

principal sum within the prescribed period of three years. The appeal must be decreed and the decision of the lower appellate Court, in so far as it relates to the interest claimed, be reversed with costs. The defendants-appellants are found to have broken their contract, and the simple question is, what is a reasonable amount of compensation for them to pay? It does not appear to us necessary to remit an issue to the lower appellate Court upon the point for determination, as there is sufficient material before us to enable us to dispose of the matter ourselves. The principal sum of Rs. 199 should, we think, bear interest from the date of the last payment of interest to the date of our decree at the rate of 12 annas per cent. The interest which becoming due and remaining unpaid caused the default should bear interest at the rate of 15 annas per cent. from the date of default to the date of our decree. Thereafter the two amounts so decreed will bear interest at 12 annas per cent.

Decree modified.

FULL BENCH.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

RAM NARAIN LAL AND OTHERS (PLAINTIFFS) v. BHAWANI PRASAD AND ANOTHER (DEFENDANTS).*

Joint Hindu family—Joint family Debt—Sale of joint family property in execution of decree.

When a member of a joint Hindu family is sued for a family debt it may be assumed that he is sued for the same as the representative of the family; and when the decree in such a suit is substantially one in respect of the family debt and against the representative of the family, such decree may properly be executed against the family property.

Held, therefore (STRAIGHT, J., dissenting), where the father of a joint Hindu family, as the representative of the family, borrowed money for family purposes, hypothecating family property for the repayment of such money, and in a suit to recover such money by the sale of such property and other family property a decree was made against him directing the sale of the hypothecated property and such other property, and such properties were sold in execution of such decree, that, having regard to these facts, it was reasonable to hold that the father was sued as the representative of the family, and such decree was made against him

* Appeal under cl. 10 of the Letters Patent, No. 2 of 1880.

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in that capacity, and was so executed against him, and consequently his sons were not entitled to recover their legal shares of such properties from the auction-purchaser. *Bissessur Lall Sahoo v. Luchmessur Singh* (1) followed; *Deendyal Lal v. Jugdeep Narain Singh* (2) distinguished.

Per STRAIGHT, J.—That, the father alone having been a party to such suit, and the sons not having been parties thereto either personally or by a formally constituted representative, and such decree being against the father alone, the rights and interest of the sons in the family properties were not affected by the sale of such properties in execution of such decree, and the sons were entitled to recover their legal shares of such properties from the auction-purchaser. *Deendyal Lal v. Jugdeep Narain Singh* (2) followed.

ON the 15th June, 1875, Kalandar Lal, a defendant in this suit, gave Bhawani Prasad, also a defendant in this suit, a bond for Rs. 799, payable within two years, in which he hypothecated a two anna share of a certain village as collateral security, describing such share as his own property. The principal amount of this bond represented the principal amounts and interest due on three bonds which Kalandar Lal had previously given to Bhawani Prasad, dated severally the 7th August, 1871, the 10th July, 1873, and the 6th June, 1874. These amounts, the bond of the 15th June, 1875, recited, were borrowed by Kalandar Lal for the payment of Government revenue and the maintenance of his children. At the time when the bond of the 15th June, 1875, was executed, Kalandar Lal had four sons, three of whom were minors. The bond was witnessed by the fourth and eldest son. Bhawani Prasad brought a suit upon the bond against Kalandar Lal, claiming a decree against him personally and against the two-anna share and his other property, and on the 21st June, 1878, obtained a decree against Kalandar Lal as claimed. On the 15th March, 1879, two houses were put up for sale in execution of this decree as the property of Kalandar Lal, and such houses were purchased by Bhawani Prasad, the decree-holder. On the 20th March, 1879, the two-anna share was put up for sale in execution of the decree as the property of Kalandar Lal, and the same was also purchased by Bhawani Prasad. In April, 1879, the sons and grandsons of Kalandar Lal brought the present suit against him and Bhawani Prasad in which they claimed possession of four-fifths of the two-anna share (1 anna 7½ pies) and four-fifths of the houses, and to have the auction-sales of the

(1) 5 Calc. L. R., 477; L. R., 6 Ind.

