs. 400 was appropriated towards family expenses.

As to the bonds for Rs. 900 and Rs. 200, dated respectively 22nd April 1897 and 25th April 1897, they appear to represent one transaction, as both of them were registered on the same date, that is, on the 3rd of May 1897. Nauratan says that Rs. 750 out of the amount of these bonds was paid to her for the expenses of the tonsure ceremony of her son by Rup Singh. She says that this money was paid to her by the plaintiff at the house of Rup Singh at Kanderki. It appears, however, from the endorsement of the Sub-Registrar made on the bonds that at the time of registration Rs. 764 and odd was paid in cash at Moradabad in the office of the Sub-Registrar. The statement of the witness therefore that it was paid to her at Rup Singh's house by the plaintiff is clearly untrue. We have on the other hand evidence to show that the marriage of the daughter of Rup Singh was celebrated about that time, and that the year 1897 being a year of scarcity and famine there was greater necessity for borrowing money

in that year than in other years. The learned Subordinate Judge did not believe the witnesses adduced to prove that all these debts had been incurred for purposes of immorality. He says that they impressed him as being tutored witnesses and partisans of the defendant's friends. We have not the advantage which the learned Subordinate Judge had of hearing the witnesses and seeing their demeanour, and nothing has been shown to us to justify our differing from the conclusion at which he arrived as to the credibility of these witnesses. It is true that there is some general evidence that Rup Singh, and possibly Matab Singh, were profligates. But even if this evidence be believed it is not sufficient, as observed in the case of *Kishan Lal v. Garuruddhwaja Prasad* (1) and in *Chintamanrav Mahendale v. Kashinath* (2) to exonerate the sons of the debtors from their pious duty to pay their father's debts.

For these reasons we are of opinion that the appeal has no force. As we have said in an earlier part of this judgment, the decree of the Court below is not strictly correct and is not in conformity with the prayer contained in the plaint. We therefore vary the decree so far that we direct that the amount of each bond together with costs proportionate to that amount and interest thereon up to the date fixed for payment be realised by sale of the property hypothecated in the bond relating to that amount, and we order that these amounts be calculated and specified in our decree. We extend the time for payment of the decretal amount to the 1st of August 1908. As the rate of interest in some of the bonds was very high, we direct that no further interest shall be charged after the date fixed for payment mentioned above. The respondent will get one half of his costs of this appeal. In other respects we affirm the decree of the Court below.

Decree modified.

(1) (1899) I. L. R., 21 All., 233 at p. 240. (2) (1899) I. L. R., 14 Bom., 320.

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