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EMPEROR*Srivastava,*
J.

septic meningitis and that the sepsis was due to the neglect in treatment and the application of some village poultice which was found on the left side of the head at the *post mortem* examination. My reading of the evidence is that the injury itself was not such as would in the natural course result in death but that the death was caused by the intervening circumstances, namely sepsis consequent to the bad handling of the wound and the application of the village poultice. In other words, it seems to me that the case is one of the death being caused by the use of wrong remedies and unskilful treatment rather than one in which the death were caused by the bodily injury, although by resorting to proper and skilful treatment it might have been prevented.

For the above reasons I allow the appeal of Sobha, set aside his conviction and sentence under section 304 of the Indian Penal Code and convicting him under section 325 of the Indian Penal Code sentence him to two years' rigorous imprisonment. No arguments were addressed in support of the appeal of Tilak, and it is dismissed.

APPELLATE CIVIL

*Before Sir C. M. King Kt., Chief Judge and
Mr. Justice Ziaul Hasan*

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July 30

THAKUR SATROHAN SINGH AND ANOTHER (PLAINTIFFS-
APPELLANTS) v. UMA DATT (DEFENDANT-RESPONDENT)*

Hindu law—Joint Hindu family—Alienation by father—Debt—Suretyship—Hypothecation of family property by father by way of security without incurring personal liability—Debt not for legal necessity or for antecedent debt—Hypothecation, whether valid and enforceable.

Held, that a debt incurred personally by a father in a joint Hindu family for being surety for appearance or for honesty of another, is binding under the Hindu law upon the sons,

*Second Civil Appeal No. 119 of 1933, against the decree of Pandit Pradyumna Krishna Kaul, Subordinate Judge of Sitapur, dated the 19th of January, 1933, reversing the decree of Pandit Pearey Lal Bhargava, Munsif of Biswan, dated the 27th of July, 1932.

but a mere hypothecation of the joint family property for the purposes of securing a debt cannot be enforced against the joint family property unless it can be shown in some manner that the hypothecation was for legal necessity or for antecedent debt. *Brij Narain Rai v. Mangla Prasad* (1), relied on, *Mata Din Kandou v. Ram Lakhan* (2), dissented from, *Maharaja of Benares v. Ramkumar Misir* (3), *Sitaramayya v. Venkataramanna* (4), *Chettikulam Venkatachala Reddiar v. Chettikulam Kumara Venkitachala Reddiar* (5), *Thangathammal v. V. A. A. R. Arunachalan Chettiar* (6), *Chakhan Lal v. Kanhaiya Lal* (7), and *Deo Narain Singh v. Lal Harihar Saran Singh* (8), referred to and discussed.

Dr. *Qutub Uddin Ahmad*, for the appellants.

Mr. *Bhagwati Nath Srivastava*, for the respondent.

KING, C.J. and ZIAUL HASAN, J.:—In March, 1934, the present appellants brought a suit for enforcement of a mortgage against Bhawani Din, uncle of the respondent, and some others and in February, 1925, the suit was decreed. Bhawani Din and the other defendants appealed to the Judicial Commissioner of Oudh and they were ordered to give security for costs of the respondents in that case. On the 28th of November, 1925, Mathura Dat, father of the present respondent, executed a security bond (exhibit 1) hypothecating his immovable property for costs that might be awarded against Bhawani Din. Bhawani Din's appeal was dismissed by this Court on the 31st of March, 1926. Mathura Dat died in February, 1926, and in April, 1930, the present appellants sought to execute the decree in regard to costs against the hypothecated property. This application was made against the present respondent and was allowed by the trial Court. On appeal this Court, however, held that the decree could not be executed against the respondent under section 145 of the Code of Civil Procedure as Mathura Dat had not undertaken a personal responsibility to pay the amount of costs, and that the decree-holders should seek any

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(1) (1923) L.R., 51 I.A., 129.

(3) (1904) I.L.R., 26 All., 611.

(5) (1905) I.L.R., 28 Mad., 377.

(7) (1929) A.I.R., All., 72.

(2) (1929) I.L.R., 52 All., 153.

(4) (1888) I.L.R., 11 Mad., 373.

(6) (1918) I.L.R., 41 Mad., 1071.

(8) (1916) 20 O.C., 1.

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other remedy that might be open to them. Thereupon the suit from which this second appeal arises was filed by the appellants, for enforcement of the hypothecation, on the 13th of March, 1932.

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The suit was decreed on the 23rd of July, 1932, by the Court of first instance but in appeal the learned Subordinate Judge of Sitapur dismissed it holding that the hypothecation of the family property by Mathura Dat was not valid under the Hindu law and that as he had not undertaken any personal liability under the security bond, the present appellants cannot even get a personal decree against the assets of the surety. It may be mentioned that it is undisputed that the property hypothecated by Mathura Dat was joint ancestral property.

The plaintiffs bring this appeal against the decision of the learned Subordinate Judge in appeal and the question is whether or not they are entitled to enforce the hypothecation contained in the security bond of the 28th of November, 1925.

We are of opinion that the decision of the learned Subordinate Judge is quite correct. We have been referred to a number of authorities by the learned counsel for the appellants but none of them, in our opinion, helps the appellants. The first case cited was the *Maharaja of Benares v. Ramkumar Misir* (1), in which it was held that the sons in a joint Hindu family are liable as such for the due fulfilment of an engagement entered into by their father as surety for the payment of rent by a lessee. In the case cited the terms of the security bond were that "in case the lessees are in arrears and the sureties fail to pay the amount, the plaintiff shall have the power to recover the money payable to him from the *persons* of the sureties and by means of attachment and auction sale of the property hypothecated in the deed of surety, or in whatever manner he may realize," but in the present case, as noted

(1) (1904) I.L.R., 26 All., 611.

above, there was no personal liability of Mathura Dat and therefore this case is quite distinguishable.

