MISCELLANEOUS CIVIL

Before Sir Lal Gopal Mukerji, Acting Chief Justice, and Mr. Justice Young

OFFICIAL LIQUIDATOR, U. P. OIL MILLS COMPANY, LIMITED (APPLICANT) *v.* JAMNA PRASAD AND OTHERS (OPPOSITE PARTIES)*. 1933 *February*, 3

Hindu law—Joint family—Son's liability for father's debts—Joint family consisting of several brothers and their sons—Pious obligation of son does not arise unless family consists of father and sons only—Companies Act (VII of 1913), section 160—Contributories in case of death of member—Extent of liability of Hindu sons as such contributories—Companies Act (VII of 1913), section 30—Subscribers of memorandum are members, not merely persons who have contracted to purchase shares—Companies Act (VII of 1913), section 156—Deceased member is not a "past member".

The doctrine of pious obligation of a Hindu son to pay his father's debts would be available only when there is a family consisting of father and sons; where the family consists not only of the father and the sons, but also of brothers and nephews of the father, the position becomes entirely different. In the latter case, if the person who has incurred the debt be the manager of the family, he can bind the family only if he has incurred the debt for the benefit of the family; if he be not the manager, he cannot bind the family in any circumstances. If there is no benefit to the family, the debt can be realized by attachment, in execution, of the share of the debtor in his lifetime and sale thereof; but the share of the debtor's son would not be liable to be sold. If there be no attachment in the lifetime of the debtor, his interest would pass by survivorship to the remaining members of the family and the creditor would be without any remedy whatsoever.

Proposition No. 2 as enunciated by the Privy Council in *Brij Narain's* case, I. L. R., 46 All., 95, is confined to the case of a family consisting of a father and his sons only, and if there be more members, like brothers and nephews, of the family then the case falls under proposition No. 1.

So, where a joint family consisted of three brothers and their sons, and one of the brothers subscribed to the memorandum of

* Miscellaneous case No. 369 of 1928.

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association of a company for a certain number of shares but did not pay for them, and the official liquidator of the company in liquidation applied to have the deceased subscriber's son and nephews made contributories in his place, it was *held* (1) that as it had been found that the purchase of the shares was not for the benefit of the family, neither the nephews nor the son nor the joint family property in their hands could be made liable for the debt; and (2) that the son could be made liable only to the extent of any separate or self-acquired property of his father in his hands, and to that extent he was a contributory under section 160 of the Companies Act.

Section 30 of the Companies Act means that the subscribers of the memorandum of association of a company are to be treated as having become members of the company, by the very fact of the subscription, and not merely persons who had contracted to take shares, against whom a suit for specific performance had to be brought to make them take up the shares.

A member of a company who has died is not a "past member" within the meaning of section 156 of the Companies Act. Section 156 deals with the case of a member who has legally parted with his shares, and not one whose shares have devolved by inheritance on his death.

This case was partly heard and decided on the 31st of May, 1932. The rest of the case was heard and decided on the 3rd of February, 1933. Extracts from the first judgment, material for the purpose of elucidating the facts, are given below:

MUKERJI and YOUNG, JJ.:—This is an application on behalf of the Official Liquidator of the U. P. Oil Mills Co., Ltd., that certain persons described as the opposite parties might be brought on the record as the contributories in place of Jagmohan Ram, proprietor of Messrs. Swarath Ram Ramsaran Ram of Agra, since deceased. The facts alleged on behalf of the Official Liquidator are these. Jagmohan Ram signed the memorandum of association, on the 19th of June, 1920. Jagmohan Ram, however, did not pay anything towards the shares and he having died, the defendants, who formed a joint Hindu family with him, are liable to pay the amount of calls that may be necessary to make, for the reason that Jagmohan Ram made the purchase of shares for the benefit of the family.

Two written statements were filed, one on behalf of the son of Jagmohan, the minor Ram Lakhan, and the other by the rest

of the opposite parties. It appears and it is common ground that Swarath Ram, whose name the firm bears, had seven sons, of whom Jagmohan Ram was one. Two of the seven died without any issue. The opposite parties are the sons of the remaining five sons of Swarath Ram.