(2) L. L. R., 3 Calc., 198.

15th March and 20th March, 1879, respectively, cancelled. They contended that, as such property was joint family property, and the debt in satisfaction whereof such property had been sold had been contracted by Kalandar Lal, their father and grandfather, without legal necessity, the sales of such property should be cancelled to the extent of the shares of his four sons. The suit was not defended by Kalandar Lal. The defendant Bhawani Prasad did not deny that such property was joint family property, but contended that Kalandar Lal had contracted the debt in question "in the presence of the plaintiffs and with their consent, to meet the necessity of satisfying former debts and to maintain the family, and the plaintiffs had not raised any objection to the contracting of such debt; and that the claim of the plaintiffs, brought in collusion with their father, the judgment-debtor, should not be allowed after the decree in respect of such debt and the auction-sales had become absolute." The Court of first instance fixed the following issues for trial, *viz.*, "Was the debt in satisfaction of which the property was sold at auction contracted by Kalandar Lal, the judgment debtor, illegally? Should four shares of that property be awarded to the plaintiffs by avoidance of the auction-sales to that extent?" The Court of first instance held in respect of such issues that, inasmuch as the debt had been contracted by Kalandar Lal as the head and manager of a joint Hindu family for necessary purposes, that is to say, for the payment of Government revenue and family wants, and the plaintiffs had shared in the benefits derived from the use of the moneys so borrowed, the plaintiffs were not entitled to recover any portion of the property in suit. On appeal by the plaintiffs the lower appellate Court affirmed the decision of the Court of first instance.

On second appeal by the plaintiffs to the High Court they contended that the defendant Bhawani Prasad, who had purchased the rights and interests of Kalandar Lal only, could not obtain their shares, as they were not parties to the suit against Kalandar Lal, and the defendant Bhawani Prasad, if he considered them liable for the debt due to him, should have sued and obtained a decree against them. The appeal came for hearing before Pearson, J., and Straight, J., who differed in opinion on the point whether

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under the circumstances the plaintiffs were entitled to recover their shares of the joint family property. The following judgments were delivered by the learned Judges:—

PEARSON, J.—In execution of a decree passed in favour of the defendant Bhawani Prasad on the basis of a bond executed by the defendant Kalandar Lal, in which the landed estate and the houses to which the present suit relates were hypothecated to secure the repayment of a loan, that property was sold and purchased by the decree-holder. The present suit has been instituted by the sons and grandsons of the judgment-debtor for the purpose of avoiding the sales in respect of their legal shares in that property. The claim rests on the averment that Kalandar Lal had borrowed the money in consideration of which the bond was executed without lawful cause, and that the plaintiffs' shares in the hypothecated property could not therefore be held liable for the debt. The lower Courts have found that the averment is untrue, and that the money was borrowed by Kalandar Lal as the head and manager of the family for the family expenses with the knowledge and consent of the plaintiffs who have shared in the benefits derived from the use of the money: and have dismissed the suit.

The ground on which the decision of the lower Courts is impugned by the appeal before us is that the auction-purchaser, who purchased the rights and interests of Kalandar Lal only at the auction-sales, cannot have acquired by his purchase the shares of the appellants who were not parties to the suit in which the decree ordering the sales was passed.

The ground of appeal is undoubtedly specious. It cannot be denied that the plaintiffs-appellants were not parties to the suit in which the decree was passed, that it was passed against Kalandar Lal alone, and that his rights and interests in the property only were ostensibly sold. It must also be allowed that the Privy Council's decision in the case of *Deendyal Lal v. Jugdeep Narain Singh* (1) countenances and supports the appellants' contention. Moreover the general principle that no person not a party to a suit can be affected by the decree passed therein is indisputable. But that principle may not be applicable in cases in which the

(1) I. L. R., 3 Calc., 198.

