1913

RAM CHANDRA NAIK KALIA v. ABDUL HAKIM.

transfer the decree can be executed in the same manner and subject to the same condition as if the application were made by such decree-holder. In our opinion the application was properly disallowed and we dismiss the appeal with costs.

Appeal dismissed.

1913

February, 18.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.

DALIP SINGH AND OTHERS (DEFENDANTS) *v.* KUNDAN LAL AND OTHERS (PLAINTIFFS) AND BAKHTAWAR SINGH AND OTHERS (DEFENDANTS).*

Hindu Law—Joint Hindu family—Power of father to bind the family property—Father no power to revive a time-barred debt.

Held that the father and manager of a joint Hindu family cannot legally revive a time-barred debt and bind the family property to secure its repayment. *Chandra Deo Singh* v. *Mata Prasad* (1) and *Indar Singh* v. *Sarju Singh* (2) followed.

THIS was a suit for sale on a mortgage bond, dated the 9th of February, 1891, executed by Dorab Singh, father of the defendants appellants. The mortgagee was one Sham Lal, the predecessor in title of the plaintiffs respondents. The mortgage was made for Rs. 33,500. The consideration for the bond was Rs. 5,000, alleged to have been due on account at the date of the mortgage, plus Rs. 6,500 calculated as interest in advance, and a balance of Rs. 22,000 paid in cash. This principal amount was made payable by instalments extending over 16 years; no further interest was to be charged except in case of default in payment of instalments. The Rs. 5,000 due on account had been advanced more than 20 years before the date of mortgage. The court of first instance gave a decree for the full amount. The defendants appealed, in regard to the item of Rs. 5,000, the claim for which was alleged to have been long time-barred.

Dr. *Satish Chandra Banerji* (The Hon'ble Dr. *Tej Bahadur Sapru* with him), for the appellants:—

The question is whether a Hindu father could revive a time-barred debt. He could not mortgage ancestral property for such debts; *Indar Singh* v. *Sarju Singh* (2). A time-barred debt could not be acknowledged under the Statute of Limitations. A Hindu father could only alienate property for legal necessity: ordinarily speaking,

*First Appeal No. 416 of 1911 from a decree of Kanhaiya Lal, Second Additional Judge of Meerut, dated the 3rd of July, 1911.

(1) (1909) I. L. R., 31 All., 176. (2) (1911) 8 A. L. J., 1099.

1913

DALIP SINGH v. KUNDAN LAL.

he could not borrow to add to family property. The mortgagee had to prove that the debt incurred was for family necessity and if the debt was time-barred, it could not be enforced against the family. Revival of a debt was not a family necessity and it was not permissible for a father or manager to revive such debts. There was a difference between reviving a debt and acknowledging a debt; *Gopal Narain Mozoomdar* v. *Muddomutty Guptee* (1), *Chinnaya Nayudu* v. *Gurunatham Chetti* (2) and *Dinkar* v. *Appaji* (3). The lower court had relied on *Narayanasami Chetti* v. *Samidas Mudali* (4), but an obligation to pay the debt did not help the plaintiff; he had to show that the debt was one which could be enforced.

The Hon'ble Dr. *Sundar Lal*, (Pandit *Rama Kant Malaviya* with him), for the respondents :—

The question is was the transaction to the advantage of the family. Money was advanced at an exceptionally low rate of interest. He could not get such easy terms if he had not revived the time-barred debt. The revival of the debt was therefore a family necessity. The debt was one which was enforceable against the father. It was an antecedent debt and as such the question of legal necessity does not arise. A son's liability to pay his father's debt is a pious obligation and is independent of the rule of limitation. The principle on which he has been made liable is entirely different—the idea being that he would suffer for the debts elsewhere if he did not discharge them in this world.