The defence of the nephews of Jagmohan Ram is that they did not admit that Jagmohan Ram ever subscribed to the memorandum of association and they denied that Jagmohan Ram ever was the head of the family or that he signed the memorandum of association on behalf of the family. The son of Jagmohan Ram denied that his father executed the memorandum of association, and raised other pleas which were similar to those raised by his cousins.

The Official Liquidator examined only one witness, Shiam Lal, and the opposite parties examined two witnesses. We have permitted the Official Liquidator to examine Shiam Lal again, because of certain alleged flaws remaining in the case; but that is no reason why the case should be adjourned, so far as the nephews of Jagmohan Ram are concerned.

The allegation of the Official Liquidator was that Jagmohan Ram purchased the shares on behalf of himself and the joint Hindu family of which he was a member. The defendants admitted that Jagmohan Ram died joint with them, and they have alleged that Jagmohan Ram left no separate property of his own. At the present moment we are not investigating the question whether Jagmohan Ram left any separate property of his own, because that question does not arise now. It being, however, an admitted fact that the nephews of Jagmohan Ram and Jagmohan Ram were joint, we have to see whether the purchase was made by Jagmohan Ram for the benefit of the family and whether the purchase binds the remaining members of the family, other than the son. The evidence adduced on behalf of the opposite parties is to the effect that Jagmohan Ram was not the eldest of the brothers. At the crucial date, namely the 19th of June, 1920, three out of the seven sons of Swarath Ram were living, namely Jagmohan Ram, Sital Prasad and Munni Lal. Munni Lal was the head of the family and carried on business at Jagdishpur in the district of Arrah where the family lived. Sital Prasad mainly carried on the business at Agra where the company was floated and he was assisted by four munims. One of the witnesses examined by the defendants admitted that Jagmohan Ram sometimes carried on the business at Agra.

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Jagmohan Ram signed the memorandum of association, if he ever signed it, as the malik (occupier) of the firm Swarath Ram Ramsaran Ram. On the evidence, therefore, it is clear that Jagmohan Ram had no better status than that of a member of a joint Hindu family. Further, we find no evidence which can show that the purchase by Jagmohan Ram was for the benefit of the family. The family did no business in shares. The business that was carried on at Agra was in sugar. The family manufactured sugar at Jagdishpur and this sugar was sold at Agra. The firm also sold sugar manufactured by others, as commission agents. There was only one customer for whom the firm at Agra purchased oil in the years 1918 to 1921. In the circumstances, it is difficult to hold that the purchase of the shares by Jagmohan Ram, assuming that he did purchase, was for the benefit of the family.

In the circumstances, we hold that the nephews of Jagmohan Ram are not liable to be brought on the record as contributories in the right of Jagmohan Ram deceased. We accordingly dismiss as against them the application of the Official Liquidator with costs.

The case of Ram Lakhan will be considered at a later stage when the additional evidence of Shiam Lal has been recorded.

After the evidence had been completed, the rest of the case was heard.

Messrs. *Bhagwati Shankar* and *Hazari Lal Kapoor*, for the applicant.

Dr. *K. N. Katju*, Dr. *N. P. Asthana*, Messrs. *Ambika Prasad* and *Shabd Saran*, for the opposite parties.

MUKERJI, A. C. J., and YOUNG, J. :—The case was partly heard and decided on the 31st of May, 1932. The result of that decision was that the application of the Official Liquidator was dismissed as against all the opposite parties, except as against Ram Lakhan, son of Jagmohan Ram. We directed by our order that Shiam Lal, witness, should be re-examined, and he has been re-examined. Now we proceed to decide the remaining issues.

Issue No. 1. The evidence of Shiam Lal now clearly establishes that Jagmohan Ram signed the memorandum

of association as a promotor and made himself liable for 151 shares of the value of Rs.100 each. Shiam Lal swore that he attested the memorandum of association in the presence of the executant, Jagmohan Ram, and * * * we hold that Shiam Lal did attest according to law the signature of Jagmohan Ram, and Jagmohan Ram's liability arose.

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Issue No. 4. According to section 160 of the Indian Companies Act Ram Lakhan is liable as a legal representative of Jagmohan Ram as a contributory "in due course of administration". This means that so far as Jagmohan Ram may have died possessed of separate property, that property in the hands of his son, Ram Lakhan, is liable as indicated in section 160 of the Indian Companies Act. It is, however, argued that not only the separate or self-acquired property of Jagmohan Ram is liable, but also the share of Ram Lakhan in the family property is liable to pay Jagmohan Ram's debt because of the pious duty of Ram Lakhan to pay such debt.