party sued was sued in respect of some matter in which he had acted as the agent and representative of others as well as on his own behalf. There is nothing unreasonable in holding that the head of the family may be taken to represent its members. In a joint Hindu family the control and management of the family property belongs to the father, who is therefore a person with whom outsiders are justified in dealing as the representative of the family and who may justly be sued as such. It may not then have been necessary in the suit brought by Bhawani Prasad against Kalandar Lal that the plaintiffs should have been joined as co-defendants with the head of the family. It might have been well had Bhawani Prasad in that suit distinctly stated that he had dealt with Kalandar Lal in the matter of the bond as the head of the family, and not in his individual capacity, and that the property hypothecated in the bond was property in which the members of his family were interested. But the omission to state those particulars does not compel us to hold, in the face of the decision in the present suit, that Kalandar Lal was in that suit sued personally and not as the head of his family.

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In the case of *Bissessur Lall Sahoo v. Luchmessur Singh* (1) it was held that two decrees passed against one of two heirs of Ram Nath Das affected the other heir, "being substantially decrees in respect of a joint debt of the family," and could be "properly executed against the joint family property." The authority of this decision which is of later date than the decision in the case of *Deendyal Lal v. Jugdeep Narain Singh* (2) above-mentioned permits us to decide the case before us in accordance with justice. Accordingly I would dismiss the appeal with costs.

STRAIGHT, J.—I regret I am unable to concur in the judgment of my honourable colleague Mr. Justice Pearson, the more so as I find that the view I entertain upon the question raised by this appeal is directly in conflict with a ruling of Spankie and Oldfield, JJ., in *Deva Singh v. Ram Manohar* (3). I should have hesitated to differ in the present case, did it not appear to me that that decision was passed under a misinterpretation of a Privy Council judgment,

(1) 5 Calc. L. R., 477; L. R., 6 Ind. App., 233.

(2) I. L. R., 3 Calc., 198.

(3) I. L. R., 2 All., 746.

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which I will fully advert to presently, and is directly at variance with another precedent of the same tribunal.

I presume it may be taken as admitted for the purpose of discussing the point raised in the present appeal that the suit of the respondent, Bhawani Prasad, was instituted and the decree in it given against Kalandar Lal alone, and that what was sold upon it in execution was Kalandar Lal's right, title, and interest as judgment-debtor. Under such circumstances, if the case of *Deendyal Lal v. Jugdeep Narain Singh* (1) is still to be acted upon as sound law, it would seem to be a distinct and positive authority to the effect that all Bhawani Prasad, as auction-purchaser, could acquire was the right possessed by Kalandar Lal to compel partition, or in other words, all he could take under the compulsory sale was such share as the judgment-debtor might have got under a partition. "If he had sought to go further," their Lordships in that case say, "and to enforce his debt against the whole property, and the co-sharers therein who were not parties to the bond, he ought to have framed his suit accordingly, and have made those co-sharers parties to it. By the proceedings which he took he could not get more than was seized and sold in execution, viz., the right, title, and interest of the father." I cannot imagine language more explicit to recognise the long-established and well-understood principle of law that no interests but those of persons who are actually parties to a decree can be affected in execution. It is now said, however, that the views thus expressed by their Lordships of the Privy Council have been modified, if not overruled, in *Bisnessur Lall Sahoo v. Luchmessur Singh* (2), and my honourable colleagues seem to have adopted this suggestion. But with great respect to them, it seems to me that they have done so under a misinterpretation of the judgment in the latter case, and in construing it to establish, as a rule for general guidance, what was only intended to be applicable to that particular suit and its special and peculiar circumstances. I think also that some confusion is caused by mixing up the circumstances of the litigation between the sons and the auction-purchaser with the earlier proceedings by the auction-purchaser against the father for the recovery of

(1) I. L. R., 3 Calc., 198.

