1937
September, 8

Before Mr. Justice Niamat-ullah and Mr. Justice Allsop

CHATAR SEN (DEFENDANT) *v.* RAJA RAM AND OTHERS (PLAINTIFFS)*

Hindu law—Alienation by father—Father's debts—"Debt", meaning of—Not restricted to its modern technical sense—Includes liability to pay unliquidated damages for breach of an obligation.

A mortgage with possession was made in favour of a person who was the father in a joint Hindu family. One of the terms of the mortgage deed was that he should pay off a prior simple mortgage. Later, in order to fulfil this obligation, he borrowed money on the security of a simple mortgage of joint family property. On a suit by the sons for a declaration that the mortgage executed by their father was not binding on them the question was whether the liability undertaken by the father by the terms of the usufructuary mortgage was a "debt" and could be called an "antecedent debt":

Held that, whether the liability undertaken by the father was of such a character that it could be specifically enforced by a suit for the recovery of an ascertained sum or it was of the character of unliquidated damages and only a suit for recovery of the damage sustained by non-fulfilment of the liability could be brought, in either view the obligation to pay the money was a "debt" within the meaning of the terms "debt" and "antecedent debt" in Hindu law; and the mortgage in question, which was executed to pay off this antecedent debt, was binding on the sons.

The obvious meaning of the original texts of the Hindu law on the subject of a son's liability for his father's debts is that a son is bound to pay any sum which is lawfully due from the father, provided that the father's liability is not in any way tainted with immorality. Those texts can not be interpreted in the light of the technical and special meaning now assigned to the term "debt", and the phrase "antecedent debt" should not be confined to this narrow and technical sense of the word "debt". If the father had undertaken an obligation to pay a sum, it did not matter whether the remedy against him was for the payment of the sum by way of specific performance or

*Second Appeal No. 1359 of 1935, from a decree of C. I. David, First Civil Judge of Meerut, dated the 19th of July, 1935, reversing a decree of Brij Nandan Lal, Second Additional Munsif of Meerut, dated the 28th of January, 1935.

was for the recovery of damages for any loss which might be caused by the non-payment; the obligation existed and was a "debt" in either case.

Mr. *K. C. Mital,* for the appellant.

Mr. *C. B. Agarwala,* for the respondents.

NIAMAT-ULLAH and ALLSOP, JJ.:—On the 25th of August, 1921, one Mutsaddi Lal executed a deed of simple mortgage in favour of the appellant Lala Chatar Sen. On the 28th of January, 1926, Mutsaddi and Thakur, a member of his family, executed a usufructuary mortgage in favour of the defendants respondents Nos. 2 and 3 who are fathers of the plaintiffs respondents. One of the terms of this deed of usufructuary mortgage was that the mortgagees should pay a sum of Rs.1,580 to Lala Chatar Sen in order to redeem the simple mortgage of the 25th of August, 1921. On the 17th of September, 1927, the defendants respondents 2 and 3 executed a simple mortgage in favour of Lala Chatar Sen for a sum of Rs.1,390 in order to fulfil their obligation to pay the debt due to him from Mutsaddi. A suit was instituted on the basis of this last mortgage of the 17th of September, 1927, and a decree was passed. The suit which has given rise to the present appeal was instituted by the plaintiffs in order to obtain a declaration that the mortgage executed by their fathers, defendants 2 and 3, was not binding upon them. The trial court dismissed the suit In first appeal the learned First Subordinate Judge of Meerut decided that the suit should succeed and passed a decree accordingly. His reason was that the liability of the defendants respondents 2 and 3 to pay the amount due from Mutsaddi to Chatar Sen on the mortgage of the 25th of August, 1921, did not constitute an antecedent debt in payment of which these defendants respondents were entitled to alienate the joint family property belonging to them and the plaintiffs. The question at issue before us is whether this liability did amount to an antecedent debt which would entitle a father to alienate joint family property in payment of it.

1937

CHATAR SEN v. RAJA RAM

The learned Judge of the lower appellate court was influenced by his opinion that the liability to pay the amount due from Mutsaddi to Chatar Sen, incurred by the defendants respondents 2 and 3, was not a liability which could be specifically enforced. His point was that the most that could be claimed against the defendants 2 and 3 on the basis of the usufructuary mortgage in their favour was that they should pay damages for any loss incurred by their failure to pay the amount due from Mutsaddi to Chatar Sen. As the amount was not ascertained, the learned Judge thought that this was merely a liability to pay unliquidated damages and therefore it could not be a debt in the proper sense of the term.