There can be no doubt that the debt in question is not tainted with immorality. Now we have to find out how far the share of Ram Lakhan in the joint family property is liable to pay Jagmohan Ram's debt.

The relevant proposition of Hindu law, when fully stated, would stand as follows :—A son is liable to pay his father's debt, out of the family property consisting of his own share and the share of the father, the property which was in the father's hand in the lifetime of the father. It is not a complete statement of the law to say that a Hindu son is bound to pay his father's debt because of a pious obligation to that effect. If that were the whole proposition of law, the son would be liable to pay out of his personal earnings, which however is not the law. The doctrine of pious obligation was invented to settle a conflict between two positions that were bound to arise in

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a family consisting of a father and his sons. The first position was that, in ancestral property, a son by his mere birth got a share which was equal to the share of the father. In accordance with this proposition of law the property in the hands of the father is *not* the absolute property of the father. That being so, he cannot utilize that property for the payment of his debts. The next position is this. A father is the head of the family. *Ostensibly*, he owns the entire property which he manages, although, *legally*, he and his sons have equal shares in the property. On the strength of this property, and on the credit of it, the father deals with the world at large and incurs debts. If the father be unable to raise any money on the credit of the joint family property, the result would probably be that in many cases maintenance of the sons and the family would become impossible; for there would be no credit in the market and nobody would lend money or provisions to the father because they would have no remedy or a poor remedy against the father. To adjust between these conflicting positions a doctrine was invented that it is the pious duty of the son to pay the father's debt, out of the entire family property, *including the shares of the sons*, provided the debt is not tainted with immorality.

The doctrine of pious obligation to pay the father's debt would be available only when there is a family consisting of father and sons. For, where the family consists not only of the father and the sons, but of brothers of the father and nephews of the father, the position becomes entirely different. Then it is no longer a case of a father at the head of his family, and incurring debts on the credit of family property. It is then a case of a debt incurred by one of the members of a Hindu family. If the person who has incurred the debt be the manager of the family, he can bind the family only if he has incurred the debt for the benefit of the family. If he be not the manager, he cannot bind the family in any circumstances. If there is no benefit to the family, the debt

can be realised, in the case of a simple money decree being passed on it, by attachment of the share of the debtor in his lifetime. If an attachment be effected, that attachment would virtually take the property attached out of the hands of the joint family and put it into the custody of the court. In that case the debtor's share, so attached, may be sold. But the share of the debtor's son would not be liable to be sold. It is the property which a father himself may sell to pay his own debt that can be sold through the intervention of the court. Where the debtor is not himself the head of a family consisting of himself and his son, he cannot sell any portion of the family property, *even his own share*, to pay his own debt: See *Balgobind Das* v. *Narain Lal* (1). If there be no attachment in the lifetime of the debtor, his interest would pass by survivorship to the remaining members of the family and the creditor would be without any remedy whatsoever: See *Binda Prasad* v. *Raj Ballabh* (2).

This state of the law has been recently laid down by their Lordships of the Privy Council in the case of *Brij Narain* v. *Mangal Prasad* (3). The case that was actually before their Lordships of the Privy Council was a case of a mortgage. But the Full Board of seven Judges proceeded to lay down the entire proposition of Hindu law on the question of payment of debts, because a previous decision of their Lordships, in *Sahu Ram Chandra* v. *Bhup Singh* (4), had to some extent unsettled the law as it was previously understood. In one sense, therefore, the propositions laid down by their Lordships were mostly *obiter dicta*, but in view of the fact that their Lordships did mean to settle the entire law we must accept their pronouncement as conclusive for us.

At page 104 their Lordships considered the several aspects that could arise in a Hindu family. The first case that their Lordships considered was the case of a joint

(1) (1893) I.L.R., 15 All., 339. (2) (1925) I.L.R., 48 All., 245.
(3) (1923) I.L.R., 46 All., 95. (4) (1917) I.L.R., 39 All., 437.

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family which was managed by one of the members. The law that was laid down was that the managing coparcener could neither alienate the family property nor burden the estate in his capacity as a manager except for purposes of necessity. It is important to note that their Lordships laid down the extent of the capacity of a member *as the manager*. The reason was that in other circumstances the member's acts had no effect.