(2) 5 Calc. L. R., 477; L. R., 6 Ind. App. 238.

the original debt. Now it must be observed that in the judgment in *Bissessur Lall Sahoo v. Luchmessur Singh* (1), as also in the argument of counsel on both sides, no mention of the case of *Deendyal Lal v. Jugdeep Narain Singh* (2) is to be found, though it had been decided only some two years before, and was an authority that had already been followed by the Indian Courts in several instances. If their Lordships intended to disturb or qualify it, as a precedent, it is difficult to understand their thus passing it by without reference or observation of any kind. In deference to the views of my colleagues, I feel bound to examine somewhat in detail the facts of *Bissessur Lall Sahoo v. Luchmessur Singh* (1) for the purpose of ascertaining, if I can, the real grounds upon which the decision of that appeal proceeded. One Nath Das, father of Ram Nath Das, died in 1853 leaving his son and a widow him surviving. Ram Nath Das died in 1855, and he left a widow and two sons Musahib and Chuman. In 1862 three suits were instituted on behalf of the infant Raja of Ramnagar for arrears of rent alleged to be due from Nath Das and Ram Nath Das' family, and they were directed as follows. The first against the widows of Nath Das and Ram Nath Das as guardians of Musahib and Chuman; the second against Musahib as heir of Nath Das; the third against the widow of Ram Nath Das as guardian of Musahib. It would therefore seem that in each suit the defendants were brought on to the record, not only for themselves and any interest they individually might have, but in a representative capacity. It must be conceded that neither in the second nor in the third case was Chuman specially mentioned, but from the mode in which his brother was cited in the one and his mother in the other suit, they might fairly be said to be his representatives, and any defence they could put forward to the claim must have had the effect of protecting his interests as well as their own. Then as to the decrees, they were passed in case No. 1 against the property left by Nath Das and Ram Nath Das; in No. 2 against the property left by Nath Das only; in No. 3 against the property left by Ram Nath Das. In execution no objection was ever made, either by the widow or by Musahib or Chuman, and it was under

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(1) 5 Calc. L. R., 477; L. R., 6 Ind. App., 233. (2) I. L. R., 3 Calc., 198.

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the special circumstances of a suit so brought and relief thus decreed that the property left by Nath Das and Ram Nath Das was brought to sale and purchased by the decree-holder. It appears to me that, substantially, if not to technical completeness, the principle in *Deendyal Lal v. Jugdeep Narain Singh* (1) already adverted to of making the co-sharers parties was complied with by the judgment creditor in framing his suit, and the right which Musahib and Chuman professed to possess to recover their interest to the extent to which it had been taken under sale in execution of decrees Nos. 2 and 3 was a mere bag of wind, which conveyed nothing to the purchaser, the plaintiff in the suit in which the Privy Council judgment was given. For as to Musahib it is difficult to see what pretence he could put forward to defeat the auction-purchaser. In the first suit, which neither he nor his brother ever sought to impugn, he was properly represented by his grandmother and mother as guardians of himself and brother; in the second he was personally a party; while in the third he was again cited through his mother as guardian. He therefore was from the beginning to the end of the litigation involving liability to the joint family property identified with, and directly or indirectly made cognizant of, the suit by which it was sought to charge his share for his grandmother's and father's debts. As regards Chuman I have already pointed out why his mother and brother may be considered to have represented his interests as well as their own, and it is with reference to all the circumstances I have detailed that it appears to me the opinion of their Lordships of the Privy Council, that "the decrees were substantially in respect of a joint debt of the family and against the representative of the family, and might properly be executed against the joint family property" must be confined. In short it was patent upon the face of the record that the defendants in each proceeding were brought into Court as representatives of all the interests in the joint family estate, and had full opportunity of protecting the rights of themselves and the other co-sharers.

I therefore entirely fail to see in what way their Lordships' decision in *Bissessur Lal Sahoo v. Luchmessur Singh* (2) can be held to disturb the authority of *Deendyal Lal's* case (1), the principle

(1) I. L. R., 3 Calc., 193.

