APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

MOHAN LAL (DECREE-HOLDER) *v.* BALA PRASAD AND ANOTHER (JUDGMENT-DEBTORS) AND CHHADAMMI LAL (DECREE-HOLDER).* 1922 *April, 25.*

Hindu law—Joint Hindu family—Execution of decree—Personal decree against father—Execution taken against the joint family property—Rights of sons.

In the case of a joint Hindu family governed by the Mitakshara law a decree against the father alone can be executed against the whole of the joint family property unless the sons can show that the debt in respect of which the decree has been obtained was a debt incurred for illegal or immoral purposes. *Karan Singh* v. *Bhup Singh* (1), *Babu Singh* v. *Bihari Lal* (2) and *Indar Pal* v. *The Imperial Bank* (3) followed. *Sahu Ram Chandra* v. *Bhup Singh* (4) and *Sripat Singh Dugar* v. *Prodyot Kumar Tagore* (5) followed. *Sheo Dhan Singh* v. *Bhagwan Singh* (6) dissented from.

THE facts of this case sufficiently appear from the judgment of PIGGOTT, J.

Munshi *Narain Prasad Ashthana*, for the appellant.

The respondents were not represented.

PIGGOTT and WALSH, JJ.:—This is an appeal by the decree-holder in a mortgage suit. That suit was against a variety of defendants, but the only point with which we are concerned here is that, while a decree for sale was passed affecting various mortgaged properties, there was also a simple money decree enforceable against one Ganga Prasad alone. In execution of this decree there has been an attachment of certain immovable property specified as being the property of Ganga Prasad, judgment-debtor. It is not property which was included in the mortgage upon which the suit was brought, so that no objection can be taken on that ground to its attachment in execution of a simple money decree. In fact, in so far as the property attached is the property of Ganga Prasad, its attachment is not objected to. The objection taken was on behalf of Bala Prasad and Nannhe, minor sons of Ganga Prasad. Their claim was that, the property attached being joint ancestral family property, they were joint owners of the same with their father and that the remedy of the decree-holders was limited to execution against the share which their father would take on partition, that is to say, one-third

* First Appeal No. 158 of 1920, from a decree of Govind Sarup Mathur, Subordinate Judge of Agra, dated the 1st of May, 1920.

(1) (1904) I. L. R., 27 All., 16. (2) (1908) I. L. R., 30 All., 156.
(3) (1915) I. L. R., 37 All., 214. (4) (1917) I. L. R., 39 All., 437.
(5) (1916) I. L. R., 44 Calc., 524. (6) (1921) I. L. R., 43 All., 496.

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share of the whole. The execution court has allowed this contention and the appeal before us is against its decision. The point of law raised was supposed to have been settled so far as this Court is concerned by the decision of a Full Bench in the case of *Karan Singh* v. *Bhup Singh* (1). That case has been followed and applied since that date in a number of other cases. We are content to refer to two cases, to one of which one of us was a party, which are :—*Babu Singh* v. *Bihari Lal* (2) and *Indar Pal* v. *The Imperial Bank* (3). All these cases are against the view taken by the court below and, if they were correctly decided, then it is competent for the holders of a simple money decree against Ganga Prasad to attach the joint family property of Ganga Prasad and his minor sons in the hands of their judgment-debtor and to bring to sale the right, title and interest of the father and of the sons in satisfaction of their decree. There has been a recent decision to the contrary, namely, the case of *Sheo Dhan Singh* v. *Bhagwan Singh* (4). The respondents were not represented at the hearing of that appeal and no reference is made to any previous decision of this Court. The learned Judges proceeded upon a decision of the Judicial Commissioner's Court of Oudh and based themselves upon an interpretation which they put upon certain passages in the judgment of their Lordships of the Privy Council in the well-known case of *Sahu Ram Chandra* v. *Bhup Singh* (5). We have given our best consideration to the arguments on this point, but we think that as the matter stands at present we ought to follow the decision of our Full Bench. The question for determination before their Lordships of the Privy Council in *Sahu Ram Chandra's* case had nothing to do with the rights of the holders of a simple money decree. If it be said that there are passages in the judgment then delivered which suggest that the older decisions of the Courts in India, of which the Full Bench case of *Karan Singh* v. *Bhup Singh* (6) is a specimen, proceeded upon a mistaken view as to the effect of the pious duty of Hindu sons to discharge their fathers' debts when not tainted with immorality, it can be said, on the other side, that only a few months before the decision in *Sahu Ram Chandra's* case their Lordships of