The next case cited was that of *Sitaramayya v. Venkataramanna* (1) but in this case also the surety appears to have incurred a personal liability to pay the debt as the following paragraph occurring in the beginning of the judgment shows:

"It is conceded by the appellant's pleader that it would be the pious obligation of the son under Hindu law to pay the debt incurred by the father as a surety for the repayment of a loan."

In the case of *Chettikulam Venkatachala Reddiar v. Chettikulam Kumara Venkitachala Reddiar* (2), "a surety debt due by the father" for payment of a debt was held to be recoverable from the entire ancestral property including the shares of the sons. This is also no authority for the proposition put forward on behalf of the appellants. Another case on which reliance was placed on behalf of the appellants is that of *Thangathammal v. V. A. A. R. Arunachalam Chettiar* (3) but in this case also there was a clear undertaking by the surety to pay the debt personally. In the case of *Chakhan Lal v. Kanhaiya Lal* (4) the real point decided was that an undertaking of suretyship for the payment of an amount due by the principal debtor is binding on the sons of the surety even if the liability as a surety is accepted by the father in respect of a debt which, though not already due, is promised to be advanced subsequently. On the other hand in this case it was clearly held on the authority of the decision of their Lordships of the Judicial Committee in *Brij Narain Rai v. Mangla Prasad* (5) that no father of a Hindu family can as a surety charge the family property so as to affect a valid alienation as he can only do so for purpose of necessity or for an antecedent debt. This case, therefore, so far from helping the appellants goes against them. Great reliance

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(1) (1888) I.L.R., 11 Mad., 373. (2) (1905) I.L.R., 28 Mad., 377.

(3) (1918) I.L.R., 41 Mad., 1071. (4) (1929) A.L.R., All., 72.

(5) (1923) L.R., 51 I.A., 129.

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was placed by the learned counsel for the appellants on the case of *Mata Din Kandu v. Ram Lakhan* (1), but in that case there was no question of the enforcement of the hypothecation contained in a surety bond executed by the father in a joint Hindu family. The facts were that a defendant in a small cause court suit having applied for setting aside an *ex parte* decree, a security bond was filed under the proviso to section 17(1) of the Provincial Small Cause Courts Act by a Hindu who was a member of a joint family with his sons. On behalf of the plaintiff it was contended that the security was not enough, as the executant of the bond was a member of a joint Hindu family. This objection was accepted by the Court of Small Causes and the defendant was asked to furnish another security. On the question going up to the High Court in revision YOUNG and BENNET, JJ., held that the hypothecation bond entered into by the father as surety was valid, but this proposition of law appears to us to be in direct conflict with the pronouncement of their Lordships of the Privy Council in the case of *Brij Narain Rai v. Mangla Prasad* (2) referred to above, and also to the decision of another Bench of the Allahabad High Court in the case of *Chakhan Lal v. Kanhaiya Lal* (3) quoted above.

The last case relied on by the learned counsel for the appellants is that of *Deo Narain Singh v. Lal Harihar Saran Singh* (4) but this again is a case in which the surety had undertaken a personal responsibility to pay certain debts due on promissory notes as appears from the fact that decrees were obtained upon the basis of those notes against the surety as well as against the principal debtor.

In our opinion a debt incurred personally by a father in a joint Hindu family for being surety for payment of money, as distinguished from a debt for being surety for appearance or for honesty of another, is binding under the Hindu law upon the sons, but a mere

(1) (1929) I.L.R., 52 All., 153.

(2) (1923) I.L.R., 51 I.A., 129.

(3) (1929) A.I.R., All., 72.

(4) (1916) 20 O.C., 1.

hypothecation of the joint family property for the purposes of securing a debt cannot be enforced against the joint family property unless it can be shown in some manner that the hypothecation was for legal necessity or for antecedent debt. In the present case it is not alleged that any such circumstances were present. We therefore hold that the hypothecation of the family property by Mathura Dat was invalid and cannot be enforced against the respondent.

The appeal fails and is dismissed with costs to the respondent.

Appeal dismissed.

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava and
Mr. Justice Ziaul Hasan*

GUR PRASAD AND OTHERS (OBJECTORS-APPELLANTS) v. BABU
UDAI BHAN PRATAP SINGH (DECREE-HOLDER-
RESPONDENT)*

1935
July 17

Oudh Rent Act (XXII of 1886), section 154(2)—Civil Procedure Code (Act V of 1908), order XXI, rule 16—Decree for arrears of rent against under-proprietors executable jointly and severally—Some judgment-debtors selling their rights and interests to decree-holder—Decree-holder, whether can execute entire decree against remaining judgment-debtors—Decree-holder, if bound to give credit for proportionate amount of decree after his purchase—Civil Procedure Code (Act V of 1908), order XXI, rule 16, applicability of.

Where a proprietor obtains a decree for arrears of rent against the whole body of under-proprietors, executable jointly and severally against them, and pending execution of the decree, some of the judgment-debtors sell their entire rights and interests to the decree-holder to liquidate all their debts, *held*, that while the decree-holder cannot be deprived of his right to execute the decree by reason of his purchase of a share in the under-proprietary tenure it would be only just and equit-

*Execution of Decree Appeal No. 70 of 1933, against the order of M. Mohammad Abdul Haq, District Judge of Fyzabad, dated the 22nd of November, 1933, upholding the order of M. W. Abbasi, I.C.S., Assistant Collector, 1st Class, Fyzabad, dated the 30th of September, 1933.

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