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On the findings of fact it must be held that the suit is barred by limitation, and the appeal must be dismissed with costs.

S. A. K.

Appeal dismissed.

APPELLATE CIVIL.

Before Fazl Ali and Madan, JJ.

SIRIKANT LAL

v.

SIDHESHWARI PRASAD NARAIN SINGH.*

COURTNEY TERRELL, C. J., JAMES AND VARMA, JJ.

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February, 1, 2, 3; *March*, 19.

Hindu Law—promissory note executed by manager—suit —other co-parceners, whether liable—Negotiable Instruments Act, 1881 (*Act XXVI of* 1881), *section* 28—*manager, whether personally liable—co-parceners, extent of the liability of.*

Under the Hindu law all that is necessary to make every member of the family liable for the debt is that it should have been contracted for legal necessity or for the benefit of the family. Where, therefore, the benefit is proved the court will not be justified in refusing to grant the appropriate relief to the creditor unless it is compelled to do so by something to be found in the Negotiable Instruments Act or the principles underlying it.

Under the law of negotiable instruments it is necessary that the name of the person to be charged should be disclosed in the document in such a way that the responsibility is made plain and can be instantly recognised as the document passes from hand to hand.

But when the karta of a joint Hindu family, which is an institution peculiar to this country, borrows money for family purposes, he is not acting as an agent for an undisclosed principal or principals but may well be regarded as the principal. At any rate, when he acts as a karta, he acts in

* Appeal from Original Decree no. 139 of 1934, from a decision of Babu Raghunandan Prasad, Additional Subordinate Judge of Gaya, dated the 26th February, 1934.

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a capacity which is so well-known that there can be no misapprehension as to the identity of the person or persons whom he purports to bind by his act.

The rule laid down in *Sadasuk Janki Das* v. *Maharaja Sir Kishan Prasad*(1) is not, therefore, applicable to a Hindu family.

Abdul Majid v. *Saraswati Bai*(2), followed.

Sreelal Mangtulal v. *The Lister Antiseptic Dressing Co. Ltd.*(3), *Hari Mohan Ghose* v. *Sourenara Nath Mitter*(4), *Thaith Ottathil* v. *Purushotam Dass*(5), *Jibach Mahto* v. *Shib Shanker Chaudhary*(6), *Birkeshwar Raut* v. *Ram Lochan Pandey*(7), *Krishnanand Nath Khare* v. *Raja Ram Singh*(8), *Krishna Ayyar* v. *Krishnasami Ayyar*(9), *Bhagwan Singh & Co.* v. *Bakshi Ram*(10), *Tikan Chand Chaudhary* v. *Sudersan Trigunait*(11), *Nagendra Chandra Dey* v. *Amar Chandra Kundu*(12) and *Baisnab Chandra De* v. *Ramdhon Dhor*(13), referred to.

A manager of joint Hindu family who has contracted the debt is liable not only to the extent of his share in the joint family assets, but, being a party to the contract, he is liable personally; other co-parceners, however, are liable only to the extent of their interest in the family property, unless in the case of adult co-parceners, 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.

Jwala Prasad v. *Bhuda Ram*(14), followed.

(1) (1918) I. L. R. 46 Cal. 663, P. C.
(2) (1933) 15 Pat. L. T. 99, P. C.
(3) (1925) I. L. R. 52 Cal. 802.
(4) (1925) 41 Cal. L. J. 535.
(5) (1910) 21 Mad. L. J. 526.
(6) (1933) 15 Pat. L. T. 100.
(7) (1934) 16 Pat. L. T. 117.
(8) (1922) I. L. R. 44 All. 393.
(9) (1900) I. L. R. 23 Mad. 597.
(10) (1933) A. I. R. (Lah.) 494.
(11) (1933) 14 Pat. L. T. 623.
(12) (1903) 7 Cal. W. N. 725.
(13) (1906) 11 Cal. W. N. 139.
(14) (1931) I. L. R. 10 Pat. 503.

Appeal by defendants 2 and 3.

The facts of the case material to this report are set out in the judgment of Fazl Ali, J.

Sushil Madhab Mullick (with him *B. P. Sinha* and *Rajkishore Prasad*), for the appellants.

Khurshaid Husnain and *Pares Nath*, for respondent no. 3.

