## APPELLATE CIVIL

*Before Mr. Justice Abdul Raoof and Mr. Justice Harrison.*

1922

*Feb 7.*

MELA MAL AND SHIB DAYAL (DEFENDANTS)—*Appellants,*

*versus*

GORI AND OTHERS (PLAINTIFFS) AND RAJ MAL AND ANOTHER (DEFENDANTS)—*Respondents.*

Civil Appeal No. 372 of 1917.

*Joint Hindu Family—Decree against one member—liability of the shares of the other members—Manager—representative capacity—family purpose—presumption.*

*Held*, that where a creditor sues for a debt due from a joint Hindu family and does not join all the members of the family as defendants and obtains a decree against one of the members of the family alone, it cannot be executed against the whole coparcenary property, unless the person sued happens to be the manager of the family and the decree is obtained against him in his capacity as manager representing the family.

*Viraragavamma* v. *Samudrala* (1), *Gurunappa* v. *Thimma* (2), *Sathuvayyan* v. *Muthusami* (3), *Balbir Singh* v. *Ajudhia Prasad* (4), *Ram Dayal* v. *Durga Singh* (5), and *Lachmi Narain* v. *Kunji Lal* (6), followed.

Mulla's Principles of Hindu Law, 3rd Edition, page 229, para. 208, Gour's Hindu Code, page 613, para. 1359, and Mayne's Hindu Law, 4th Edition, page 372, section 324, approved.

*Sakharam* v. *Devji* (7), *Hari Vithal* v. *Jairam Vithal* (8) and *Daulat Ram* v. *Mehr Chand* (9), distinguished.

*Baldeo Sonar* v. *Mobarak Ali Khan* (10), referred to.

*Held also*, that there is no presumption of law that a suit by a creditor against a manager of a joint Hindu family was brought against the latter in his representative capacity as manager.

*Rangaswami Iyengar* v. *Annathurai Iyengar* (11), referred to.

*Held further*, that there is no presumption that a debt contracted even by the manager of a Hindu family was contracted for the benefit of the family.

*Bhura* v. *Banarsi Das* (12), followed.

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(1) (1885) I. L. R. 8 Mad. 208.
(2) (1887) I. L. R. 10 Mad. 316.
(3) (1888) I. L. R. 12 Mad. 325.
(4) (1886) I. L. R. 9 All. 142.
(5) (1890) I. L. R. 12 All. 209.
(6) (1894) I. L. R. 16 All. 449.
(7) (1898) I. L. R. 23 Bom. 372.
(8) (1890) I. L. R. 14 Bom. 597.
(9) (1887) I. L. R. 15 Cal. 70 (P C.)
(10) (1902) I. L. R. 29 Cal. 583.
(11) (1910) 20 Mad. L. J. 852, 853.
(12) 174 P. L. R. 1915.

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*Held, however,* that no general rule can be laid down which may be applicable to every case. If in any particular case it is shewn that the debt was incurred by the *Karta* of a family for the purposes of the family trade or for its benefit otherwise and he was sued as manager and a decree was substantially against the family in the name of its manager, all the members of the family will be liable for the decretal amount.

*Second Appeal from the decree of F. W. Kennaway, Esquire, District Judge, Hoshiarpur and Kangra Districts, dated 20th January 1917, reversing that of J. K. M. Topp, Esquire, Senior Subordinate Judge, Kangra, at Dharmsala, dated the 20th July 1916, dismissing the suit.*

BALWANT RAI, for Appellants.

MUKAND LAL PURI, for Respondents.

The judgment of the Court was delivered by—

ABDUL RAOOF J.—This second appeal has arisen out of the following facts :—

One Nand Ram along with his sons, Gori, Munshi, Duni, plaintiffs, and Raj Mal, defendant No. 1, in the suit, formed a joint Hindu family. He died in 1903. On the 7th January 1913 Mela Mal and Shib Dayal, defendants Nos. 3 and 4, traders of Hoshiarpur, filed a suit in the Court of the Subordinate Judge of Hoshiarpur against Nand Ram and Raj Mal, defendant No. 1, for the recovery of Rs. 1,270 due on *bahi* account. Nand Ram having died before the suit, as already stated the defendants Nos. 3 and 4 proceeded against Raj Mal alone as the sole defendant in the case. The suit was decreed against Raj Mal alone and a decree for the amount was passed against him. In the execution of the decree a debt of Rs. 2,051 due from the estate of the Raja of Goler in the hands of the Court of Wards was attached. The plaintiffs objected to the attachment of $\frac{4}{5}$th of the debt on the allegation that the debt for which the claim was preferred had not been incurred for the benefit of the joint family, and that the decree being against the defendant No. 1 alone could not be executed against them. The objections were disallowed and the $\frac{4}{5}$th share of the debt was not released from attachment. Thereupon the plaintiffs instituted the present suit for a declaration to the

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effect that the sum of Rs. 2,051 due from defendant No. 2 which the defendants Nos. 3 and 4 had got attached in execution of their decree against defendant No. 1, was not liable to be attached and sold in excess of the share of Raj Mal, and that the share of the plaintiffs to the extent of ¾th ought to have been released from attachment. It was also pleaded that the defendant No. 1 was a man of bad character and of extravagant habits and had incurred the debt for immoral purposes, and that in any case the decree being against defendant No. 1 alone, the shares of the plaintiffs were not liable to be attached in execution thereof.