RICHARDS, C. J., and BANERJI, J. :—This appeal arises out of a suit brought on foot of a mortgage, dated the 9th of February, 1891. The mortgage was admittedly made by the father of a joint Hindu family. The consideration for the mortgage was a sum of Rs. 5,000 alleged to be due on account at the date of the mortgage, a sum of Rs. 6,500 representing interest calculated in advance, and Rs. 22,000 cash advanced to enable the mortgagor to purchase certain immovable property. The principal amount was made repayable by instalments extending over sixteen years. The court below has given a decree for Rs. 27,926-1-0.

(1) (1874) 14 B. L. R., 21. (3) (1894) I. L. R., 20 Bom., 155.
(2) (1882) I. L. R., 5 Mad., 169. (4) (1883) I. L. R., 6 Mad., 293.

1913

DALIP SINGH v. KUNDAN LAL.

The question which has been urged before us in the present appeal is that the sum of Rs. 5,000, assuming it ever to have been a debt at all, was at the time of the execution of the mortgage time-barred, and that, therefore, it was not permissible for the mortgagor, as the father and manager of the joint Hindu family, to revive a time-barred debt and to create a mortgage for such time-barred debt on the family property. A ground was no doubt taken in the memorandum of appeal that on the evidence the court should not have held that there was any debt at all. In our opinion we ought to have no hesitation in accepting the finding of the court below that the debt was an honest debt, but that it was time-barred at the time of the execution of the mortgage.

The case resolves itself then into a question of law, namely, whether or not the father of a joint Hindu family can legally revive a time-barred debt and bind the family property to secure its repayment. Having regard to the decision of the majority of the Full Bench in the case of *Chandra Deo Singh* v. *Mata Prasad* (1) it seems to us that we must find the existence of family necessity before we can hold the family property bound. It is very difficult to say that there would ever be any necessity for the father or manager of the family to revive a time-barred debt. *Primâ facie* and looked at from a wordly point of view it is very much against the interest of the family to revive such a debt. The very question was decided by a Bench of this Court in the case of *Indar Singh* v. *Sarju Singh* (2). It has been contended before us that we ought to hold, under the circumstances of the present case, that it was in the interest of the family that the time-barred debt should be revived. It is urged that the money was advanced upon very easy terms, and that, therefore, we should hold that the money could not have been obtained except on the condition of reviving the debt. In our opinion there is no sufficient evidence on the record to show that it was for the benefit of the family that the time-barred debt of Rs. 5,000 should be revived.

It has also been contended that the father, even if he could not bind his sons, could bind himself, and that, therefore, the payments which he made should be considered as payments made in respect of his interest in the property. We do not consider that this

(1) (1909) I. L. R. 31 All., 176. (2) (1911) 8 A. L. J., 1099.

1913

DALIP SINGH v. KUNDAN LAL.

argument is sound. In our opinion the payments which were made must be attributed to payments made upon foot of the mortgage to the extent for which it was a good and valid mortgage, that is to say, to the extent of the family necessity proved. There is nothing to show that the payments were made by the father out of separate funds.

Under these circumstances we would have been quite prepared to have excluded the sum of Rs. 5,000 from the mortgage and dealt with the mortgage as if it had been made for an advance of Rs. 22,000 and no more. If we did this, however, we certainly should give the mortgagee interest upon Rs. 22,000, or so much thereof as for the time being remained unpaid, at a reasonable rate. We think under the circumstances that nine per cent. per annum would not be an excessive rate of interest. In the mortgage deed itself it was agreed that interest at that rate should be paid on overdue instalments. We find, however, that if we were to treat the mortgage as a mortgage for Rs. 22,000 only and calculated interest at the rate of nine per cent. (allowing the mortgagors credit for any sums where the instalments which were paid were more than sufficient to keep down interest) the amount due on such calculation would admittedly exceed the amount of the decree of the court below. Under these circumstances we see no reason whatever for interfering with the decree of the court below, and we accordingly dismiss the appeal with costs. The decree will carry future interest at the rate of six per cent. per annum from the date of the decree of the court below. To this extent we allow the respondent's objection. We extend the time for payment for six months from this date.

Appeal dismissed.