S. N. Rai, for respondents 1 and 2.

FAZL ALI, J.—This is an appeal from a decree passed by the Subordinate Judge of Gaya in a suit brought by the plaintiffs to recover a sum of Rs. 26,795-11-8 pies from defendants 1 to 3. Defendants 1 and 2 are full brothers and defendant no. 3 is the son of defendant no. 1. These three defendants were admittedly members of a joint family of which defendant no. 1 was the manager or karta till 1932 (1339 F.). The case of the plaintiff is that defendant no. 1 as karta of the family borrowed—

(*1*) Rs. 4,869 on the 5th December, 1929,

(*2*) Rs. 7,200 on the 22nd March, 1931,

(*3*) Rs. 10,034-7-0 on the 27th September, 1931,

and executed a promissory note in favour of the plaintiffs for the particular sum borrowed on each occasion. The trial court decreed the suit against all the three defendants holding that the handnotes were genuine and that defendant no. 1 had borrowed the sums mentioned in them for family necessity. This appeal has been preferred by defendants 2 and 3 (defendant no. 1 not appealing) and the only questions which are raised by them are (*1*) that the plaintiffs' action being based upon promissory notes, no decree should have been passed against defendants nos. 2 and 3 who had not signed them and (*2*) that the finding of the trial court as to the existence of legal necessity for the loans taken by defendant no. 1 is not correct.

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In arguing the first point the learned Advocate for the appellants greatly relied on *Sadasukh Janki Das* v. *Maharaja Sir Kishan Prasad*(1). In that case a question arose whether a person whose name did not appear on certain hundis (which are negotiable instruments) could be made liable under them on the ground that the person who had drawn the hundis was his agent. Their Lordships of the Judicial Committee answered the question in the negative and observed as follows:—

"It is not sufficient that the principal's name should be 'in some way' disclosed, it must be disclosed in such a way that on any fair interpretation of the instrument his name is the real name of the person liable upon the bills.

Their Lordships' attention was directed to sections 26, 27 and 28 of the Negotiable Instruments Act of 1881, and the terms of these sections were contrasted with the corresponding provisions of the English Statute. It is unnecessary in this connection to decide whether their effect is identical. It is sufficient to say that these sections contain nothing inconsistent with the principles already enunciated, and nothing to support the contention, which is contrary to all established rules, that in an action on a bill of exchange or promissory note against a person whose name properly appears as party to the instrument, it is open either by way of claim or defence to show that the signatory was in reality acting for an undisclosed principal."

In view of these observations it has been held in a number of recent cases that the karta of a joint Hindu family cannot by executing a promissory note in his own name bind the other members of the family, no other names appearing on the document as those of persons to be charged [*see Sreelal Mangtulal* v. *The Lister Antiseptic Dressing Co., Ltd.*(2); *Hari*

(1) (1918) I. L. R. 46 Cal. 663, P. C.
(2) (1925) I. L. R. 52 Cal. 802.

Mohan Ghose v. *Sourendra Nath Mitter*(1); *Thaith Ottathil* v. *Purushotam Doss*(2); *Jibach Mahto* v. *Shib Shanker Chaudhary*(3); *Birkeshwar Raut* v. *Ram Lochan Pandey*(4)]. The Allahabad High Court has, however, taken a different view in *Krishnanand Nath Khare* v. *Raja Ram Singh*(5) and held that there is no inherent reason why the managing member of a joint Hindu family cannot in that capacity execute in his sole name a promissory note which should be binding on the family as a whole and the property owned by it. The learned Judges who decided that case have explained the decision of the Privy Council by pointing out that the position of the head of the joint Hindu family is not the same as that of an ordinary business agent and that a joint Hindu family, being a legal person according to Hindu Law lawfully represented by and acting through the managing member or head thereof, is included ordinarily in term "a person". A similar view had been expressed by two eminent Judges of the Madras High Court in *Krishna Ayyar* v. *Krishnasami Ayyar*(6) and both these decisions have been followed by the Lahore High Court in *Bhagwan Singh & Co.* v. *Bakshi Ram*(7) and by a single Judge of this Court in *Tikan Chand Chaudhury* v. *Sudarsan Trigunait*(8). It may also be stated that before the decision of the Judicial Committee in the case of *Janki Das* v. *Maharaja Sir Kishan Prasad*(9) the High Court of Calcutta had also held in several cases that the karta of a joint Hindu family could bind the other members of the family by signing a promissory note for family purposes [*see Nagendra Chandra Dey* v. *Amar*

(1) (1925) 41 Cal. L. J. 535.
(2) (1910) 21 Mad. L. J. 526.
(3) (1933) 15 Pat. L. T. 100.
(4) (1934) 16 Pat. L. T. 117.
(5) (1922) I. L. R. 44 All. 393.
(6) (1900) I. L. R. 23 Mad. 597.
(7) (1933) A. I. R. (Lah.) 494.
(8) (1933) 14 Pat. L. T. 623.
(9) (1918) I. L. R. 46 Cal. 663, P. C.

