

general or special order. The court of an additional munsif who may happen to be sent to a district in a particular year is not necessarily the same court as the court of the additional munsif deputed to the same area in other years. For the purpose of execution of the decree which the additional munsif pronounced his court was the court of the first munsif for he was then trying suits appertaining to the area which was comprised in the territorial jurisdiction of the latter court. I consider, therefore, that the application for execution was made in accordance with law and, therefore, the subsequent application was not time-barred. I would accordingly allow the appeal with costs throughout and restore the execution case.

COURTNEY TERRELL, C. J.—I agree.

*Appeal allowed.*

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## APPELLATE CIVIL.

*Before Courtney Terrell, C. J. and Saunders, J.*

BISSESSOR RAM

v.

RAMAKANT DUBEY.\*

*Hindu law—liability of son to pay father's debt, extent of—son, whether personally liable.*

A son, as a member of a joint family, is liable for the debts incurred by the karta of the family if he has derived benefit therefrom. Secondly, a son is liable for the debts of his father, even if he has not derived benefit therefrom, on the ground of the pious obligation to pay the debts of his father, and can only resist liability if he can show that such debts were incurred for immoral purposes. In neither case,

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\* Appeal from Appellate Order no. 80 of 1933, from an order of J. G. Shearer, Esq., I.C.S., District Judge of Muzaffarpur, dated the 9th October, 1932, reversing an order of Babu Parmeshwari Dayal, Munsif of Bettiah, dated the 11th June, 1931.

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however, can the son be made personally liable for the debts, but only can be made liable to the extent of the estate coming into his possession.

*Sukhdeo Prasad Narayan Singh v. Madhusudan Prasad Narayan Singh*(1), *Bhudaram Marwari v. Udai Narayan*(2) and *Jwala Prasad v. Bhuda Ram*(3), followed.

*Dalip Narayan Singh v. Raghunandan Prasad*(4) distinguished.

Appeal by the decree-holders.

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

*B. N. Mitter* and *D. N. Das*, for the appellants.

*S. N. Roy*, for the respondents.

COURTNEY TERRELL, C. J.—This is an appeal by the decree-holders against the decision of the District Judge allowing an appeal from the Munsif's order in an execution case. The decree-holders had sued one Ramakant Dubey together with his sons and grand-sons in respect of indebtedness due to the plaintiff-firm for cloth supplied and money lent, with the allegation that the principal defendant (who was in fact the karta of the family), acknowledged the debt and executed certain chithas. The decree which they obtained was against the defendants for a sum of Rs. 1,721-4-9, principal and interest and for costs of the suit. The decree-holders sought to execute the decree by the arrest of the sons of the principal defendant; and the learned District Judge has, in my opinion rightly, held that construing the decree in the proper manner it did not make the sons of the principal defendant personally liable for the decretal debt.

(1) (1930) I. L. R. 10 Pat. 305.

(2) (1931) 12 Pat. L. T. 741.

(3) (1931) I. L. R. 10 Pat. 503.

(4) (1931) 13 Pat. L. T. 160.

Now, as I take it from the authorities, the principle of law of the liability of sons for the debts of the father in the case of joint Hindu family is shortly stated in the following propositions: A son as a member of a joint Hindu family is liable for the debts incurred by the karta of the family if he has derived benefit therefrom. Secondly, a son is liable for the debts of his father, even if he has not derived benefit therefrom, on the ground of the pious obligation to pay the debts of his father, and can only resist liability if he can show that such debts were incurred for immoral purposes. Thirdly, in neither case can the son be made personally liable for the debts, but only can be made liable to the extent of the estate coming into his possession. These propositions were made perfectly clear by several decisions of this Court, to the first of which I was a party but which was delivered by Khaja Mohamed Noor, J. [*Sukhdeo Prasad Narayan Singh v. Madhusudan Prasad Narayan Singh*(<sup>1</sup>)]. The same view has been expressed by Khaja Mohamed Noor, J., sitting with Macpherson, J., in *Bhudaram Marwari v. Udai Narayan*(<sup>2</sup>). A similar point of view has been expressed by Kulwant Sahay, J. in *Jwala Prasad v. Bhuda Ram*(<sup>3</sup>). But the appellants here seem to draw other conclusions from a decision of Jwala Prasad, J. sitting with James, J. in *Dalip Narayan Singh v. Raghunandan Prasad*(<sup>4</sup>). It is true that a reading of the judgment, without reference to the precise facts of the case, might lead to the conclusion that Jwala Prasad, J. took a different view of the law and that he would have held that a son may be made personally liable for the debts of his father; but when the facts of the case are examined, it is found that there had been a decree passed not only against

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the father but against the sons, based upon the contract which was specifically made by the father on his own behalf and also as guardian for the sons. In my opinion, therefore, this authority in no way detracts from the authorities to which I have referred, and the sons are not liable save to the extent that the estate comes to their hands. In my opinion, therefore, the view of the learned District Judge was correct and this appeal must be dismissed with costs.

SAUNDERS, J.—I agree.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Wort and Kulwant Sahay, JJ.*

LALDHARI PRASAD

v.

NILKANTH PRASAD SINGH.\*

*Execution—transfer of interest in mortgage decree made before final decision of mortgage action on appeal—transferee made party during pendency of appeal—application for execution by transferee—Code of Civil Procedure, 1908 (Act V of 1908), Order XXI, rule 16, whether applicable—transferee from mortgagor, whether necessary party to execution proceeding—legal representative of transferee not brought on the record of execution case—sale, whether a nullity—one of the major judgment-debtors described as minor in execution proceeding—effect of sale.*

When the transfer of an interest in a mortgage decree was made before the final decision of the mortgage action on appeal, and the transferees, who were made parties to the action during the pendency of the appeal, sought to execute the decree.

\* Appeal from Original Order no. 284 of 1930, from an order of Maulvi Abdul Aziz, Subordinate Judge of Monghyr, dated the 3rd December, 1930.