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SUKHDEI v. KEDAR NATH.

Reading the findings of the court below in the light of the provisions of section 13 as to easements of necessity, we hold that Kedar Nath failed to prove facts which would entitle him to the right of way claimed, inasmuch as the user of that right is not *absolutely* necessary for the benefit of his share of the house. He certainly can open a door towards the north for access to his share. It is contended by his learned advocate that with reference to the existing state of the building and without any alteration therein, the use of the doorway in question for access to this share of the building is an absolute necessity. There is, however, no authority to favour the contention, and the share cannot be deemed to be absolutely useless without the right of way claimed.

For the above reasons we allow the appeal, set aside the decree of the court below and disallow the objection of Kedar Nath with costs.

Appeal allowed.

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February 13.

Before Mr. Justice Richards and Mr. Justice Griffin.

SUMER SINGH (DEFENDANT) *v.* LILADHAR AND OTHERS (PLAINTIFFS)*

Hindu Law—Debts—Sons' liability for father's debts—Money borrowed to defend a suit for defamation not an immoral debt.

Held, that under the Hindu Law money borrowed by the father to defend a suit for defamation is a debt for which a Hindu son and grandson are liable.

THE facts of this case were as follows:—

One Rushton brought a suit for damages for libel against Chaube Rikhi Lal. The court of first instance dismissed the suit, but the lower appellate court passed a decree in his favour. Rikhi Lal borrowed money from a Bank to file a second appeal, and the defendant's father stood surety for him. The Bank realized its money from the surety, and Rikhi Lal executed a promissory note in favour of the defendant's father. The defendant obtained a decree against Rikhi Lal, and attached the ancestral property. The sons and grandsons of Rikhi Lal brought the present suit for a declaration that the property could not be attached and sold.

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* Second Appeal No. 867 of 1910 from a decree of H. W. Lyle, District Judge of Agra, dated the 14th of March, 1910, reversing a decree of Kalka Singh, Additional Subordinate Judge of Agra, dated the 5th of October, 1909.

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The court of first instance dismissed the suit, but the lower appellate court reversed the decree. The defendant appealed.

Pandit *Mohan Lal Sandal* (with him Dr. *Satish Chandra Banerji*), for the appellant—

The debt is not immoral, and the son can only escape from liability if he shows it to be immoral; *Yajnavalkya Smriti* v. *Vyavahara Adhyaya*, v. 47; Mitakshara, Chap. VI, sec. III, Pc. 47, and the Commentary thereon; *Paryag Sahu* v. *Kasi Sahu* (1) *Dalip Singh* v. *Sri Kishen Pandey* (2).

The case relied on by the lower appellate court, *Durbar Khachar* v. *Khachar Harsur* (3) is distinguishable. There the father caused a damage to the property of another; he was sued and a decree was passed against him, after the death of the father the son was brought on the record. There the loan itself was taken to defend the honour of the father.

No one appeared for the respondents.

RICHARDS and GRIFFIN JJ:—This appeal arises out of a suit in which the plaintiff claimed that a certain ancestral house which has been attached in execution of a decree against one Chaube Rikhi Lal, could not be attached and sold. The plaintiffs were the son and grandson of the said Chaube Rikhi Lal. A decree had been granted against Chaube Rikhi Lal at the suit of the appellant Sumer Singh. The suit instituted by Sumer Singh was a suit on foot of a promissory note given by Rikhi Lal under the following circumstances. Rikhi Lal had been sued for libel. He was successful in the court of first instance. On appeal, however, a decree was given against him. He was anxious to file a second appeal in the High Court, and having no money, Sumer Singh's father went security for him, had to pay the money for him and obtained the promissory note. The plaintiff raised the plea that the debt due to the father of Sumer Singh was not a debt for which a Hindu son and grandson could be held liable. The court of first instance held that the son and grandson were liable and dismissed the suit. The lower appellate court reversed the decree of the court of first instance and gave the plaintiff a decree. Hence the present appeal. The learned Judge having

(1) (1899) 4 C. W. N., 659. (2) (1872) 4 N. W. P., H. C. Rep., 88.
(3) (1908) I. L. R., 32 Bom., 348.

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referred to certain authorities came to the conclusion that they were so conflicting that he was entitled to follow his own view. The case of *Durbar Khachar* v. *Khachar Harsur* (1) was one of the authorities cited before the learned Judge, and was the authority which he thought fit to follow. Speaking generally, the debts which a son is not liable to pay are debts incurred for spirituous liquor, gratification of lust or gambling. (*Vide* Colebrooke's Mitakshara, Chapter VI, section 3, Placitum 47). The text also declares that a son is not bound "to pay any unpaid fines or tolls or idle gifts." In the Bombay case cited above a decree was obtained against the defendant's father for damages to the plaintiffs' property caused by a dam erected by the defendant's father, and it was sought to execute this very decree against the son. The facts of the present case are, when carefully considered, very different from those in the case cited. It was not sought to execute against the son or grandson a decree for damages for libel. The decree which the decree-holder sought to execute was a decree in a suit on a promissory note. The promissory note represented money which the father had borrowed for the purpose of defending himself against a suit for damages. Without expressing any opinion as to whether the case above referred to was or was not rightly decided, we think that the debt in the present case was a debt for which a Hindu son and grandson were liable. We may mention that no one appears on behalf of the respondents. We allow the appeal, set aside the decree of the lower appellate court and restore that of the court of first instance with costs.

Appeal allowed.

(1) (1908) I. L. R., 32 Bom., 348.