It has been argued before us that a suit could have been instituted against defendants respondents 2 and 3 for the recovery of the specific amount because the mortgage in their favour was a usufructuary mortgage and because they were in possession of the property. Reliance was placed upon the case of *Sheopati Singh* v. *Jagdeo Singh* (1). In that case it was held by a Bench of this Court that a usufructuary mortgagee could be sued for part of the consideration which he had failed to pay to the mortgagor, since he was in possession of the mortgaged property. In a later case, *Khunni Lal* v. *Bankey Lal* (2), some doubt was cast upon the authority of the earlier ruling, but the principle of that ruling was again affirmed in the case of *Tikam Singh* v. *Bhola Nath* (3). In the view which we take of the case before us it is not necessary for us to consider whether we are prepared to follow the two rulings in *Sheopati Singh* v. *Jagdeo Singh* (1) and *Tikam Singh* v. *Bhola Nath* (3) or whether we are inclined to agree with the observations in the case of *Khunni Lal* v. *Bankey Lal* (2). We have come to the conclusion that it does not affect the issue whether the liability of the defendants respondents 2 and 3 to pay the sum due from

(1) (1930) I.L.R. 52 All. 761. (2) [1934] A.L.J. 713.
(3) I.L.R. [1937] All. 666.

Mutsaddi to Chatar Sen was or was not a liability which could be specifically enforced, that is, whether the claim against the defendants 2 and 3 would be a claim for the recovery of the specific sum of money or a claim for the recovery of an unliquidated amount by way of damages. We have been referred to the original authorities upon which the proposition is based that a son is liable to pay the antecedent debts of his father. The question is whether the term "antecedent debt" should be considered in the narrow and technical sense in which the term "debt" is now used, or whether it should include a wider class of liabilities. On behalf of the respondents reliance is placed upon the text of Brihaspati as translated by Max Muller in volume 33 of the Sacred Books of the East at page 319. It is pointed out that the question of a son's liability to pay the antecedent debts of his father is part of a discussion on "The law of debt". It is urged that the discussion of the subject begins with a statement on the precautions which should be taken by a creditor when he is proceeding to lend money. The original word which has been translated as loan is the Sanskrit word "rin". This word is used in the beginning of the discussion where it is said that a creditor should not advance money without taking certain precautions. It is therefore urged that the word "rin" where it is used in the farther part of the discussion about the liability of the son to pay a debt should also mean merely a liability incurred for the payment of a debt in the strict sense of the word. We do not think that there is much force in this argument, because, if we carry it to its logical conclusion, the liability of a son to pay the antecedent debts of his father would not extend to any liability incurred otherwise than by the advancing of a sum in cash to the father. We cannot believe that this was the intention of the author of the text. We cannot believe, for instance, that a son would not be liable to pay the unpaid price of a commodity which had been bought by his father or to pay rent due by his father as a tenant.

1937

CHATAR SEN v. RAJA RAM

We think that the obvious meaning is that a son is bound to pay any sum which is lawfully due from the father, provided that the father's liability is not in any way tainted with immorality. The question then is whether a son must satisfy the liability of the father for the payment of a sum of money in the circumstances of the case before us. A good deal of the argument on behalf of the respondents, that is the argument which was accepted by the learned Judge of the court below, is based upon the meaning assigned to terms at the present day. We do not think that the original text can be interpreted in the light of these special meanings. It has been urged on behalf of the respondents that there could be no specific decree against the father for the payment of this particular sum; but it cannot be doubted that the father had undertaken the obligation to pay off the debt from Mutsaddi Lal to the appellant. It may be that this obligation could not be specifically enforced; but the inference sought to be drawn from this, that the obligation itself was destroyed, is, we think, unjustified. There is no doubt that the obligation to pay the sum of money existed. The defendants respondents 2 and 3 had taken possession of the property and had made a promise to pay the money. They had an obligation to pay that sum, and it does not matter whether the remedy of the mortgagor was for the payment of the sum by way of specific relief or was for the recovery of damages for any loss which might have been caused by the non-payment of the sum. The father had an obligation, and we have no doubt that he was perfectly justified in fulfilling it. If he fulfilled it and borrowed money in order to pay the amount, we think that the sons are bound by his agreement. The obligation to pay was antecedent to the deed of mortgage executed on the 17th of September, 1927. For this reason we think that the mortgage was binding upon the sons. We therefore allow the appeal and dismiss the suit with costs throughout.