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amma is stated to have, when she suddenly woke up at hearing the noise, nudged her grandmother. Therefore, in the present case the intention was not to carry on a peaceful intrigue and intercourse with any of the ladies in the house and with the consent or connivance of any one of them, but the intention of the accused was to commit a criminal trespass into the house and an indecent and unjustifiable trespass upon the person of the occupants of the house. The concurrent finding of the Courts below in the present case makes the authorities cited by the learned Counsel on behalf of the petitioner inapplicable to the present case. This contention must, therefore, also be held to be untenable.

The last submission of Mr. *Agarwala* is that the punishment in this case is excessive and that it should be reduced. The view taken by the Court below is that the punishment in this case is lenient and that the Magistrate has erred on the side of leniency. I do not think the accused has any grievance on account of the severity of the sentence. The act committed by him is most reprehensible. Rammurti happened to come to Jharsuguda only recently with several ladies of his family. The outrage attempted upon his household is a heinous offence, and the punishment in the present case is far from being severe.

The application is refused.

Rule discharged.

APPELLATE CIVIL.

Before Ross and Kulwant Sahay, J. J.

RAM GHULAM SINGH

v.

NAND KISHORE PRASAD.*

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Jan., 20.

Hindu Law—Sons' liability for father's debts, after partition.

* Appeal from Appellate Decree no. 415 of 1922, from a decision of Damodar Prasad, Esq., Additional District Judge of Patna, dated the 11th January, 1922, modifying a decision of B. Suresh Chandra Sen, Subordinate Judge, Patna, dated the 6th January, 1921.

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After partition between a Hindu father and his sons the sons are not liable, during the lifetime of the father, for the latter's simple money debts.

Vinjamampati Peda Venkanna v. *Vadlamannati Sreenivasa Deekshatulu*(1), followed.

Appeal by the plaintiffs.

This was an appeal by the plaintiffs who brought a suit on two simple money bonds executed on the 8th of July, 1916, and the 19th of September, 1916, respectively, for Rs. 500 each. The bonds were executed by defendant no. 1 and the suit was contested by defendants nos. 2 to 4, his sons.

The Subordinate Judge who tried the suit gave a decree against all the defendants; but, on appeal, the learned Additional District Judge limited the decree to defendant no. 1 only.

K. P. Jayaswal (with him *Bimola Charan Sinha*), for the appellants.

Siveshwar Dayal, for the respondents.

ROSS, J.—The first contention raised by the learned Counsel for the appellants is that the learned District Judge was in error in holding:

> "that the sons cannot be made liable on the ground that it is their pious duty to pay off their father's debt inasmuch as the father (defendant no. 1) is alive."

It is conceded by the learned Vakil for the respondents that this is an error and that, so far as the pious obligation is concerned, it attaches during the lifetime of the father.

The second contention was that the enquiry was sufficient. The learned Counsel referred to the passage of the judgment of the Additional District Judge dealing with this point and observed that two cousins of the defendants had given information to the plaintiffs. He contends that this evidence ought to have been acted upon by the Additional District Judge. In my opinion, it is not open to this Court in second appeal to question the finding on this part of the case which is a finding of fact.

(1) (1918) I. L. R. 41 Mad. 186.

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On behalf of the respondents while it is admitted that the pious duty attaches to the son even during the lifetime of the father, it is contended that as partition had taken place and had taken place before the suit was brought, the property of the sons cannot be proceeded against in satisfaction of this simple money debt. This contention was supported by a reference to the decision in *Vinjamampati Peda Venkanna* v. *Vadlamannati Sreenivasa Deekshatulu*(1) and especially to the judgment of Kumarswami Sastriyar, J. (2). It is clear that in any case only the assets of the father in the hands of the sons could be followed. But, after partition has taken place, there are no assets of the father in the hands of the sons and there is nothing to follow. This is not a case of mortgage where the security attaches to the property and clings to it even after partition. In the case of a simple money debt where there are no assets of the father in the hands of the sons there is nothing for the creditor to proceed against so far as the sons are concerned.

Finally, it was argued by the learned Counsel for the appellants that in equity defendants nos. 2 to 4 are bound by this debt because they have obtained benefit from it. It is said that the money was borrowed in connection with the partition suit and that these defendants have obtained the benefit of this loan by the partition being effected. Now, this argument also is met by the findings of fact. The learned Additional District Judge has held:

> "that it has not been shown how much if anything the defendant no. 1 had to pay as commissioner's fee;.....and it has been stated above that no money was necessary to be borrowed to meet the family expenses. Necessity to borrow the money has not at all been proved."

It follows that if there was no necessity to borrow the money these defendants cannot be bound to make good the loan. The decision of the learned Additional District Judge is right and the appeal must therefore be dismissed with costs.

KULWANT SAHAY, J.—I agree.

Appeal dismissed.

(1) (1918) I. L. R. 41 Mad. 136. (2) *Ibid*, p. 142.