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Chandra Kundu(1) and *Baisnab Chandra De* v. *Ramdhon Dhor*(2)].

Now the view expressed in these cases has this advantage that it enables the court to grant the same relief in a suit based on a promissory note as in a suit for debt and, therefore, makes it unnecessary for it to decide whether the suit belongs to one category or the other. The distinction between these two classes of suits is too well recognised to be overlooked, but so far as this country is concerned, the line of distinction becomes highly artificial in many cases, first, because except in a few mercantile towns a promissory note is not popularly regarded as a negotiable instrument; and, secondly, because the distinction depends largely on the view one takes of the pleadings and the pleadings in the mofussil courts are generally defective and badly drafted. Besides, so far as the Hindu Law goes, it does not recognise any distinction between the liability of the joint family when the debt is contracted by its karta under a promissory note and its liability when the debt is contracted otherwise. Under that law all that is necessary to make every member of the family liable is that the debt should have been contracted for legal necessity or for the benefit of the family. Where, therefore, the benefit is proved the court will not be justified in refusing to grant the appropriate relief to the creditor unless it is compelled to do so by something to be found in the Negotiable Instruments Act or the principles underlying it.

Under the law of negotiable instruments as has been explained by the Judicial Committee in *Janki Das* v. *Maharaja Sir Kishan Prasad*(3) it seems necessary that the name of the person to be charged should be disclosed in the document in such a way that the responsibility is made plain and can be instantly recognised as the document passes from hand

(1) (1903) 7 Cal. W. N. 725.
(2) (1906) 11 Cal. W. N. 139.
(3) (1918) I. L. R. 46 Cal. 663, P. C.

to hand. Now, the joint Hindu family is an institution peculiar to this country and the law gives its karta the power to contract loans for the benefit of the family according to his own discretion and without any express authority from the other members of the family. Therefore when the karta borrows money for the family purpose he is not acting as an agent for an undisclosed principal or principals but may well be regarded as the principal. At any rate when he acts as a karta, he acts in a capacity which is so well-known that there can be no misapprehension as to the identity of the person or persons whom he purports to bind by his act. On the whole, therefore, I am inclined to think that the rule laid down in *Janki Das* v. *Maharaja Sir Kishan Prasad*(1) is not applicable to a Hindu family and I am to some extent fortified in my view by the later pronouncement of the Judicial Committee in *Abdul Majid* v. *Saraswati Bai*(2). In that case a suit had been brought on the basis of two promissory notes executed by the manager of a joint Hindu family against the surviving members of that family after the death of the manager who had executed the promissory notes. The Judicial Committee in dealing with the case observed (*1*) that it would be within the authority of the karta of the joint family to borrow money in his own name if it be necessary for the proper conduct of the joint family business that money should be borrowed from time to time on promissory notes and (*2*) the fact of the promissory note being signed by the karta is equally consistent with the borrowing by him for his own individual purpose or borrowing for the purpose of the joint family business. The matter, however, need not be pursued any further because I agree with the learned Subordinate Judge that on the pleadings of the parties the present suit should be treated as a suit for recovery of debt. This is clear on reading paragraphs 3 and 4 of the plaint where, after stating

(1) (1918) I. L. R. 46 Cal. 663, P. C.
(2) (1933) 15 Pat. L. T. 99, P. C.

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the amounts which were borrowed by defendant no. 1 on different occasions, it is stated that the three handnotes were executed "in proof of his taking the aforesaid loans". Again in paragraph 6 of the plaint the defendants are sought to be made liable on the ground that "they were benefited by the loans" and in paragraph 8 it is clearly stated that the cause of action accrued on the dates on which "the loans were taken and the handnotes sued upon were executed". It is true that in paragraph 9 of the plaint the plaintiffs asked for a decree "on account of the three handnotes sued upon" but the plaint must be read as a whole and if read as a whole, it supports the view taken by the learned Subordinate Judge that the suit was in essence a suit for debt and therefore all the members of the family would be liable to re-pay the debt if they were contracted for legitimate family necessity.

