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contract," and ss. 69 and 70 seem specially framed to meet cases in which, while no contract can be said actually to exist (and to imply one would involve a resort to legal fiction), justice and equity require that a person, for whom an act has been done or money has been paid by another of which he enjoys the benefit, such other not intending to do the act or make the payment gratuitously, should re-imburse or compensate the person doing such act or making such payment. Consequently these two sections create a statutable duty, or in other words, turn a natural into a legal obligation in the person for whom the act has been done or the payment has been made towards the person doing such act and making such payment, and the latter may call upon the former to fulfil such duty and obligation, and if he fail to discharge it, he will be responsible in damages for the breach. In the present case the plaintiff paid the revenue for the defendants lawfully, that is, for a lawful purpose; he did not intend to do so gratuitously, and the defendant has adopted and enjoyed the benefit of the payments. The position of the parties, therefore, directly falls within the terms of s. 70 of the Contract Act. The plaintiff's suit accordingly was in reality one for damages, the measure of which will be the amount he has actually paid, and as such was of the nature cognizable by a Small Cause Court, the amount sought to be recovered being under Rs. 500; s. 586 of the Civil Procedure Code consequently applies, and no second appeal can be had from the decision of the officiating Judge to this Court.

APPELLATE CIVIL.

1880
July 7.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

RAM SEVAK DAS (PLAINTIFF) *v.* RAGHUBAR RAI AND OTHERS (DEFENDANTS).*

Hindu Law—Joint Hindu family—Alienation—Liability of the Joint undivided family property for family debts—Sale in Execution of Decree against one member of Family Property—Rights of other members.

During the minority of *S*, a member of a joint Hindu family consisting of himself, his father *J*, and his uncle *H*, and while he was living under the natural

* Second Appeal, No. 257 of 1880, from a decree of Rai Bhagwan Prasad, Subordinate Judge of Azamgarh, dated the 16th December, 1879, affirming a decree of Maulvi Kamar-ud-din Ahmad, Munsif of Azamgarh, dated the 11th October, 1879.

guardianship of his father, *R* sued *J* and *H*, but not *S*, as the heirs of *P*, *S*'s grandfather, and as the heads and representatives of the joint family, to recover a joint family debt incurred to *R* by *P*, before *S*'s birth, by the sale of the joint family estate which had been hypothecated by *P* as security for the payment of such debt. *R* obtained a decree in this suit against *J* and *H* for such debt, such decree directing the sale of the joint family estate for the satisfaction of the debt. In the execution of such decree the rights and interests of *J* and *H* in such estate were put up for sale and were purchased by *R*, who took possession of such estate. *Held*, in a suit by *S* to recover his share of the joint family estate, that, under the circumstances, it must be held that the decree against *J* and *H* was made against them as representing the joint family, and therefore such decree was properly executable against such estate, notwithstanding that *S* was not formally brought on the record of the suit in which such decree was made, and *S* could not recover his share of such estate. *Bissessur Lall Sahoo* v. *Luchmessur Singh* (1) followed: *Deendyal Lal* v. *Jugdeep Narain Singh* (2) distinguished.

The facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Mr. *Spankie*, for the appellant.

Munshis *Hanuman Prasad* and *Kashi Prasad*, for the respondents.

The judgment of the High Court (PEARSON, J., and OLDFIELD, J.,) was delivered by

OLDFIELD, J.—The plaintiff's grandfather Pragash Rai borrowed a sum of money from the defendants No. 3, 4, and 5, respondents before us, by deed dated 11th September, 1865, before the birth of plaintiff, and mortgaged certain ancestral property as security for the loan. In 1875, when plaintiff was a minor living under the natural guardianship of his father Jasram Rai, the respondents above mentioned brought a suit against Jasram Rai and his brother Harsukh Rai, as heirs of Pragash Rai, for the recovery of the money lent by sale of the property mortgaged, and obtained a decree on 21st November, 1875; and they executed their decree by attaching and selling the mortgaged property, and became the purchasers on the 20th March, 1876, and obtained possession of the property. The plaintiff has brought the present suit to recover his share of the property on the ground that the sale cannot affect more than Jasram Rai's and Harsukh Rai's

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

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interests. The Courts below have dismissed the suit, and we find no reason to interfere.

