We are completely satisfied that the sale by Sohna Mal without the consent of his two brothers was looked upon from the beginning as an excellent piece of business, that Dhanpat Rai and his brother, and later his nephews gladly acquiesced in the sale and allowed the vendee to make full use of the property and to erect a costly building, and that it was not until enhancement in value made it worth their while to do so that they had any idea of attempting to upset the sale. We find that there has been such acquiescence as estopped the present assertion of their rights by the plaintiffs, and we dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Abdul Raoof and Mr. Justice Moti Sagar.

RAM RATTAN—(PLAINTIFF)—*Appellant,*

versus

BASANT RAI AND ACHHRU RAM—(DEFENDANTS)—*Respondents.*

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June 14.

Civil Appeal No. 490 of 1918.

Hindu Law—Joint Hindu family—liability of son for his father's debts—money decree against father, whether enforceable against co-parcenary property—Onus probandi—*bond executed by a major in settlement of previous bonds executed by him during minority—whether a "promise without consideration"—Indian Contract Act, IX of 1872, section 25 (2).*

A. R. and his minor son R. R., the present plaintiff, constituted a joint Hindu family. On 4th August 1914 A. R. having attained majority entered into 2 bonds for Rs. 1,000 in settlement of 6 earlier bonds executed by him and his mother while he was a minor. On the 3rd May 1917 the defendant B. obtained a simple money decree on the basis of the 2 bonds for Rs. 1,000, and in execution thereof attached certain houses of A. R. which were joint family property. Objections were made by R. R. and when these were rejected by the executing Court, the present suit was filed praying for a declaration that the property in question was not liable to attachment and sale in execution of the decree against A. R. The lower Appellate

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Court held that plaintiff had failed to prove that the debt was incurred for an illegal or immoral purpose and that the question of illegality of the debt by reason of the fact that the original bonds had been executed by A. R. while he was a minor was immaterial as A. R. had ratified them after attaining majority by executing fresh bonds.

Held, by the High Court, (1) that a money decree against a Hindu father for a debt which was neither illegal nor immoral, whether incurred for family purposes or not, may be enforced in his life time by the execution sale of the entire coparcenary property and is binding on the sons, and (2) that in order to absolve a Hindu son from liability for his father's debts it is not enough to prove that the father was a man of extravagant and vicious habits but there must be some definite connection established between the debt and the expenditure.

Held also, that having regard to the provisions of clause (2) of section 25 of the Indian Contract Act, the bonds of 4th August 1914 executed by A. R. could not be held to be "promises without consideration" as although a promise by an infant is in law a mere nullity and void, it is otherwise where the agreement is made by a person of full age to compensate a promisee who has already voluntarily done something for the promisor, even at a time when the promisor was a minor and unable to contract.

Karm Chand v. Mussammat *Basant Kaur* (1) and Mussammat *Kundan Bibi* v. *Sree Narayan* (2), followed.

Held further, that the *onus* of proving that the debt was non-existent or illegal and that he was in consequence relieved from his pious obligations to discharge it was clearly upon the plaintiff, the son, and he having failed to discharge it the joint property was liable.

Natasayyan v. *Ponnusami* (3), followed.

Second appeal from the decree of A. E. Martineau, Esquire, District Judge, Jullundur, dated the 22nd December 1917, *reversing that of Bhagat Jagan Nath, Subordinate Judge, 2nd class, Jullundur, dated the* 31st *July* 1917, *and dismissing plaintiff's suit.*

SHEO NARAIN, for Appellant.

JAGAN NATH, for Respondents.

The judgment of the Court was delivered by—

MOTI SAGAR, J.—This is an appeal from a judgment and decree of the District Judge of Jullundur

(1) 81 P. R. 1911. (2) (1905) 11 Cal. W. N. 135.

(3) (1892) I. L. R. 16 Mad. 99.