The next question to be considered is whether the debts were in fact contracted for family necessity. The finding of the trial court as to the existence of such necessity has not been seriously challenged before us so far as it relates to the promissory note exhibit 1(*b*) by means of which defendant no. 1 borrowed a sum of Rs. 10,034-7-0 on the 27th September, 1931. It appears that the defendants had obtained a lease of certain property from the plaintiffs after having given it to them in usufructuary mortgage. The handnote exhibit 1(*b*) recites that the rent for this property had fallen due, that the mortgagees were ready to institute a suit to recover the arrears and that if a suit was instituted, it was likely to put the defendants and the other members of the family to unnecessary loss and harassment. The correctness of these recitals is clearly established by the statement made in a mortgage bond to which defendant no. 2 was a party, it being executed by him and defendant no. 1 on the 19th September, 1932. This bond recites in very clear terms that the *two brothers* had paid rent for 1928 in respect of the property of which they were

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sub-lessees by taking a loan of Rs. 10,034-7-0 from plaintiff no. 1. There can, therefore, be no doubt that all the defendants are liable for the dues under this handnote [exhibit 1(*b*)].

The other two handnotes [exhibits 1 and 1(*a*)] do not contain any recitals so as to indicate the purpose for which defendant no. 1 borrowed the amounts mentioned therein and the question as to whether the loans under these handnotes were justified by any family necessity or not has to be decided with reference to the evidence of the witnesses examined by the parties. It was contended by the learned Advocate for the appellants before us that the defendants being possessed of considerable property which yielded an annual income of about two lakhs of rupees (vide the evidence of defendants' witness no. 1) defendant no. 1 had no justification for contracting these debts. The evidence, however, which is before us shows that the pecuniary condition of the family was far from satisfactory. Exhibit 5 which is a mortgage bond executed by both defendants nos. 1 and 2 in 1926 for a sum of Rs. 76,800 shows that the family had incurred large debts and a decree for Rs. 1,39,000 had been passed against them by the Calcutta High Court. Again a simple bond executed by both the brothers (defendants 1 and 2) in October, 1931, contains among other things the following passage :—

"We the declarants..... had borrowed Rs. 40,000 bearing interest from Babu Ran Bhanjan Singh..... promising to pay interest and compound interest at Re. 1 per cent per month..... but we have not yet paid to the said mahajan a single shell out of either the principal or interest or compound interest due under the aforesaid mortgage bond..... Besides this we the declarants had borrowed Rs. 1,000 bearing interest at Rs. 2 per cent per month from the said Babu Saheb under a handnote, dated the 28th September 1931, for payment of court-fee and for instituting a rent suit against the tenants of mauza Chatar (?), pargana Narhat, district Gaya and having taken the loan we instituted rent suits, which if not instituted a large amount of the arrears would have been time-barred and at present we stand in need of money for making payment of income-tax, for the realisation of which a warrant has already been issued. We have also to pay road cess for our zamindar for the realisation of which several certificates have been issued. We also badly stand in need

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of money for making payment of rent to Dulhin Jageshar Kuer, wife of Babu Bansi Singh, resident of mauza Baijnathpur, pargana Narhat, district Gaya in respect of (lands of) mauza Majhgawan and mauza Sikanderpur and we have got no money at present in our khas tahbil and at present there is no income in kind from the zamindari and rent in cash is not realised from the tenants on account of rise in the price of grains. Without taking loan there does not appear any other source for raising money."

FAZL ALI, J. From another mortgage bond (exhibit 3), dated the 19th September, 1932, to which reference has already been made it appears that the two brothers could not pay off certain arrears of rent without borrowing from the plaintiffs. These documents speak for themselves and do not justify the contention that the family was in no want of money. In fact it is not seriously disputed that the defendants were heavily indebted and, as the learned Subordinate Judge has rightly pointed out, that their income had been greatly reduced owing to economic depression.

On the question of actual necessity it is stated on behalf of the plaintiffs that defendant no. 1 had taken the loans in question for the purpose of paying Government revenue and cesses for the villages owned by them in Gaya and Patna districts and for defraying the expenses of an appeal pending before the Privy Council and meeting certain household expenses. P. W. 4 who is the servant of the plaintiffs has deposed that he had himself made enquiries in various quarters and was satisfied that defendant no. 1 wanted money for the purposes mentioned above. The evidence of the plaintiffs' witnesses has been accepted by the learned Subordinate Judge and on the whole I am not prepared to hold that he was not justified in doing so. The case put forward on behalf of defendants 2 and 3 is that defendant no. 1 could have paid the dues mentioned above without borrowing any money from the plaintiffs and that in fact he had paid them out of the income of the estate. These defendants, however, have offered no reliable evidence to establish their allegations. The learned Subordinate Judge has strongly commented upon the non-production of certain account books which he finds on

