

APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

1931.

JWALA PRASAD

Jan., 13, 14.

v.

BHUDA RAM.*

Hindu Law—joint family—decree obtained against minor and managing member on pronote executed by latter for purposes of family business—minor, whether personally liable under the decree. ;

A minor member of a Hindu family having a joint family business is not personally liable under a decree obtained against him and the managing member of the family on the basis of a pronote executed by the latter for the purposes of the family business.

Bishen Singh v. Kidar Nath(1), followed.

Sherafutoollah Chowdhry v. Srimati Abedoonissa Bibee(2), distinguished.

Appeal by one of the judgment-debtors.

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

P. B. Ganguli, for the appellant.

G. P. Das, for the respondent.

KULWANT SAHAY, J.—This is an appeal by one of the judgment-debtors against whom an application has been made for execution by his arrest. The decree was passed on the basis of a pronote executed by the uncle of the appellant as the managing member of the joint family. In the suit upon that pronote the

* Appeal from Appellate Order no. 163 of 1930, from an order of F. F. Madan, Esq., I.C.S., District Judge of Muzaffarpur, dated the 12th June, 1930, reversing an order of Babu Priya Lal Mukharji, Munsif of Muzaffarpur, dated the 11th March, 1930.

(1) (1921) I. L. R. 2 Lah. 159.

(2) (1872) 17 W. R. 374.

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uncle as well as the appellant were made defendants and a joint money decree was passed against them.

It is contended on behalf of the appellant that he is not personally liable and execution cannot be levied against him by his personal arrest.

The Munsif allowed the objection and held that the appellant was not personally liable and no warrant for his arrest could be issued.

On appeal the learned District Judge has set aside that order and has held that there was nothing in law to prevent the decree-holders from executing the decree in the ordinary course of law by applying for a warrant of arrest.

The appellant was a minor at the date of the suit and was represented by a guardian *ad litem*. He has now attained majority and has filed the objection as an adult. It is contended on his behalf that having regard to the nature of the transaction the decree made in the suit cannot be executed against the appellant personally. It appears on a reference to the judgment in the suit itself that the handnote was executed for a debt contracted by the managing member of a joint family having a joint family business. In the 6th edition of Mulla's Principles of Hindu Law at page 250 the law has thus been stated :

“ In the case of an ordinary partnership, it is not only the share of each partner in the partnership property which is liable for the payment of the partnership debts, but the separate property of each partner is also liable. In the case of debts contracted by a manager, in pursuance of his implied authority in the ordinary course of the family business, there is a distinction between the liability of a manager and the liability of his coparceners. The manager is liable not only to the extent of his share in the joint family property, but, being a party to the contract, he is liable personally, that is to say, his separate

property is also liable. But as regards the other coparceners, they are liable only to the extent of their interest in the family property, *unless*, in the case of adult coparceners, the contract sued upon, though purporting to have been entered into by the manager alone, is in reality one to which they are actual contracting parties, or one to which they can be treated as being contracting parties by reason of their conduct, or one which they have subsequently ratified; and, in the case of minor coparceners, unless the contract has been ratified by them on attaining majority."

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In the present case the appellant was a minor up to the date of the decree, and there is nothing to show that he ever ratified the contract on attaining majority. The law has been similarly expressed in Mayne's Hindu Law at page 399 of the 9th edition. It is thus stated—

“ The share of an infant, who is a member of a trading family, in such of the property of a trading family as is invested in the business carried on by it will be liable for the debts of the partnership.....”

What is stated here is that it is only the share of the infant which is liable and not that he is liable personally. The question was considered by the Lahore High Court in *Bishen Singh v. Kidar Nath*(¹). The learned Judges referred to the statement of law in Mulla's Principles of Hindu Law just quoted with approval and held that the minor was not personally liable under the decree.

The learned Judge has referred to the decision of the Calcutta High Court in *Sherafutoollah Chowdhry v. Srimati Abedoonissa Bibee*(²). That was a suit between parties who were Muhammadans. The facts of the case are not clearly set out in the judgment which is very short; but from the recital of facts the suit appears to have been brought by the mother-in-law of the minor defendant for her share of the

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dower debt of the deceased wife of the defendant. The minor was made a defendant under the guardianship of his father; but the decree was against the minor, and it was held that the decree which was obtained against his father as his guardian during his minority bound the minor personally. It was stated in the course of the judgment in that case that no cause was shown why this mode of execution, namely, by means of warrant for his arrest should not have been adopted, nor had the appellant (the judgment-debtor in that case) shown any valid reason against it. This decision is no authority for holding in the present case, which is a case of a minor member of a Hindu family having a joint family business, that he is personally liable under a decree obtained on a pronote executed by the managing member of the family for the purposes of the family business. The law as laid down in Mulla's Principles of Hindu Law and Mayne's Hindu Law clearly goes to show that the liability of the minor only extends to his interest in the joint family property. We agree with the view of the law as stated in Mulla's Principles of Hindu Law and Mayne's Hindu Law.

The order of the District Judge is, therefore, set aside and that of the Munsif restored. The appellant is entitled to his costs.

MACPHERSON, J.—I agree.

Appeal allowed.

REVISIONAL CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

SYED ALI HUSSAIN

v.

BIBI AKHTARI BEGUM.*

Charitable and Religious Trusts Act, 1920 (Act XIV of 1920), section 3—"Trust", meaning and significance of—

*Civil Revision no. 444 of 1930, against an order of T. Luby, Esq., I.C.S., District Judge of Bhagalpur, dated the 7th May, 1930.

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Jan., 5, 16.