The plaintiff Ram Rattan is the son of the 2nd defendant Achhru Ram, these two constituting a joint Hindu Family. On the 3rd May 1917, the defendant Basanta obtained a simple money decree against the other defendant Achhru Ram for Rs. 1,000 on the basis of two bonds dated the 4th August 1914, and in execution thereof attached certain houses of Achhru Ram situate in the jurisdiction of the Jullundur Court which were admittedly joint family properties. Thereupon the plaintiff applied to the execution Court to raise the attachment on the ground that the money debt in the decree against his father was tainted with immorality, and hence the joint family property was not liable for the payment of the same.

The executing Court refused to raise the attachment, and the plaintiff thereupon instituted a regular suit out of which the present appeal has arisen. In this suit the plaintiff reiterated his allegations as regards the immorality of the decretal debt, and prayed for a declaration to the effect that the property in question was not liable to attachment and sale in execution of the aforesaid decree.

The following two issues were fixed by the trial Court :—

1. Whether the decretal debt in execution of which the houses in question had been attached was borrowed for the benefit of the family, and the said debt was in consequence binding on the plaintiff.

2. Whether the loan was taken for immoral purposes and consequently the houses in question were not liable to attachment and sale.

The Subordinate Judge while recording his judgment was of opinion that the first issue was altogether unnecessary, and he, therefore, gave a finding on the 2nd issue alone. The Subordinate Judge found that

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it had not been proved that there was any connection between the immoral purpose, and the debt contracted, but that there was a general presumption that the debt was tainted with immorality, as the borrower was at the time leading an immoral life, and had no trade or business necessitating borrowing of loans. Another point raised by the plaintiff at the time of the arguments that the debt in question was illegal, inasmuch as the six bonds in lieu of which the bonds sued upon had been obtained were executed during the minority of the defendant Achhru Ram, was disallowed on the ground that it had not been raised at an earlier stage of the case, and because that there was no issue on which evidence could have been adduced by the parties. On appeal the District Judge disagreed with the view taken by the Subordinate Judge, and held that the plaintiff in order to succeed must prove that the debt in question was contracted for an illegal or immoral purpose, and that it had not been shown that at the time when the money had been borrowed, the plaintiff's father had launched out into a life of debauchery or was a notorious profligate. On the question of illegality of the debt by reason of the fact that the original bonds had been executed by Achhru Ram, while he was a minor, the District Judge held that this was immaterial as Achhru Ram had ratified the bonds by executing fresh ones in August 1914, after reaching the age of majority. He accordingly dismissed the plaintiff's suit. A second appeal has now been preferred to this Court, and we have heard the case argued at considerable length by the counsel appearing on behalf of their respective clients. Two points have been conceded before us by the learned counsel appearing on behalf of the appellant, and no arguments have consequently been addressed thereon, *viz.* (1) That a money decree against a *Hindu* father for a debt which was neither illegal, nor immoral and whether incurred for family purposes or not may be enforced in his life time by the execution sale of the entire coparcenary property and is binding on the sons; and (2) That in order to absolve a *Hindu* son from liability for his father's debts, it is not enough to prove that the father

was a man of extravagant and vicious habits, but that there must be some definite connection established between the debt and the expenditure.

The main contention of *Pandit* Sheo Narayan for the appellant is that the decretal debt, for the payment of which the property in suit was sought to be made liable, is a debt which has no existence in the eye of the law, and that consequently no obligation attaches to the son to satisfy this debt by the sale of the coparcenary property. He argues that the bonds of the 4th August 1914, which were the foundation of the decree subsequently obtained by the defendant No. 1 Basanta, were executed by the defendant Achhru Ram, on attaining majority in settlement of the six earlier bonds executed by him and his mother, *Mussammat* Tabi, while he was admittedly a minor, in consideration of his having received from the obligee certain sums of money during the time of his minority, and that as he could not incur any debt, while he was a minor, there was no debt which the defendant Basanta could have recovered at the time the bonds were executed, and that they were consequently bad for want of consideration. The execution of the bonds is admitted, and it is also conceded that Achhru Ram, the executant of the bonds, would in all probablity be personally liable under the decree that has been passed against him, but so far as the liability of the son to pay the debts of his father is concerned, it is contended that this arises only from the moral and religious obligation to rescue him from the penalties arising from the non-discharge of his debts, and that when the debt itself creates no such moral obligation, the son is not bound to repay it. A debt tainted with immorality or illegality, it is said, is of such a character, and the son is entitled to repudiate it. In support of this contention a certain passage at page 396 in Mayne's Hindu Law has been relied upon, where it is stated that—

"The sons are not compellable to pay sums due by their father, for spirituous liquors, for losses at play, for promises made without any consideration, or under the influence of lust

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or wrath, nor generally any debt for a cause repugnant to good morals."