evidence to have been in possession of defendant no. 2; but apart from these account books there was nothing to prevent defendant no. 2 from coming into the witness box and disproving the case made out on behalf of the plaintiffs. It cannot be said that defendant no. 2 was not acquainted with the affairs of the family, for defence witness 1 Govind Lal has stated that defendant no. 2 used to look after the affairs of the family at times and also used to check the household accounts (deorhi jama kharach). The only witness who was examined by the defendant no. 2 to disprove the allegations made on behalf of the plaintiffs was Govind Lal, one of his servants, but his statement is not supported by any reliable evidence. The learned Subordinate Judge has dealt with the whole question at some length and I agree with him that the only reasonable conclusion which can be drawn from the evidence which is on the record is that defendant no. 1 contracted the loans in question not for his own use but for the benefit of the family and that both defendants 2 and 3 were benefited by the loans.

There is only one other point which remains to be dealt with. In cases where a loan is contracted by the managing member of a joint family a question often arises at the time of the execution of the decree as to the extent of the liability of the other members of the family for the debt. This question has arisen in this particular case also as will appear from the connected miscellaneous appeal before us and it seems, therefore, to be necessary that the decree of the court should be prepared in such a way as to make the position clear. In *Jwala Prasad* v. *Bhuda Ram*[1] two learned Judges of this Court have quoted with approval the following passage from Mulla's Hindu Law as correctly summarising the law on the subject:

"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

(1) (1931) I. L. R. 10 Pat. 503.

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between the liability of a manager and the liability of his co-parceners. 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 co-parceners, they are liable only to the extent of their interest in the family property, unless, in the case of adult co-parceners, 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."

Now in this particular case so far as defendants 1 and 3 are concerned, the position is perfectly simple. The former as the executant of the handnotes is personally liable for the debts contracted under all of them and defendant no. 3 who is a minor is liable for these debts only to the extent of his interest in the joint family property. As to defendant no. 2 I am of opinion that he is personally liable for the loan contracted under the handnote, dated the 27th September, 1931. I have already stated that the mortgage bond (exhibit 3), dated the 19th September, 1932, which was executed by him as well as by defendant no. 1 refers in clear terms to the promissory note in question and I may quote the exact words used in the bond which are as follows:—

"*We paid rent* with interest on the default of instalment for 1928 to the said ijaradar *by taking a loan* from Babu Sidheshwar Prasad Narain Singh, etc., etc., under a handnote for Rs. 10,034-7-0."

I think that this statement, the correctness of which there is no reason to doubt, brings the case of defendant no. 2 within the exception referred to in the passage quoted above and amounts to a ratification of the loan. Defendant no. 2 is, therefore, personally liable so far as the debt contracted under the handnote of 27th September, 1931, is concerned but he is liable only to the extent of his share in the joint family

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property in respect of the debts contracted under the other two handnotes. I would, therefore, dismiss this appeal with costs and direct that in the decree which is to be prepared in this Court the amount due under the three handnotes should be calculated separately and it should be made clear that defendant no. 1 is personally liable for the debts due under all the three handnotes, that defendant no. 2 is personally liable only in respect of the debt contracted under the third handnote and that defendant no. 3 is not personally liable under any of the debts but is liable only to the extent of his interest in the joint family property.

MADAN, J.—I fully agree.

Appeal dismissed.

S. A. K.

APPELLATE CIVIL.

Before Fazl Ali and Madan, JJ.

1937.

January, 7.
March, 19.

RAMESHWAR NARAIN MISRA

v.

RAGHUNANDAN PURBEY.*

Limitation Act, 1908 (Act IX of 1908), Article 182, clause (4)—nature of amendment contemplated—amendment made after execution of decree is barred, whether saves limitation.

Where an application for the amendment of decree was made more than three years after the decree was passed and without notice to the judgment-debtor and the amendment which was of a trifling nature was allowed, *held*, that the amendment which gives a fresh start to limitation must be an amendment in the real sense of the term and not merely the correction of clerical error or trifling arithmetical mistakes

* Appeal from Appellate Order no. 161 of 1936, from a decision of V. Ramaswami, Esq., I.C.S., Additional District Judge of Darbhanga, dated the 7th May, 1936, reversing a decision of Maulavi Kabiruddin Ahmad, Munsif of Darbhanga, dated the 5th September, 1935.