The suit was resisted by the defendants Nos. 3 and 4 on the following grounds, namely, that the defendant No. 1 was the manager of the joint family; that he had incurred the debt as such along with the father of the plaintiffs for the purchase of articles for a shop which belonged jointly to the plaintiffs, defendant No. 1 and their father. The charges of immorality and extravagance were denied, and the debt due from the estate of the Raja of Goler was alleged to be the joint property of the family.

The trial Court framed two issues, namely :—

(1) Was not the debt for which the defendants 3 and 4 obtained a decree for Rs. 1,270 incurred for the benefit of the joint family comprising plaintiffs and defendant 1 ?

(2) If so, is not the whole debt of Rs. 2,051 due by defendant 2 to the plaintiffs and defendant 1 attachable and liable to sale in execution of the said decree ?

The onus was placed on the plaintiffs in respect of both these issues. On the first issue the finding of the trial Court was that the plaintiffs had failed to discharge the onus, and that it was not necessary under the circumstances to discuss the evidence of defendants Nos. 3 and 4.

The decision on the second issue naturally followed the decision on the first issue and was necessarily against the plaintiffs.

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The suit was accordingly dismissed.

On appeal by the plaintiffs the decision of the trial Court has been reversed and a decree has been granted in favour of the plaintiffs. Hence this appeal.

The following facts may be taken to have either been admitted or found—

(1) that the sum of Rs. 2,051, which has been attached, belongs to the plaintiffs and Raj Mal, the defendent No. 1; and

(2) that the decree under execution was passed against Raj Mal personally and not in his representative capacity as the manager of the family.

The first contention put forward by Mr. Balwant Rai in his argument was that the attached debt belonged to the defendant No. 1 exclusively, and that the plaintiffs had no share in it. This contention, however, does not appear to have been urged in the Courts below. In fact, from the line taken in defence and from the wording of issue No. 2 it would appear that the said sum was treated by all parties as being due both to the plaintiffs and the defendant No. 1. We are, therefore, not prepared to listen to this contention put forward in second appeal for the first time.

The second contention of the learned Vakil was that inasmuch as the decretal debt had been incurred for the benefit of the joint family, and as the defendant No. 1 was admittedly the manager, the plaintiffs must be held to be liable for the debt, in spite of the fact that the decree under execution had been obtained against the defendant No. 1 alone. This contention is opposed to the well recognised rule that where a creditor sues for a debt due from a joint family and does not join all the members of the family as defendants and obtains a decree against one of the members of the family alone, it cannot be executed against the whole coparcenary property, unless the person sued happens to be the manager of the family and the decree is obtained against him in his capacity as manager representing the family. This rule is clearly stated in almost all the commentaries on Hindu Law. See for example Principles of Hindu

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Law by Muller, III Edition, page 229, paragraph 208, where the principle, deducible from decided cases is thus summed up :—

"Where a person seeks to enforce a claim against a joint Hindu family, it is advisable that he should join all the members of the family as defendants. If he sues only one of the members and obtains a decree against him, the decree cannot be executed against the whole coparcenary property; it can only be executed against the defendant's interest in the property. To this, however, there is an exception which is noted below.

EXCEPTION—A decree passed against the *manager* of a joint family *as representing the family*, provided it be in respect of a debt contracted by him for family necessities or for the family business, may be executed against the whole coparcenary property, although the other members were not parties to the suit. It is otherwise, if the decree passed is against the manager *personally*. A decree, even for a family debt, passed against the manager personally, cannot be executed against the whole coparcenary property; it can be executed only against his interest in the property."

The same rule is stated by Dr. Gour in his Hindu Code at page 613, paragraph 1359, as follows :—

"If the manager may sue or be sued on behalf of the joint family, it follows that any decree passed in such suit for or against him, would bind the family which he *represents*. This was the *ratio decidendi* of the Privy Council decision (*Sheo Shankar* v. *Jaddo Kanwar* (1)),

It is immaterial whether the manager was the father or any other relation, provided he was the manager, and *had or was sued in that capacity. This must be clear from the record. It cannot be presumed.*"

The same rule is stated by Mayne in his work on Hindu Law, IV Edition, Section 324 at page 372, in the following words :—

"If the managing member of the family executes a document which would bind the other members, the proper course is to sue them all. If the creditor chooses, he may only sue the person who executed the document. But if he adopts this course, his execution will only take effect upon the share of the execution debtor. He cannot enforce it against the other members (not being the sons of the debtor) merely by proving that the transaction was entered into for the benefit of the family."

In this case it has not been shown that the debt was incurred for the benefit of the family or that the plaintiffs were in any way benefited by the transaction.

(1) (1914) I. L. R. 36 All. 383 (P. C.).

It has been held in *Bhura and others* v. *Banarsi Das, etc.* (1) that—

"there is no presumption that a debt contracted even by the manager of a Hindu family was contracted for the benefit of the family or firm."