It is argued that the obligation to pay under the bonds of the 4th August 1914 falls within the category of a "promise made without any consideration," and that the son who was not a party to the decree need not, therefore, repay it. It is beyond dispute that the proposition of the Hindu Law that the freedom of the son from his pious obligation to discharge his father's debt has reference to the nature of the debt alone is correct, but there is a fallacy underlying this argument, which assumes that the bonds of the 4th August 1914 were without consideration. The argument entirely loses sight of section 25, clause (2), of the Indian Contract Act, which lays down that a promise made without consideration is void unless it is a promise to compensate wholly or in part, a person who has already voluntarily done something for the promisor. On the same footing would be a promise to pay a debt, which is barred by the law of limitation, but which would, under section 25, clause (3), be a perfectly good and a valid promise if made in writing and signed by the person sought to be charged with liability. In *Karam Chand* v. *Mussammat Basant Kaur* (1) the law with regard to the applicability of section 25 (2) of the Contract Act, to cases of this description has been laid down as follows:—

"It is now settled law that a promise by an infant is in law a mere nullity and void, but we fail to see how an agreement made by a person of full age to compensate wholly or in part a promisee who had already voluntarily done something for the promisor, even at a time when the promisor was a minor, does not fall within the purview of section 25 (2) of the Indian Contract Act. As at the time when the thing was done, the minor was unable to contract, the person who did it for the minor must, in law, be taken to have done it voluntarily. But he has in fact done *something* for the minor, and if words mean anything at all, surely his case must be deemed to come within the scope of the Act? If stress is to be laid on the words "the promisor" and an argument to be deduced therefrom that an infant cannot in law be regarded as a "promisor," we would reply

(1) 31 P. R. 1911.

that the word "already" which was deliberately inserted before the words "voluntarily done something," clearly refers to past transactions, and that we are unable to understand why that expression should be restricted merely to such as had occurred after the promisor had attained majority. Section 25 was intended to give effect to agreements which would otherwise be void as, being without consideration, an infant's agreement is such, and in our opinion the provisions of the section, which are wide in terms, apply no less to such an agreement than to a contract by a major to pay for past services."

The same view has been taken by the Calcutta High Court in a ruling reported as *Mussammat Kandan Bibi* v. *Sree Narayan* (1). Having regard to these rulings we do not think that the contention of the learned counsel for the appellant that the bonds of 4th August 1914 were without consideration and consequently void, has any force. In our opinion there can be no manner of doubt that upon a correct interpretation of the words as used in the rule of Hindu Law under consideration, the debts were justly due by the father to the decree-holder Basanta, and that no such illegality has been shown in the nature of these debts as would absolve plaintiff from his obligation to pay them out of the joint family property. As observed by the learned Judges of the Madras High Court in *Natasayyan* v. *Ponnusami* (2), the son is of course not bound to do anything to relieve his father from the consequences of his own vicious indulgences, but he is surely bound to do that which his father himself would do were it possible, *viz.*, to restore to those lawfully entitled, the money, he has unlawfully retained. The *onus* of proving that the debt was non-existent or illegal, and that he was in consequence relieved from his pious obligations to discharge it was clearly upon the son, and he, having failed to discharge it, we must hold that the joint family property is liable.

The next point taken on behalf of the appellant is that the debt was tainted with immorality,

(1) (1906) 11 Cal. W. N. 135. (2) (1892) I. L. R. 16 Mad. 99.

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and, therefore, not binding on him. On this point the learned District Judge has given a definite finding that the debts were not immoral, and that the father was not leading an immoral life at the time they were contracted. This is clearly a finding of fact and cannot be challenged in second appeal.

The result is that the appeal fails, and is dismissed with costs.

Appeal dismissed.