

1921

SHADI JAN
v.
WARIS ALI.

WALSH, J.—I agree. I am satisfied that no certificate is necessary and that a decree ought not to be refused on this ground.

By THE COURT :—The appeal is dismissed. We make no order regarding costs.

Appeal dismissed.

Before Mr. Justice Gobul Prasad and Mr. Justice Lindsay.

SHEODAN SINGH AND ANOTHER (PLAINTIFFS) v. BHAGWAN SINGH AND ANOTHER (DEFENDANTS).*

1921
February, 28.

Hindu law—Joint Hindu family—Son's liability for father's debts—Simple money debt—Sons not liable during father's life-time.

The pious obligation of a Hindu son to pay his father's debts can only be enforced after the death of the father.

Hence, where on a promissory note executed by the father a simple money decree was obtained against him and in execution thereof a part of the family property was attached, and the sons brought a suit for a declaration that their shares in the property were not liable to satisfy the decree against their father, who was alive, it was held, that the sons were entitled to the declaration sought. *Sahu Ram Chandra v. Bhup Singh* (1) and *Bharath Singh v. Prag Singh* (2) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Sheo Prasad Sinha*, for the appellants.

The respondents were not represented.

GOKUL PRASAD and LINDSAY, JJ. :—The point raised in this case is whether the pious duty of the sons to pay their father's debts can be enforced during the life-time of the father, or, in other words, have the sons the right to object to the payment of such debts from their shares of the family property when the father is alive? It appears that one Bhagwan Singh executed a promissory note in favour of Musammatt Shrimati Mangala Devi. She sued Bhagwan Singh on the promissory note and obtained a decree. She put the decree into execution and proceeded to attach a part of the family property. Bhagwan Singh's two sons Sheodan

* Second Appeal No. 133 of 1919 from a decree of Jagat Narain, First Additional Judge of Aligarh, dated the 23rd of November, 1918, confirming a decree of Lai Gopal Mukerji, Second Additional Subordinate Judge of Aligarh, dated the 23rd of July, 1911.

(1) (1917) I. L. R., 39 All., 497 : (2) (1917) 43 Indian Cases, 291.

L R 44 I. A., 1.

Singh and Mahendrapal Singh thereupon sued for partition of their shares of the family property and also for a declaration that their shares in the family property were not liable to satisfy the decree obtained against their father Bhagwan Singh. The courts below have dismissed the suit so far as the declaration claimed is concerned. The learned Judge of the lower appellate court has, after considering the decisions of the various courts on the interpretation to be put on certain observations of their Lordships of the Privy Council in *Sahu Ram Chandra v. Bhup Singh* (1), as to the existence of such liability, dismissed the appeal. The Judicial Commissioner of Oudh has, however, in the case of *Bharath Singh v. Prag Singh* (2) put a plain meaning on the words of their Lordships of the Privy Council which are to the effect that such a pious obligation can only be enforced after the death of the father. We agree with this interpretation of the ruling of their Lordships of the Privy Council referred to above and we think that the court below was wrong in dismissing the plaintiffs appellants' suit for a declaration that their shares of the family property were not liable to be taken in execution of a simple money decree obtained against the father, inasmuch as their father was alive. As matters stand at present we think the plaintiffs are entitled to the declaration asked for and the creditors cannot proceed against their shares of the family property for the realization of the debts due from the father. We, therefore, modify the decree of the courts below by decreeing the plaintiffs' claim in full. The plaintiffs are entitled to their costs in all courts.

Decree modified.

REVISIONAL CRIMINAL.

Before Sir Grimwood Mears, Knight Chief Justice, and Justice Sir Pramada Charan Banerji.

SHARIF AHMAD v. QABUL SINGH. *

Criminal Procedure Code, sections 435 to 439—Revision—Practice—Application to be first made to Sessions Judge or District Magistrate—Act No. XLV of 1860 (Indian Penal Code), sections 499, 95—Defamation—Act causing slight harm.

So far as the practice of the High Court in the matter of applications for revision on the Criminal side is concerned, an application to the lower

* Criminal Revision No. 1 of 1921 from an order of Ratan Chaud, Magistrate, First Class of Muzaffarnagar, dated the 22nd of December, 1920.

(1) (1917) I. L. R., 39 All., 437 : (2) (1917) 43 Indian Cases, 291.
L. R., 44 I. A., 126.

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