APPELLATE CIVIL.

Before Terrell, C. J. and Khaja Mohammad Noor, J.

SUKHDEO PRASAD NARAIN SINGH

v.

MADHUSUDAN PRASAD NARAYAN SINGH.*

1930.

November, 24, 25. December, 5.

Hindu Law—son, pious obligation of, whether limited to ancestral property in his hands—execution—pleadings, whether can be referred to in order to find out what the decree is.

Under the Hindu Law the pious obligation of the son to pay the debt of his father is limited to the extent of the family assets in the hands of the son.

Chalamayya v. *Varadayya*(1), *Ramchandra Padayachi* v. *Kondayya Chetti*(2), *Muthu Reddi* v. *Chinnasawmy Reddi*(3) and *Rambujhawan Prasad Singh* v. *Ram Narayan*(4), followed.

Ram Balak Singh v. *Ambica Singh*(5), not followed.

Pleadings in the suit can be referred to in execution in order to find out what the decree really is.

Jagatjit Singh v. *Sarabjit Singh*(6), followed.

Appeal by the Judgment-debtor.

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

Pandey Nawal Kishore Sahay and *S. Saran*, for the appellant.

N. N. Sinha, for the respondents.

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*Appeal from Appellate Order no. 115 of 1930, from an order of R. B. Beevor, Esq., I.C.S., District Judge of Saran, dated the 6th February, 1930, reversing an order of Babu Brajendra Prasad, Subordinate Judge of Saran, dated the 16th September, 1929.

(1) (1898) I. L. R. 22 Mad. 166.
(2) (1901) I. L. R. 24 Mad. 555.
(3) (1920) 59 Ind. Cas. 685.
(4) (1921) 2 Pat. L. T. 396.
(5) (1929) 10 Pat. L. T. 373.
(6) (1891) I. L. R. 19 Cal. 159, P. C.

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KHAJA MOHAMMAD NOOR, J.—This appeal arises out of an execution case. The respondents obtained a simple money decree against the appellant and his father Babu Brijnandan Prasad Singh jointly. The appellant's father is now dead and the decree-holder now wants to enforce his decree by attachment and sale of a certain property which the appellant has inherited since the death of his father as reversioner and which is admittedly his self-acquired property. The appellant's contention is that the decree being one against a joint Hindu family consisting of himself and his father cannot be enforced against a property which is his self-acquired. The learned Subordinate Judge accepted this plea and held that the property could not be sold. On appeal the learned District Judge has set aside the order of the first court and held that the appellant was personally liable to satisfy the decree and his self-acquired property could be sold in its execution. The judgment-debtor has now appealed.

The simple question is, whether in execution of this decree, which was against the father and the son, the self-acquired property of the son can be sold. The respondent decree-holder contends that as the son was benefited by the loan he was personally liable and his self-acquired property is liable to sale. He relied upon the case of *Rambalak Singh* v. *Ambica Singh*(1). This is a decision of Chattarji, J. sitting singly and was in a revision case against a decree of a Small Cause Court Judge. The question arose in the suit itself. The Small Cause Court Judge had passed a personal decree against the son and this was objected to in revision. The relevant portion of the judgment is as follows:

"It is next urged that there should have been no personal decree passed against the defendants, who were sons of the executant. In view of the fact that the court held that the loans had been taken for the

(1) (1929) 10 Pat. L. T. 373.

purposes of the joint family the sons are bound under law to pay the same and have a personal liability in the matter. This contention also fails."

We are not in a position to know what was the basis of the suit and what were the allegations made in the plaint. If the learned Judge meant to lay down a wide proposition of law that whenever a loan is taken for the purposes of the joint family the son of the karta is personally liable I beg to differ from him with respect. This is not the Hindu Law as I understand it to be. The son's liability, except in one respect, is not greater than that of any other member of the family. The well established principle is that if a loan is taken by the karta of a joint family for the purposes of the family the members of the family, whoever they may be, are bound to pay the loan to the extent of the joint family property. The son has a further liability. Even if the loan is not proved to have been taken for the purposes of the joint family, or if the loan was advanced without making proper enquiries as to the necessity of the family, the son is still liable to pay the debt provided that it is not tainted with immorality. This is based upon the pious duty of the son to pay the debt of his father if it is not tainted with immorality, and this moral and pious obligation of the son has, by a long course of decisions, been enforced in courts of law. What was formerly a pious duty has become now a legal obligation. But in this case also where the liability of the son is greater than that of the other members of the family it is confined to the assets in the hands of the son and not more. The personal obligation of any man to pay a debt incurred by another is based on quite a different principle and it is not peculiar to Hindu law or to the institution of a joint Hindu family. I cannot do better than to quote the observations of Subramania Ayyar, J. in *Chalamayya* v. *Varadayya*(1). The learned Judge says: "No doubt, where it is shown that the contract relied on,

(1) (1898) I. L. R. 22 Mad. 166 (167).

