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has accepted any proposal or promise and such cases are probably decided on the traditional principles governing the English Courts of Equity rather by any application of the terms of section 2 of the Indian Contract Act. If I am correct, this third class would I think be exemplified by the case of *Khajwa Muhammad Khan* v. *Husaini Begum*(1).

Appeal dismissed.

APPELLATE CIVIL.

Before Ross and Kulwant Sahay, J.J.

CHAIRMAN, DISTRICT BOARD, MONGHYR,

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April, 19.

v.

SHEODUTT SINGH.*

Provincial Insolvency Act, 1920 (*Act V of* 1920), *section* 2(*l*) (*d*)—*Receiver, right of to sell son's share to liquidate father's debt—son's pious obligation—Hindu Law.*

A Receiver in insolvency in whom Hindu joint family property has vested has the right to sell the share of the son to liquidate the father's debt, not incurred for immoral purposes, and the pious obligation of the son prevents him from asserting that the family estate, so far as his interest is concerned, is not liable for that debt.

Amolak Chand v. *Mansukh Rai Mangan Lal* (2), *Brij Narain* v. *Mangal Prasad* (3), *Bihari Lal Jamna Das* v. *Sat Narain*(4), followed.

Sant Prasad Singh v. *Sheo Dutt Singh* (5), referred to.

*Appeal from Original Order no. 184 of 1925, from an order of Ananta Nath Mitter, Esq., District Judge of Saran, dated the 16th of March, 1925.

(1) (1910) I. L. R. 32 All. 410; L. R. 37 I. A. 152.
(2) (1924) I. L. R. 3 Pat. 857.
(3) (1924) I. L. R. 46 All. 95, P. C
(4) (1922) I. L. R. 3 Lah. 329, F. B.
(5) (1923) I. L. R. 2 Pat. 724.

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

Harnarayan Prasad, for the appellant.

Sambhu Saran and *Bankey Behari Sahay*, for the respondents.

Ross, J.—In 1918 Sheodutt Singh filed a petition in insolvency and on the 7th of January, 1919, a receiver was appointed to take charge of his property. On the 7th of September, 1921, the wife of the insolvent, on behalf of her minor children, filed a petition claiming that three-fourths of the properties should be exempted from liability. The District Judge referred the matter to the receiver; and, accepting his report, exonerated the share of the minor children from sale. The matter came before the High Court and the case was remanded in order that the District Judge should deal with the question himself. The District Judge has now given his decision; and, overruling the objection of one of the creditors, the Chairman of the District Board of Monghyr, he has accepted the evidence on behalf of the minors that Sheodutt Singh was a man of immoral habits and has held that there is nothing to show that there was any enquiry regarding the necessity for the loan; and that it had not been established that the loan was raised for the benefit of the minors. He has consequently directed that three-fourths share of the property, being the share of the three minor sons of the insolvent, should be exempted from sale.

The Chairman of the District Board of Monghyr has appealed against this decision; and it is contended on his behalf that as it is the pious duty of the sons to pay their father's debt the whole of the estate is assets in the hands of the receiver. It is further contended that there is no evidence of the immorality of the debt in question in this case; that a general charge of immorality is not sufficient; and that there must be something to connect the immorality of the debtor with the debt. The debt is a decree for money

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obtained by the District Board against Sheodutt Singh. There is nothing to show what the nature of the debt was.

The learned Advocate for the respondents relies upon the definition of "property" contained in section 2(*1*) (*d*) of the Provincial Insolvency Act:

> "Property" includes any property over which or the profits of which any person has the disposing power which he may exercise for his own benefit;

and he contends that although a Mitakshara father can dispose of the property of the family for necessity or for antecedent debt, his powers extend no further; and as there is nothing to show in the present case that the debt had been contracted for family necessity or to pay off an antecedent debt, the family property is not liable. It is pointed out that the decision in *Amolak Chand* v. *Mansukh Rai Mangal Lal*(1) upon which the appellant relied, was a decision in a case of antecedent debt. Now there is no doubt that the District Board could have executed their decree against the family property: *Brij Narain v. Mangar Prasad*(2) where it was laid down by the Judicial Committee that if the managing coparcener is the father and the reversioners are his sons, he may, by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceedings upon a decree for payment of that debt. The principle underlying this rule is thus stated in that decision: "Then there comes in the further doctrine that the debt has been contracted by the father, and the pious obligation incumbent on the son to see his father's debts paid prevents him from asserting that the family estate, so far as his interest is concerned, is not liable to purge that debt. It may become liable by being taken in execution on the back of a decree obtained against the father, or it may become liable by being mortgaged by the father to pay the debt for which otherwise

(1) (1924) I. L. R. 3 Pat. 857. (2) (1924) I. L. R. 46 All. 95, P. C.

decree might be taken and execution be sought." If their pious duty prevents the sons from asserting that the family estate is not liable to be taken in execution, I do not see in principle how the sons can dispute the right of the receiver in insolvency to sell the property in order to liquidate the father's debt. If the debt was recoverable by execution before insolvency it is not easy to see why the creditor should be deprived of his relief merely because the estate has vested in the receiver. And it has been so held by the Full Bench of the Lahore High Court in *Bihari Lal Jamna Das* v. *Sat Narain*(1), where the learned Chief Justice said : " It has, however, been repeatedly held.....that the joint family property can be attached and sold in execution of a decree for money passed against the father, and that the sale affects the interest of the son as well as that of the father, and in principle I see no real difference between an individual creditor realizing his debt from the coparcenary property and an official assignee, who represents the general body of the creditors, seizing it for the satisfaction of their debts." It has not been proved that this debt was incurred for immoral purposes; and there is in my opinion no obstacle to the sale of the family property by the receiver in order that the debt may be discharged.

It was further contended on behalf of the respondents that the case was remanded by the High Court [*Sant Prasad Singh* v. *Sheodutt Singh*(2)] for a decision on the allegations in the petition filed on behalf of the minors and that the District Judge has come to a decision on these allegations and has found that the debt was not contracted for the benefit of the family; and that consequently the position taken up by the minors has been established; and it must be taken, under the decision of the High Court, that nothing has vested in the receiver. But the legal consequences of the findings of the District Judge

(1) (1922) I. L. R. 3 Lah. 329, F. B. (2) (1923) I. L. R. 2 Pat. 724.

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cannot be taken to have been determined before these findings had been arrived at; and, moreover, the view of the law expressed in *Sant Prasad Singh* v. *Sheodutt Singh*(1) which rested on the decision in *Sahu Ram Chandra's case*(2) has been held to require reconsideration in view of the later decision of the Judicial Committee which has been referred to above [vide *Amolak Chand* v. *Mansukh Rai*(3)].

It follows that this appeal must be allowed and the order of the District Judge exempting three-fourths of the property from sale must be set aside. There will be no orders as to costs.

KULWANT SAHAY, J.—I agree.

APPELLATE CIVIL.

Before Dawson Miller, C.J. and Foster, J.

1926.

May, 6.

DANGAL RAM

v.

JAIMANGAL SARAN.*

Hindu Law—family arrangement and partition—minors, suit by, to set aside—legal necessity, proof of, whether necessary—tests to be applied.

H and his brother *K* were at one time joint in estate but the only joint property which they held was the house in which they lived. Although the brothers had separated in estate the house had not been divided by metes and bounds. *K* had four sons who were also living with him in the same house. Owing to dissension between *H* and *K* there was a likelihood of the value of the property depreciating for want of repairs, and of the house being sold in execution of a rent

*Appeal from Appellate Decree no. 1212 of 1923, from a decision of Babu Phanindra Lal Sen, Additional Subordinate Judge of Shahabad, dated the 11th September, 1923, reversing a decision of Babu Kamini Kumar Banerji, Munsif of Arrah, dated the 18th September, 1922.

(1) (1923) I. L. R. 2 Pat. 724.
(2) (1917) I. L. R. 39 All. 437; L. R. 44 I. A. 126.
(3) (1924) I. L. R. 3 Pat. 857.