

APPELLATE CIVIL.

Before Mr. Justice Martineau and Mr. Justice Zafar Ali.

KHAZANA MAL AND TULSI RAM (PLAINTIFFS)

Appellants

versus

JAGAN NATH AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 1351 of 1920.

Joint Hindu Family—debt contracted by manager—presumption that it was contracted for benefit of family.

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

Ganpat Rai v. Muni Lal (1), Bhura v. Banarsi Das (2), Peras Ram-Jawala Das v. Gian Chand (3), and Ram Dhan Das v. Kanji Das (4), followed.

Brij Lal v. Jaishi Ram (5), disapproved.

Second appeal from the decree of A. Campbell, Esq., District Judge, Hoshiarpur, dated the 1st of March 1920, reversing that of G. H. Harris, Esq., Senior Subordinate Judge, Kongra at Dharm sala, dated the 31st July 1919 and dismissing the claim.

MEHR CHAND MAHAJAN, for Appellants.

M. L. PERI, for Respondents.

The judgment of the Court was delivered by—

MARTINEAU J.—The plaintiffs sued Jagan Nath and the sons of Jagan Nath's deceased brother Ram Saran for money due on book accounts, alleging that Jagan Nath and Ram Saran were members of a joint Hindu family and had dealings with them. Jagan Nath pleaded that he was separate from Ram Saran and had had no dealings with the plaintiffs. The first Court passed a decree against all the defendants, but on Jagan Nath's appeal the District Judge dismissed the suit as against him, finding that although Jagan Nath had not proved his separation from Ram

(1) (1911) I. L. R. 34 All. 135.

(2) 118 P. W. R. 1915.

(3) 48 P. W. R. 1919.

(4) (1919) 50 Indian Cases 215.

(5) 106 P. W. R. 1915.

Saran the plaintiff's dealings had been only with Ram Saran, Jagan Nath not having signed any of the entries in the plaintiffs' books, and holding that the plaintiffs had to prove that the debts were contracted for the benefit of Jagan Nath, which they had failed to do. The plaintiffs have preferred a second appeal.

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On the question of *onus* the ruling of Sir Donald Johnstone in *Brij Lal v. Jaishi Ram* (1) is no doubt in the appellants' favour, but the other authorities are against them. In *Ganpat Rai v. Munt Lal* (2) it was held that there is no presumption that a debt contracted by the manager of a Hindu family is contracted for the benefit of a family, and the rulings of the High Courts of Calcutta and Bombay referred to in that judgment were to the same effect. The Allahabad ruling has also been followed in *Bhura v. Banarsi Das* (3), *Paras Ram-Jawala Das v. Gian Chand* (4), and *Ram Dhan Das v. Ramji Das* (5). Counsel for the appellants has in fact not disputed the correctness of the view taken by the High Courts, but has contended only that as no issue was framed on the question whether the debts were incurred for the benefit of the family his clients should have been given an opportunity of proving that they were so incurred. There does not appear to be any force in this contention, for, as the plaintiffs alleged that their dealings had been with both Ram Saran and Jagan Nath, no occasion arose for a separate issue on the question whether the debts were incurred for the benefit of the family. Moreover the point was really covered by the second issue, which was, whether the plaintiffs had advanced the amounts in suit to the family of the defendants. The plaintiffs knew that they had to prove such facts as would render Jagan Nath liable, and when it was found that they had not proved them the suit was rightly dismissed. We cannot agree that the plaintiffs were entitled to a remand and we accordingly dismiss the appeal with costs.

C. H. O.

Appeal dismissed.

(1) 106 P. W. R. 1915.

(3) 119 P. W. R. 1915.

(2) (1911) I. L. 34 All. 135.

(4) 48 P. W. R. 1919.

(5) (1919) 50 Indian Cases, 215.