The money for recovery of which the respondents' suit was brought was borrowed by plaintiff's grandfather before plaintiff's birth for the purpose of releasing from liability to sale certain ancestral family property; the debt was therefore clearly a debt which plaintiff is bound to pay, and for which the ancestral property is liable, and we cannot allow the contention raised that, looking at the proceedings taken by the respondents in the suit they brought in 1875 against Harsukh Rai and Jasram Rai, and the decree obtained by them, and the sale-proceedings, the respondents bought only the interests of Jasram Rai and Harsukh Rai. It may be that plaintiff was not formally brought on the record of that case as a defendant under the guardianship of his father, but at the time he was a minor, necessarily under the guardianship of his father, who was admittedly the head of a joint Hindu family, and the suit was brought against his father and his uncle as the heirs of Pragash Rai. It is presumable that the heirs were sued as heads and representatives of the joint family, and indeed there is no reason to doubt the fact, and the suit was brought ostensibly and in fact to recover a debt for which the family was liable, and the relief sought was to recover the debt by sale of the ancestral property mortgaged, and the decree was made for the sale of the property. Under these circumstances, it must be held that the decree was passed against Jasram Rai and Harsukh Rai as representing the joint family in respect of a joint debt of the family, and was properly executable against the joint ancestral property, and the plaintiff cannot recover the property sold in execution. In thus deciding this case we consider we are doing no more than giving effect to the principle laid down in *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 debt for which the joint family was liable, and the question was whether the entire family property, which had been sold in execution, was liable under the decrees passed against the judgment-debtor only. It was held to be liable. Their Lord-

(1) I. L. R., 6 Ind. App., 233.

ships held that, the family being joint, it was to be presumed that the suit was brought against the member of the family as representing the family; and they observed, looking to the substance of the cases and the decrees, "they are substantially decrees in respect of a joint debt of the family and against the representative of the family, and may be properly executed against the joint family property;" and they add: "The Court will look at the substance of the transaction in execution proceedings, and will not be disposed to set aside an execution upon mere technical grounds when they find that it is substantially right."

The case of *Deendyal Lal* v. *Jugdeep Narain Singh* (1) has been cited as an authority for an opposite view to the one we take. But the facts of that case may not be similar; it is not clear, for instance, from the report of that case whether the decree in the suit had been passed against property other than that which it was sought to sell in execution, and the auction-purchaser appears not to have been considered a *bonâ fide* purchaser for value under the circumstances. We dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

1880 *July* 19.

BEHARI BHAGAT (DEFENDANT) *v.* BEGAM BIBI AND OTHERS (PLAINTIFFS.)*

Appeal—Act X of 1877 (*Civil Procedure Code*), *s.* 540.

The plaintiffs, the widow and son respectively of *N*, deceased, claimed immoveable property inherited from his father by *N*, and also immoveable property which had devolved upon *N* from his brother, who had predeceased him, and mesne profits of such properties. The Court of first instance, finding that the claim to the former property was admitted, and that to the latter was not denied, but resisted as barred by s. 13 of Act X of 1877, and holding it not to be so barred, made a decree returning the plaint to the plaintiffs that they might after correcting it file it either in the Revenue Court in regard to the profits of the former property, or in the Civil Court for possession of the latter property. *Held* that, although the claim of the plaintiffs was not either decreed or dismissed, yet as the right and title asserted by them to such properties was implicitly recognised by such decree, the defendants were entitled to appeal from it.

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* First Appeal, No. 15 of 1880, from a decree of Maulvi Abdul Majid Khan, Subordinate Judge of Ghâzipur, dated the 16th July, 1879.

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