(2) 5 Calc. L. R., 477; L. R., 6 Ind. App., 233

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of which appears to me to be directly applicable to the present appeal. Bhawani Prasad might have so framed his suit against Kalandar Lal as to make it one for the recovery of a debt incurred by him in the character of head and manager of a joint Hindu family, and by joining the sons and grandsons of whose existence he was perfectly well aware all difficulty might have been obviated. As he did not do so, he cannot in my opinion take under the auction-purchase at the sale in execution more than the share of the person against whom he obtained his decree. The argument that hardship is thus entailed upon him I cannot entertain, and it seems to me much greater injustice and inconvenience would be caused by allowing the rights and interests of persons to be disposed of by sale in execution of decrees in suits to which neither in person nor by a representative were they cited as parties, than by leaving auction-purchasers in their natural position of taking what is in terms sold to them and no more. I am fortified in this view by a valuable and exhaustive judgment of Innes, J., in *Venkataramayyan v. Venkatasubramania Dikshatar* (1) with which I may say I entirely concur not only in the conclusions but in his criticisms on the several cases to which he refers, all of which I have been at pains to examine and consider. I would therefore reverse the decision of the lower Courts and decree the appeal, but having regard to all the circumstances without costs.

The plaintiffs appealed to the Full Court from the judgment of Pearson, J., under cl. 10 of the Letters Patent, raising the same contention as they had raised before the Division Bench.

The *Senior Government Pleader (Lala Jiala Prasad)*, for the appellants.

Munshi *Kashi Prasad*, for the respondent.

The following judgments were delivered by the Full Court:

PEARSON, SPANKIE, and OLDFIELD, JJ., concurring.—The suit has been brought to recover 1 anna $7\frac{1}{2}$ pies out of a two anna share in a village and four shares of two buildings, by setting aside two auction-sales dated 20th and 15th March, 1879, respectively, held in execution of a decree dated 21st June, 1878, obtained by Bhawani

(1) I. L. R., 1 Mad., 358.

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Prasad against Kalandar Lal in a suit which the former brought on a bond dated 15th June, 1875, executed in his favour by Kalandar Lal by which the two annas share was mortgaged. Bhawani Prasad purchased the property sold at the auction-sales. Plaintiffs are the four sons of Kalandar Lal and sue to recover their shares on the ground that Kalandar Lal contracted the debt without legal necessity. The defence was that the money had been borrowed for family necessities and with consent of plaintiffs. Both Courts dismissed the suit. In second appeal to this Court a plea was taken by plaintiffs that Bhawani Prasad bought only the rights and interests of Kalandar Lal and not the shares of plaintiffs who were not parties to the suit which was brought against their father only. The appeal was heard by a Division Bench consisting of Pearson, J., and Straight, J., and the decrees of the lower Courts were affirmed, Mr. Justice Straight dissenting. An appeal has now been preferred to the Court at large from the judgment of Mr. Justice Pearson on the same ground taken before the Division Bench.

The question to be determined is whether the rights and interests of Kalandar Lal only in the property passed to Bhawani Prasad at the two sales, or whether the whole family property was sold including the sons' interests, and in order to arrive at a determination we must examine the proceedings in the suit brought by Bhawani Prasad against Kalandar Lal, and the decree made in it, and the execution-proceedings, in order to ascertain if the decree was made for the recovery of a family debt against Kalandar Lal as representative of a joint Hindu family. In the case of *Bissessur Lall Sahoo v. Luchmessur Singh* (1) two decrees had been obtained against a member of a joint Hindu family as heir of his grandfather to recover a family debt, and it was held that the entire family property was properly saleable under those decrees. Their Lordships observed: "It appears to their Lordships that acting on the principle which follows from their finding that this family is joint, it must be assumed that Musahib Das is sued as a representative of the family." That decision therefore is an authority for holding that, when a suit is brought to recover a family debt against a member

(1) 5 Calc., L. R., 477; L. R., 6 Ind. App., 233.

of a joint Hindu family, it may be assumed that the defendant is sued as representative of the family; and also for holding that, when looking at the substance of the eases and the decrees the latter are substantially decrees in respect of a joint debt of the family and against the representatives of the family, they may be properly executed against the family property. To consider the father as representing the family in a suit brought against him for recovery of a family debt is quite consistent with the status of a joint Hindu family, in which the father in regard to his minor sons is the natural guardian in all cases, until partition takes place the legal head and representative of the family in all dealings respecting the family property.

