

THE
INDIAN LAW REPORTS,
ALLAHABAD SERIES.

APPELLATE CIVIL.

Before Mr. Justice Sulaiman and Mr. Justice Daniels.

SHIVA NATH PRASAD (APPLICANT) *v.* TULSHI RAM
(OPPOSITE PARTY).*

1925
May, 26.

Hindu law—Joint ancestral estate—Mortgage-deed executed by father—Debt tainted with immorality—Money decree against father personally—Father's interest not exempt from attachment and sale.

THE fact that a debt incurred by the father of a Hindu joint family is tainted with immorality may be a reason for invalidating a mortgage of joint family property, but it is not a reason for exonerating from liability the father's interest in such property, which is liable to be sold in execution of a simple money decree against him. *Deendyal Lal v. Jugdeep Narain Singh* (1), *Suraj Bansi Koer v. Sheo Prasad Singh* (2), *Lachmi Narain v. Kunji Lal* (3), *Chandra Sen v. Ganga Ram* (4), *Karan Singh v. Bhup Singh* (5) and *Abdul Karim v. Ram Kishore* (6), referred to and followed. *Brij Narain v. Mangal Prasad* (7), not applied.

Mr. B. Mallick and Munshi Gulzari Lal, for the appellant.

Babu Piari Lal Banerji, for the respondent.

SULAIMAN and DANIELS, JJ. :—This is an appeal by a Hindu son from a decree passed in execution

* First Appeal No. 500 of 1924, from a decree of Syed Istikhar Husain, Additional Subordinate Judge of Ghazipur at Ballia, dated the 5th of August, 1924.

(1) (1877) I.L.R., 3 Cal., 193.

(2) (1878) I.L.R., 5 Cal., 148.

(3) (1894) I.L.R., 16 All., 449.

(4) (1880) I.L.R., 2 All., 899.

(5) (1904) I.L.R., 27 All., 16.

(6) (1925) I.L.R., 47 All., 421.

(7) (1928) I.L.R., 46 All., 95.

1925

SHIVA NATH
PRASAD
v.
TULSHI RAM.

against him. His father had made a mortgage in favour of the plaintiff decree-holder and a suit was instituted against him impleading his minor son. On behalf of the son it was pleaded that the debt was tainted with immorality and, therefore, the mortgage was bad and the son was not liable to pay the debt. The court found that the debt was proved to have been tainted with immorality and declined to pass a decree for sale on the basis of the mortgage-deed, but simply passed a money decree against the father personally. The decree-holder put the decree for money against the father in execution and attached the whole of the ancestral property, including that which had been mortgaged. The court below has allowed the objection of the son so far as the attachment of his interest in the property is concerned but has ordered execution against the interest of the father in the joint property. The son appeals to this Court and on his behalf it is contended, in the first place, that the effect of the previous decision was to make the entire family property free from all liability; and in the next place it is contended that in the face of the finding that the debt was tainted with immorality, it is not open to the decree-holder to attach any portion of the joint ancestral property. We think that there is absolutely no substance in the first contention. All that the court held was that in view of the finding on the question of immorality the mortgage was bad and therefore there had been no transfer of the property and no charge created. It passed a simple money decree against the father, but it did not in any other way hold that any ancestral property would never be liable to be sold in execution of the decree against the father.

The next contention also has no force. It was held by their Lordships of the Privy Council in the

case of *Deendyal Lal v. Jugdeep Narain Singh* (1) that the right title and interest of one co-sharer in a joint ancestral estate might be attached and sold in execution to satisfy a decree against him personally under the law of Mitakshara. This principle was re-affirmed by their Lordships in the case of *Suraj Bunsri Koer v. Sheo Prasad Singh* (2) where at page 174 their Lordships observed that the previous decision had recognized the seizable character of an undivided share in a joint property. This case has been followed by this Court in the case of *Lachmi Narain v. Kunji Lal* (3) and in the case of *Chandra Sen v. Ganga Ram* (4). It seems to us that if the interest of the father alone can be seized in execution of a decree against him, the question of the immorality of the debt does not arise. The son is not called upon to pay this debt nor is his property said to be attached and sold. He is entitled to get his interest in the joint property exempted. But it does not follow that he is also entitled to prevent the attachment and sale of the interest of his father against whom a decree is in force. In the Full Bench case of *Karan Singh v. Bhup Singh* (5) reference was made to an earlier Privy Council case and it was pointed out that if the son sought to escape from having *his interest* affected by the sale, he had to establish that the debt he desired to be exempted from paying was of such a character that he as a Hindu son could not be under the pious obligation to discharge it. In the recent case of *Abdul Karim v. Ram Kishore* (6) the above mentioned Full Bench case was followed.

1925

SHIVA NATH
PRASAD
v.
TULSHI RAM.

It is lastly contended that the observations of their Lordships of the Privy Council in the case of

(1) (1877) I.L.R., 3 Cal., 198.

(2) (1878) I.L.R., 5 Cal., 148.

(3) (1894) I.L.R., 16 All., 449 (455-6).

(4) (1880) I.L.R., 2 All., 899.

(5) (1904) I.L.R., 27 All., 16.

(6) (1925) I.L.R., 47 All., 421.

1925

SHIVA NATH
PRASAD
v.
TULSHI RAM.

Brij Narain v. Mangal Prasad (1) conclude this point and make the entire estate free from liability in case the debt is contracted for immorality. We think that the propositions laid down by their Lordships do not cover the point now before us. The question whether the interest of one coparcener can be attached and sold in execution of a decree against him was not a matter before their Lordships. The previous cases referred to above therefore still hold good. We are of opinion that this appeal has no force. It is accordingly dismissed with costs.

Appeal dismissed.

Before Mr. Justice Sulaiman and Mr. Justice Daniels.

1925
May, 21.

FAQIR CHAND AND ANOTHER (JUDGMENT-DEBTORS) v. SANT LAL (DECREE-HOLDER).*

Hindu law—Joint family property—Attachment of undivided share—Death of judgment-debtor—Attachment not there-by raised.

The attachment of the undivided interest of a co-parcener creates a charge on his interest which is not extinguished by the death of that co-parcener. *Suraj Bansi Koer v. Shoo Prasad Singh* (2) and *Lachmi Narain v. Kunji Lal* (3), followed.

THE facts of this case so far as they are necessary for the purpose of this report, sufficiently appear from the judgment of the Court.

Dr. *Kailas Nath Katju*, for the appellants.

Babu *Piari Lal Banerji*, for the respondent.

SULAIMAN and DANIELS, JJ. :—This is an appeal by the judgment-debtors from an order passed in execution. *Faqir Chand* is the father and *Musammatt*

* First Appeal No. 449 of 1924, from a decree of *Abdul Hasan*, Subordinate Judge of Dehra Dun, dated the 5th of August, 1924.

(1) (1923) I.L.R., 46 All., 95.

(2) (1879) I.L.R., 5 Cal., 148.

(3) (1894) I.L.R., 16 All., 449.