Therefore in each case it ought to be proved that the debt for which all the members of the family are sought to be made liable was incurred for the benefit of the family. This question, however, is not very material and cannot affect the main question on which the decision of the present case depends. The main question is whether the property of the plaintiffs can be attached in execution of a decree passed in a suit to which they were no party and were not represented by any one. As a general proposition of law there can be no doubt that a decree can be executed only against a person against whom it has been passed, but it is contended in this case that although the plaintiffs were not impleaded as defendants in the suit they were substantially represented by the defendant No. 1. who was the manager of the joint family. It has, however, been held in numerous cases that in order to make the other members of the joint family liable under a decree passed against the managing member it ought to be shown that the suit was brought against him in his representative capacity. In addition to the authorities quoted above the following cases among others too numerous to mention may be cited as fully supporting this proposition :—

*Viraragavamma* v. *Samudrala* (2),
*Guruvappa* v. *Thimma and another* (3),
*Sethuvayyan* v. *Muthusami* (4),
*Balbir Singh* v. *Ajudhia Prasad* (5),
*Ram Dayal* v. *Durga Singh* (6), and
*Lachmi Narain* v. *Kunji Lal and Chote Lal* (7).

Mr. Balwant Rai has, however, strongly relied on the case of *Sakha Ram* v. *Devji* (8) and no doubt the

(1) 174 P. L. R. 1915.
(2) (1885) I. L. R. 8 Mad. 208.
(3) (1887) I. L. R. 10 Mad 316.
(4) (1888) I. L. R. 12 Mad. 325.
(5) (1886) I. L. R. 9 All. 142.
(6) (1890) I. L. R. 12 All. 209.
(7) (1894) I. L. R. 16 All. 449.
(8) (1898) I. L. R. 23 Bom. 372.

decision in that case goes a long way to support his contention. The rule is thus stated in the headnote :—

"Where a debt is incurred by a Hindu as manager of the family for family purposes, the other members of the family, though not parties to the suit, will be bound by the decree passed against him in respect of the debt ; and if in execution of the decree any joint property is sold, the interest of the whole family in such property will pass by the sale."

It has, however, not been shown in this case that Raj Mal had incurred the debt as the manager of the family and for its benefit. An examination of the facts of decided cases leads us to the conclusion that no general rule can be laid down which may be applicable to every case. If in any particular case it is shown that the debt was incurred by the *karta* of a family for the purposes of the family trade or for its benefit otherwise and he was sued as manager and a decree was substantially against the family in the name of its manager, all the members of the family will be liable for the decretal amount. These facts, however, must be proved by evidence. It was held in *Rangaswami Iyengar* v. *Annathurai Iyengar and others* (1) that—

"there is no presumption of law that a suit by a manager of a joint Hindu family is in his representative capacity as Manager and where the question itself is not raised as to his having represented the family, a Court will be acting rightly in holding that he sued in his own personal capacity."

The same rule, we take it, will apply in a converse case, namely, where a suit is brought *against* a manager of a joint Hindu family.

Mr. Balwant Rai has referred to three more cases to which we will briefly refer :—

(1) *Baldeo Sonar* v. *Mobarak Ali Khan* (2). This case, in our opinion, does not lay down any different principle. The rule laid down in the judgment is summed up in the headnote which runs as follows :—

"A member of a joint Hindu family, not being a son of the debtor, would be bound by a decree and sale of the family property under the decree, although he was not a party to it, if the creditor or the purchaser, as the case may be, could prove that the debt had been contracted for the benefit of the family or the purposes of

(1) (1910) 20 Mad. L. J. 852, 853. (2) (1902) I. L. R. 29 Cal. 583.

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a trading business in which they were interested, and if the decree was substantially one against them although in form it might be against the head member or members of the family, who contracted the debt.

This would especially be so, if the other coparceners were minors at the time the debt was contracted and the suit was brought."

(2) The facts of the case in *Hari Vithal* v. *Jai Ram Vithal* (1) are clearly distinguishable from the facts of the present case. The plaintiffs and their brother Esaji were in joint occupation of certain *Thikans* in a *khoti* village. Esaji being the eldest brother was in possession of the family estate as a manager. In *that capacity* he was sued for arrears of assessment due on the *Thikans* and a decree was obtained against him. It was accordingly held that the other members of the family were bound by the decree.

(3) The case of *Daulat Ram* v. *Mehr Chand* (2) has been distinguished in the case of *Sathurayyan* v. *Muthusami* (3) on the ground that the suit was brought upon a mortgage standing in the name of the managing member of the family and was treated as one against the managing members in his representative capacity. The other members were, therefore, rightly held to be bound by the decree.

In our opinion the preponderance of authorities is in favour of the decision of the Lower Appellate Court. We accordingly dismiss this appeal with costs. The effect of the dismissal being that the decree cannot be executed against the shares of the plaintiffs in the property attached.

C. H. O.

*Appeal dismissed.*

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(1) (1890) I. L. R. 14 Bom. 597. (2) (1887) I. L. R. 15 Cal. 70 (P. C.).
(3) (1888) I. L. R. 12 Mad. 325.