

the application are not at all controverted by any counter-affidavit, and regard being had to the fact that the appellant lives at a distance from the residence of the deceased Jhagru Sahu, it is possible that, as alleged by him, he did not come to know of the death of the deceased until December. We, therefore, accept the reasons given in the petition for not making the application for substitution in time, and accordingly we set aside the abatement and direct that the substitution as prayed for be made. The opposite party has entered appearance and in this case he is entitled to costs.

S. A. K.

*Substitution ordered.***APPELLATE CIVIL.***Before Das and Ross, J. J.***'AMOLAK CHAND**

v.

MANSUKH RAI MANGAN LAL*

1924.

ILO SONAR

v.

JHAGRU
SAHU.

1924.

May. 9.

Provincial Insolvency Act, 1920 (Act V of 1920), sections 2 (1) (d) and 28—"Property" whether includes ancestral property—Hindu Law—business carried on by father and major sons and resulting in insolvency—whether shares of minor sons liable to be sold for the debts.

Where the father of a joint Hindu family and his two major sons engaged in business which proved unsuccessful and they were adjudged insolvent, and a Receiver was appointed, held, overruling an objection by the minor sons that their shares in the joint family property did not vest in the Receiver, that ancestral property is "property" within the meaning of section 2 (1) (d) of the Provincial Insolvency Act, 1920, and is liable to be sold in satisfaction of antecedent debts.

Sant Prasad Singh v. Sheodut Singh(¹) and *Sahaj Narayan Sahi v. Wajid Hussain*(²), not followed.

* Appeal from original Order no. 52 of 1924, from an order of H. W. Boyce, Esq., i.c.s., District Judge of Bhagalpur, dated the 13th March, 1924.

(1) (1923) I. L. R. 2 Pat. 724.

(2) (1919) 49 Ind. Cas. 848.

1924.

ANOLAK
CHAND
v.
MANSUKH
BAI MANGAN
LAL.

Fakirchand Motichand v. Motichand Hurruckchand(1),
Nunna Brahmayya Setti v. Chidaraboyina Venkitaṣwami(2),
and *Bawan Das v. O. M. Chiene*(3), followed.

Sahu Ram Chandra v. Bhup Singh(4), referred to.

The facts of the case material to this report are stated in the judgment of Ross, J.

Susil Madhab Mullick and *Satya Sunder Bose*, for the appellants.

Noresh Chandra Sinha, for the respondents.

Ross, J.—This is an appeal against a decision of the District Judge of Bhagalpur, holding that certain properties vested in the Receiver in insolvency.

The facts of the case are that one Lachmi Chand, who acquired considerable properties, movable and immovable, died leaving a son Jiban Ram who had four sons, two of whom are minors and two of whom had two sons who are minors. The appellants are these four minors. Jiban Ram and his two major sons embarked on business which proved unsuccessful; and heavy debts having been incurred they were adjudged insolvent at the instance of the creditors and a Receiver was appointed. As the Receiver is selling the joint family property this objection has been raised by the minors that this is not property within the meaning of section 2(d) of the Insolvency Act.

This contention was overruled by the learned District Judge. It is contended in appeal that as the property is admittedly the ancestral property of a joint *Mitakshara* family, it cannot be proceeded against at all, or, if at all, only to the extent of the share of the major members of the family. Two decisions of this Court have been cited in support of this contention [*Sahaj Narayan Sahi v. Wajid Hussain* (5) and *Sant Prasad Singh v. Sheodut Singh* (6)]. The principle

(1) (1888) I. L. R. 7 Bom. 438.

(2) (1908) I. L. R. 26 Mad. 214.

(3) (1922) I. L. R. 44 All. 516.

(4) (1917) I. L. R. 89 All. 487; 44 I. A. 125.

(5) (1919) 49 Ind. Cas. 848.

(6) (1928) I. L. R. 2 Pat. 724.

was discussed in the latter decision. That decision, however, proceeded expressly on the authority of *Sahu Ram Chandra's* case ⁽¹⁾. That case has been recently considered by the Judicial Committee and certain propositions laid down therein have been overruled. Therefore the decision in *Sant Prasad Singh v. Sheodut Singh* ⁽²⁾ cannot now be considered to be an authority on this subject. On the other hand there are the decisions in *Fakirchand Motichand v. Motichand Hurruckchand* ⁽³⁾, *Nunna Brahmayya Setti v. Chidaraboyina Venkitaswami* ⁽⁴⁾ and *Bawan Das v. O. M. Chiene* ⁽⁵⁾, to mention only three of the decisions which have been referred to by the respondents; and, in my opinion, it is too late now to contend that property over which a person has a disposing power which he may exercise for his own benefit does not include ancestral property which may be sold for the satisfaction of antecedent debts.

I would, therefore, dismiss this appeal with costs.

DAS, J.—I agree.

Appeal dismissed.

REVISIONAL CIVIL.

Before Das and Ross, J. J.

RAMJI PANDEY

v.

ALAF KHAN*

1924.

April, 28.

Partition Suit—two defendants struck out on application of plaintiff—appeal, whether maintainable—Code of Civil Procedure, 1908, (Act V of 1908), order 1, rule 10.

* Civil Revision no. 378 of 1923, from an order of H. W. Williams, Esq., i.c.s., officiating Judicial Commissioner of Chota Nagpur, dated the 27th July, 1923, reversing an order of Babu Debi Prasad, Munsif of Palamau, dated the 1st February, 1923.

(1) (1917) I. L. R. 39 All. 437; L. R. 44 I. A. 126.

(2) (1923) I. L. R. 2 Pat. 724.

(3) (1883) I. L. R. 7 Bom. 438.

(4) (1903) I. L. R. 26 Mad. 214.

(5) (1922) I. L. R. 44 All. 316.