In the second proposition their Lordships lay down that where the manager is a father and the family consists of a father and sons, the father has greater powers, and so long as the debt incurred by the father is not immoral, the whole estate of the family (consisting of the father and the sons) is liable to be taken in execution proceedings upon a decree for payment of that debt.

Their Lordships then state two other propositions of law with which we are not concerned here, and then they state as a fifth proposition that the liability of the estate in the case of facts stated in case No. 2 was not affected by the question whether the father was dead or alive.

Now in the case before us we have a family which does not consist merely of a father and a son or sons, but which consists of several members who do not stand in relation to one another as father and sons. The family of Jagmohan Ram consisted of himself, his brothers and his nephews and his own son. In such a case, the debt incurred by the manager could be enforced against the other members of the family only in the case of there existing a family necessity for incurring the debt. In any other case, like the present one, there is no liability at all on the family. The case before us does not fall under proposition No. 2 as enunciated in *Brij Narain's* case, because it was not the case of a family consisting of a father and sons, but it was a case in which there were members of the family other than sons.

The case before us not being covered by proposition No. 2 of their Lordships', and being covered by proposition No. 1, the liability of Ram Lakhan will be only to

the extent of the separate or self-acquired property (which did not merge in the joint family estate) in the hands of Ram Lakhan. We accordingly decide that the liability of Ram Lakhan is only to the extent of the property to which section 160 of the Indian Companies Act applies, namely the separate property of Jagmohan Ram in which no other person had any interest in the lifetime of Jagmohan Ram.

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Issue No. 10. It was argued on behalf of Ram Lakhan that Jagmohan Ram having died in the year 1921, he ceased to be a member of the company and therefore became a past member of the company within the meaning of section 156 of the Indian Companies Act and therefore his estate is not liable. This argument is not sound. Jagmohan Ram by his death did not become a past member within the meaning of section 156(1)(*i*). Having died, he could not continue to be a member of the company, but his estate continued to be liable. No authority has been produced before us to show that by mere death a member of a company becomes a "past member" within the meaning of section 156 of the Indian Companies Act. Section 156 deals with the case of a member who has legally parted with his shares. We accordingly hold that Jagmohan Ram's son is liable to be placed on the list of contributories.

Issue No. 11. The learned counsel for Ram Lakhan argued that because Jagmohan Ram did not pay anything towards the shares subscribed by him there was only a liability to be enforced by a suit for specific performance of the contract, to make him take up shares in the company. The argument is based on section 30 of the Indian Companies Act which says that the subscribers of the memorandum of a company "shall be deemed to have agreed to become members of the company". This section has been interpreted in several cases in this Court and other courts and it has been held that the

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words "shall be deemed to have agreed to become members of the company" mean that the subscribers of the memorandum of a company are to be treated as having become members of the company by the fact of the subscription. This view was taken in *In the matter of the Union Bank, Allahabad* (1) and in the case of *In the matter of J. H. Chandler & Co.* (2). No decided case in conflict with these authorities has been produced before us and we hold that by merely subscribing to the memorandum of association Jagmohan Ram became a member of the company.

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The result is that we allow the application of the Official Liquidator to this extent that we direct Ram Lakhan to be placed on the list of contributories for 151 shares and that he be liable "in due course of administration" as the legal representative of Jagmohan Ram. The Liquidator will have his costs from Ram Lakhan personally, inasmuch as Ram Lakhan unnecessarily raised pleas against his liability to be brought on the list of contributories.

APPELLATE CRIMINAL

Before Mr. Justice Young

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EMPEROR *v.* RAM BARAN SHUKLA*

Criminal Procedure Code, section 164—*Written confession—Magistrate accepting a confession already written out and signed by the person while under police control—Such confession inadmissible in evidence—"Record" a confession, meaning of.*

While an accused person was under the control of the police he wrote out a confession and signed it. He was thereafter taken before a Magistrate for recording his confession under section 164 of the Criminal Procedure Code. After the Magistrate had given him the usual warnings the accused person handed over the written confession to the Magistrate and said

* Criminal Appeal No. 906 of 1932, from an order of Rup Kishan Aga, Additional Session Judge of Aligarh, dated the 16th of September, 1932.

(1) (1925) I.L.R., 47 All., 669. (2) (1926) I.L.R., 48 All. 580.