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though purporting to have been entered into by the manager only, is in reality one to which the other coparceners are actual contracting parties either because they had agreed, before the contract was entered into, to be personally bound thereby, or because they, being in existence at the date of the contract and competent to enter into it, have subsequently duly ratified and adopted it, in that case unquestionably every such coparcener is absolutely responsible. Equally he would be responsible though he did not assent to the particular contract if there had been such acquiescence on his part in the course of dealings, in which the particular contract was entered, as to warrant his being treated in the matter as a contracting party. When however such is not the case, but the contract is of a character such as, under the law, to entitle the manager to enter into, independently of the consent of the other members of the family, so as to bind them thereby, then it is clear that the scope of the manager's power is restricted to, and does not extend beyond, the family property." Thus it is clear that the personal liability of the other members of the family for a debt incurred by the karta is dependent not upon their having been benefited by the loan or loan having been taken by the karta for family purposes but it rests on a higher ground. In this respect there is no difference between the son and other members of the family. If the loan was not taken for the family purposes and if the karta took the loan for his own personal use no other member of the family is liable for it, not even their coparcenary property. Their liability is dependent upon the fact that the loan was really taken for the benefit of the family and was taken by the karta as such. But in this case also the liability is confined to the family property. Except the case I have referred to above, viz., *Ram Balak Singh* v. *Ambica Singh*(1), no other case has been placed before us to show that the position of the son in this respect is different from that of the other coparceners of the

(1) (1929) 10 Pat. L. T. 873.

joint family. The difference arises when the loan was not taken for family purposes. As I have said, it is settled law that in case a father borrows some money not for the purposes of the family but for his own personal use the son is liable to pay as it is his pious duty if the debt is not for immoral purpose, but in that case also the authorities are clear that his liability is to the extent of the coparcener's property in the hands of the son who is not personally liable. It follows, therefore, that if the decree-holders want to attach the person and self-acquired property of the appellant they must show that either he was a party to the original contract by which the money was borrowed or that he subsequently duly ratified and adopted it. There is no such evidence in this case.

Mr. Nirsu Narayan Sinha for the respondents has urged that the decree is unrestricted in term and, therefore, his client is entitled to proceed against the personal property of the judgment-debtor. No doubt the decree is unrestricted but pleadings can be referred to in order to find out what the decree really is. The decree was ex parte; the judgment simply says that the suit was decreed ex parte and so is the decree. Therefore, it is necessary to look to the pleadings to find out what the claim was which was decreed [*Vide Jagatjit Singh* v. *Sarabjit Singh*(1)]. On referring to the plaint I find that in paragraph (*3*) it is clearly stated that the loan was taken by the appellant's father for the payment of Government dues and other expenses and it proceeds that both defendants (father and son) were benefited by it. Paragraph (*2*) says that the defendants (father and son) are joint and mess together and defendant no. 1 (father) is the karta and the manager of the joint family. These were the allegations on the basis of which the plaintiffs (respondents) asked for a joint decree. It is obvious that they did not base their suit either on the allegation that defendant no. 2 the present appellant was eithr a party to the contract of loan or that he subsequently ratified it. The loan was obviously a loan for

(1) (1891) I. L. R. 19 Cal. 159, P. C.

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the purposes of the joint family and cannot in any sense bind the appellant personally. A creditor who advances money to a joint family looks forward to the family property for the satisfaction of that debt. Various authorities have been placed before us to show that when a manager of a joint family borrows for the purposes of the family in his capacity as manager the other members are liable to pay the debt only to the extent of the family estate and that they are not personally liable. The case of *Ramchandra Padayachi* v. *Kondayya Chetti*(1) is directly in point. There the father and the two sons were carrying on business as an undivided trading Hindu family. The father borrowed the money as manager and it was held that the sons were not personally liable. Their liability was confined to the extent of the family property which had come in their hands. The same view was taken in *Muthu Reddi* v. *Chinnaswamy Reddi*(2) and in this Court in a case, which is almost similar to the present one, decided by Jwala Prasad and Ross, JJ.—*Prasad Singh* v. *Ram Narain*(3). I think the above cases should be followed. The learned Advocate for the respondents has contended that the son who was the party to the suit in which the decree was passed ought to have raised a plea that he was not personally liable, but he could not have possibly raised the plea as the suit against him was based as a member of the joint family and in no other capacity and the debt being a proper debt it was not at all necessary for him to contest the suit and he allowed the decree to be passed. I would, therefore, hold that the decree-holders are not entitled to proceed against the personal property of the judgment-debtor. The result is that the appeal is allowed, the order of the learned District Judge is set aside and that of the learned Subordinate Judge restored. The appellant will get his costs throughout.

COURTNEY TERRELL, C. J.—I agree.

Appeal allowed.

(1) (1901) I. L. R. 24 Mad. 555. (2) (1920) 59 Ind. Cas. 685.
(3) (1921) 2 Pat. L. T. 396.