In the case before us it is admitted that of the four sons of Kalandar Lal three were minors under the father's guardianship when the bond dated the 15th June, 1875, was executed, and it was witnessed by the fourth adult son. It is not now disputed that Kalandar Lal was acting for the family and borrowed the money for family necessities, a fact which sufficiently appears from the recitals in the bond, and the suit was brought against Kalandar Lal for the recovery of this family debt from the hypothecated and other property, and the decree was made for the sum due by enforcement of the hypothecation, and the decree-holder in taking out execution applied to bring to sale the entire two annas share hypothecated and the two buildings, all being joint family property. Looking to the above facts it seems reasonable to hold that Kalandar Lal represented his sons in the suit brought for recovery of the family debt, and that the intention of the decree was to recover the debt from the hypothecated family property, the whole of which it was intended to sell at the auction-sale, and the auction-purchaser is entitled to the same. It appears that the two houses sold in execution of the decree dated 21st June, 1878, were not hypothecated in the bond dated 15th June, 1875, and that the decree above-mentioned, while it awarded to the plaintiff in the suit which it terminated the total amount claimed by him with future interest, only provided for its realization by the enforcement of the lien. Had the plaintiffs in the suit which is brought before us by the present appeal claimed avoidance of the sales of the

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houses in so far as their own rights and interests were effected thereby, on the ground that those sales could not legally be made in execution of the decree, it would have been incumbent on us to determine the question raised by such a contention as to the right construction of the terms of the decree. But as no such contention has been made by or on behalf of the plaintiffs at any stage of the proceedings, either in the lower Courts or in this Court, we do not feel called upon to decide it.

The decision of the Privy Council in *Deendyal Lal v. Jugdeep Narain Singh* (1) has been pressed upon us as an authority for holding that, as the sons were not formally made defendants in the suit brought against their father Kalandar Lal, the decree obtained in that suit can only be considered to be a personal decree against Kalandar Lal, and that neither the decree nor the auction-sales made under it will affect them. That case, however, does not necessarily conflict with the principle laid down in *Bissessur Lall Sahoo v. Luchmessur Singh* (2) or with the view now taken in the case before us. The facts of the case of *Deendyal Lal v. Jugdeep Narain Singh* (1) are distinguishable. There the decree-holder Deendyal Lal had obtained a bond from Toofani Singh the father of the plaintiff, in which certain property was hypothecated, but he contented himself with suing Toofani Singh, and obtaining a money decree only against him, and instead of taking steps to enforce the hypothecation he took out execution against the right, title, and share of Toofani Singh only in some joint family property belonging to him and his son the plaintiff, property which had not been claimed by him in his suit nor decreed, and he himself became the purchaser. As observed by Mr. Justice Phear in his judgment in that case, "the property was not sold in pursuance of a decree directing that it should be sold, or in any manner pointing out that it was the property out of which the debt should be realized The judgment-debtor chose for reasons of his own simply to sell the right, title, and interest of the father; and he cannot now, I think, be heard to assert that he is entitled to hold the whole property, as if he had in fact sold the whole family property, and was, at the time of the execution-sale, entitled to do so (3)." It is in these points

(1) I. L. R., 3 Calc., 198.

(3) 12 B. L. R., at pp. 102, 103.