(1) (1904) I. L. R., 27 All., 16.
(2) (1908) I. L. R., 30 All., 156.
(3) (1915) I. L. R., 37 All., 214.
(4) (1921) I. L. R., 43 All., 496.
(5) (191.) I. L. R., 39 All., 437.
(6) (1904) I. L. R., 27 All., 16.

the Privy Council, in the case of *Sripat Singh Dugar* v. *Prodyot Kumar Tagore* (1), had re-affirmed in the clearest possible language the principles deducible from a number of previous decisions upon which the Full Bench of this Court had proceeded. The words used at the bottom of page 532 of the report are as follows :—

"The property in question was joint property governed by the Mitakshara law. By that law a judgment against the father of the family cannot be executed against the whole of the Mitakshara property if the debt in respect of which the judgment has been obtained was a debt incurred for illegal or immoral purposes. In every other event it is open to the execution creditor to sell the whole of the estate in satisfaction of the judgment obtained against the father alone."

Unless, therefore, further light is thrown upon this question by some further pronouncement on the part of their Lordships of the Privy Council, we think we ought to abide by the statement of the law as it was understood to have been settled by the Full Bench of this Court in the year 1904. The same view has been taken by two other High Courts in India, *vide* I. L. R., 43 Bom., 612, and I. L. R., 48 Calc., 341. It has been suggested in argument that a distinction should be made against the decree-holder in this present case because he had impleaded the sons in his suit upon the mortgage and as against the sons his suit had been dismissed. It does not seem to us that this affects the question for determination. The sons were impleaded in the mortgage suit with a view to making their interest in the mortgaged property available in satisfaction of the plaintiffs' claim. That attempt failed and it is not now sought in the execution department to attach the interests of the sons in the mortgaged property. There could have been no question in the suit as brought of a simple money decree against the sons. What is to be determined is, what property is or is not available to the decree-holder in execution of his simple money decree against the father alone. That question, according to the older decisions of this Court, which we desire to follow, must be answered in favour of the decree-holder. We, therefore, allow this appeal to this extent, that we send back the case to the court below with orders to proceed with the execution of the decree

(1) (1916) I. L. R., 44 Calc., 524.

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on the assumption that the shares of the minor sons of Ganga Prasad in the property sought to be attached are liable, unless the said sons can prove that the debt in respect of which the simple money decree was passed was one tainted with immorality. The decree-holder should get his costs of this appeal.

WALSH, J. :—I agree. In my opinion it is too late to contend that the joint family estate cannot be sold to satisfy a personal decree against the father of a joint family; except in the one case of the sons being able to show that the debt was tainted with immorality. This appears to me to be established by a long line of decisions by the Privy Council, namely :—

Musammat Nanomi Babuasin v. *Modun Mohun* (1); *Bhagbut Pershad* v. *Musammat Girja Koer* (2); *Meenakshi Naidu* v. *Immudi Kanak Ramaya Kounden* (3); *Rai Babu Mahabir Pershad* v. *Rai Markunda Nath Sahai* (4), reviewed and explained by a Full Bench in *Karan Singh* v. *Bhup Singh* (5) and finally by the Lord Chancellor, Lord BUCKMASTER, in *Sripat Singh Dugar* v. *Prodyot Kumar Tagore* (6). The opinion of their Lordships in *Sahu Ram Chandra* (7) relates to a case in which an alienation by mortgage was sought to be enforced and all other possible remedies of the mortgagee had been extinguished. I agree with the view which seems already to have been expressed in India that it could hardly have been intended by what was said in the opinion of their Lordships in that case to reverse everything that had been said before.

Appeal allowed.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Lindsay.

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RAM BILAS AND OTHERS (DEFENDANTS) *v.* NITYA NAND AND OTHERS (PLAINTIFFS)*

Civil Procedure Code (1908), *section* 92—*Suit relating to a trust created for a public purpose of a charitable or religious nature—Suit against a trustee de son tort :*

Held that a suit of the nature mentioned in section 92 of the Code of Civil Procedure, 1908, will lie against a person who, without title, chooses to take upon himself the character of a trustee, or, in other words, a trustee *de son tort*. *Budree Das Mukim* v. *Chooni Lal Johurry* (8) referred to.

* First Appeal No. 78 of 1920, from a decree of L. Johnston, District Judge of Pilibhit, dated the 14th of February, 1920.

(1) (1885) L. R., 13 I. A., 1.
(2) (1888) L. R., 15 I. A., 99.
(3) (1888) L. R., 16 I. A., 1.
(4) (1889) L. R., 17 I. A., 11.
(5) (1904) I. L. R., 27 All., 16.
(6) (1916) I. L. R., 44 Calc., 524.
(7) (1917) I. L. R., 39 All., 437.
(8) (1906) I. L. R., 33 Calc., 780.