(2) 5 Calc. L. R., 477; L. R., 6 Ind. App., 234.

that the case we are dealing with and that of *Bissessur Lall Sahoo v. Luchmessur Singh* (1) are to be distinguished from that of *Deendyal Lal v. Jugdeep Narain Singh* (2): and in the case cited by Mr. Justice Straight in his judgment—*Venkatasamayyan v. Venkatasubramania Dikshatar* (3)—it will be seen that the judgment of the Chief Justice and Mr. Justice Kindersley proceeded on the ground that nothing in the litigation indicated that it was intended to enforce the debt due from the whole family, and that the decree was not passed against the father as managing member of the family, and therefore the question whether his minor sons though not parties to the record may be considered as represented by their father did not arise. In each case we have to ascertain what the intention and operation of the decree and execution-proceedings substantially are, and to give effect to them. The appeal should be dismissed with costs.

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STUART, C. J.—I substantially concur in the judgment of my colleagues Pearson, Spankie, and Oldfield, JJ. and in their examination of the authorities which were referred to at the argument. The case of *Deendyal Lal v. Jugdeep Narain Singh* (2) is clearly distinguishable, and in my opinion has no application to the case before us, as to which it seems to me that the reasons assigned by the Judge for the conclusion he arrived at are sufficient. It cannot I think be for one moment doubted that the defendant Kalandar Lal incurred the debt in question for a necessary and not for an immoral or extravagant purpose, and that he executed the bond in suit in a representative capacity in behalf of the family, and the bad faith of the plaintiffs is but too apparent, they having been not only consenting parties to the mortgage, but having taken benefit under it. Under these circumstances the doctrine of the Hindu law on the subject laid down by Mr. Justice West in his admirable digest of the Hindu law, 2nd edition, 1878, page 340, strictly applies, where it is stated that “the Hindu law lays down broadly that sons and grandsons shall discharge the obligation of their ancestors, except where they have been contracted for immoral purposes, and this duty is not altered by a partition amongst the sons.” I am

(1) 5 Calc. L. R., 477; L. R., 6 Ind. App., 233.

(2) I. L. R., 3 Calc., 198.
 (3) I. L. R., 1 Mad., 358.

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therefore of opinion that the order of the Division Bench must be affirmed.

STRAIGHT, J.—I see no reason to alter the opinion I expressed upon this case when it was before the Division Bench of which I was a member, and I regret that I am constrained to hold a view at variance with the rest of the Court. The impropriety in conduct or bad faith of the plaintiffs-appellants has as far as I can see no bearing one way or the other upon the plain legal question raised by this appeal, namely,—Can the rights and interests of the other members of a joint Hindu family be affected by sale in execution of a decree against the father alone for enforcement of lien under a bond executed by him charging the whole joint property, when such decree has been passed in a suit in which the father was sole defendant and to which none of the other members of the joint family either personally or by formally constituted representatives were made parties. As I expressed my views upon the matter at length in my former judgment it is unnecessary to recapitulate them now, or to do more than say that I adhere to them and to the order which I was then of opinion should be passed on the appeal.

Appeal dismissed.

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APPELLATE CIVIL.

Before Mr. Justice Spankie and Mr. Justice Straight.

BINDESHRI CHAUBEY AND OTHERS (PLAINTIFFS) v. NANDU (DEFENDANT).*

Return by Appellate Court of plaint for amendment or presentation to proper Court—Appeal from Order—Second Appeal to High Court—Act X of 1877 (Civil Procedure Code), ss. 540, 588 (6).

The lower appellate Court (Subordinate Judge) decided on appeal by the defendant from the decree of the Court of instance (Munsif) that the Court of first instance had no jurisdiction to entertain the suit, as the value of the subject-matter of the suit exceeded the pecuniary limits of its jurisdiction; and ordered that "the appellant's appeal be decreed, the decision of the Munsif be reversed, and the record of the case be sent to the Munsif to return the plaint to the plaintiff for presentation to the proper Court." The plaintiff appealed to the High Court

* Second Appeal, No. 61 of 1880, from a decree of Hakim Rahat Ali, Subordinate Judge of Gorakhpur, dated the 21st July, 1880, reversing a decree of Maulvi Abdul Razzak, Munsif of Deoria, dated the 19th March, 1880.