APPELLATE CIVIL.

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

GURSARN DAS AND ANOTHER (DEFENDANTS)—
Appellants,

versus

MOHAN LAL (PLAINTIFF)—Respondent.

Civil Appeal No. 1879 of 1919.

1922

Dec. 6.

Hindu law—Money belonging to a third person improperly retained by the father—Whether ancestral property in the hands of the son is liable for the payment of such a debt.

During the minority of M. L., the present plaintiff, his estate was under the superintendence of the Court of Wards, and S.R., the father of defendant No. 1, was its manager. On attaining majority the plaintiff brought a suit for rendition of accounts against S. R. alleging dishonesty and misappropriation, and succeeded in getting a decree for Rs. 6,444-5-0. S. R. owned a half share in certain joint Hindu family property with his brother K. R. This share was attached in execution of the decree and was purchased by the decree-holder himself at the auction sale. Meanwhile S. R. and K. R. both died, and defendant No. 1 succeeded to the whole property. Plaintiff then brought the present suit as auction purchaser for partition of the property. The main plea in defence was that as the debt for the satisfaction of which the half share in the property had been sold was not incurred for family purposes it was not binding upon the defendant No. 1.

Held, that it is incumbent on a Hindu son to discharge a debt of his father which consists of money improperly retained by the latter when dealing with the property of a third person. A liability imposed by the Court upon the father to indemnify the person with whose property he had improperly interfered creates a debt for which the ancestral property in the hands of the son may justly be held liable.

Chhakauri Mahton v. *Ganga Parshad* (1), *Natasayyan* v. *Ponnusami* (2), *Venugopala Naidu* v. *A. Ramanadhan Chetty* (3), and *Hanumat Mahton* v. *Sonadhari Singh* (4), followed.

Mahabir Parshad v. *Basdeo Singh* (5), *Pareman Das* v. *Bhattu Mahton* (6), *McDowell* v. *Ragava Chetty* (7), and *Durbar Khachar Shri Odha Ala* v. *Khachar Harsur Oghad* (8), dissented from.

(1) (1911) I. L. R. 39 Cal. 862.
(2) (1892) I. L. R. 16 Mad. 99.
(3) (1912) I. L. R. 37 Mad. 458.
(4) (1919) 4 Pat. L. J. 653.
(5) (1884) I. L. R. 6 All. 234.
(6) (1897) I. L. R. 24 Cal. 672.
(7) (1903) I. L. R. 27 Mad. 71.
(8) (1908) I. L. R. 32 Bom. 348.

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v.
MOHAN LAL.

Second appeal from the decree of Lt.-Col. B. O. Roe, District Judge, Jullundur, dated the 10th June 1919, affirming that of Bhagat *Jagan Nath, Junior Subordinate Judge, Jullundur, dated the 22nd June 1918, decreeing the claim.*

FAKIR CHAND, for Appellants.

BADRI DAS, for Respondent.

The judgment of the Court was delivered by—

MOTI SAGAR J.—This is a second appeal from a judgment and decree of the District Judge of Jullundur, dated the 10th June 1919, and has arisen out of a suit brought by one Mohan Lal, an auction purchaser, for possession by partition of some immoveable properties in the city of Jullundur purchased by him at an auction sale. The defendant Gursarn Das is the son of one Shi Ram who is now dead, and *Mussammat* Parmeshri, the second defendant, is the widow of one Shambu Nath, another son of Shi Ram. Shi Ram had a brother Kirpa Ram who died childless, and these two while living and Gursarn Das, defendant No. 1, constituted a joint Hindu family. Mohan Lal, the plaintiff, is not a member of this family, and has only recently come of age. During the time of his minority his estate was under the superintendence of the Court of Wards, and Shi Ram, father of defendant No. 1, was its manager. On attaining majority Mohan Lal brought a suit for rendition of accounts against Shi Ram alleging dishonesty and misappropriation on his part while he was the manager, and succeeded in obtaining a decree for Rs. 6,444-5-0 on the 29th April 1907 from the Chief Court. Shi Ram and Kirpa Ram owned some immoveable properties in the town of Jullundur, and it is admitted that Shi Ram had a half share therein. This half share was attached and sold in the execution of Mohan Lal's decree, and was purchased by the decree-holder himself at the auction sale. It appears that Shi Ram and Kirpa Ram had both died by this time, and Gursarn Das, defendant No. 1, who was the only surviving male member of the family had succeeded to the whole estate. No objection was raised by him in the execution proceedings to the sale or to the right of the decree-holder to attach and sell this property. A sale

certificate was in due course issued to the auction purchaser and he soon after applied to the executing Court for delivery of possession. It appears that he was awarded actual physical possession of some of the properties, but of others he was only able to get joint possession with Gursarn Das who had succeeded to the undivided half share of his uncle Kirpa Ram after the death of his father, Shi Ram. On the 11th July 1917, the plaintiff brought the present suit for partition impleading Gursarn Das and *Mussammat* Parmeshri as defendants in the suit. The suit was resisted on several grounds, but the main plea taken in defence, with which we are now concerned, was that the debt for the satisfaction of which the joint family property had been sold was not incurred for family purposes, and was consequently not binding upon the defendant. The other pleas had reference only to a denial of the plaintiff's ownership in half of the property sold, to the legality of the sale, to the suit not being within limitation, and to the defendant's right to recover from the plaintiff a proportionate share of the expenditure incurred in repairs and improvements. *Mussammat* Parmeshri, defendant No. 2, only claimed a right of residence in the house in suit. The trial Court fixed the following issues :—

(1) Does the plaintiff own half of the house and shops in suit ?

(2) Did the plaintiff get possession of his share subsequently to the auction ?

(3) Is the sale void and not binding on the defendants because—

(*i*) it was not good in law ;

(*ii*) the debt on account of which the auction took place was not for the benefit of family ?

(4) Could an objection not be raised in this suit on the score of the illegality of the auction ?

(5) Is the suit time-barred ?

(6) Has *Mussammat* Parmeshri, defendant, got the right of residence in the house in suit ?

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(7) Did defendant No. 1 spend anything on repairs to the house and shops ; how much did he spend, and is the plaintiff liable to pay half the outlay in case of decree ?

The learned Subordinate Judge *Bhagat* Jagan Nath, M.A., in a very able and lucid judgment disposed of all the issues in favour of the plaintiff, and held that, the debt in question, not having been proved to be illegal or immoral, it was the pious duty of the defendants as a *Hindu* son to discharge it, and that the sale of the family coparcenary property held in satisfaction of such a debt was binding upon the defendant. The issue as to *Mussammat* Parmeshri's right of residence in the house in suit was also found in favour of the plaintiff, and as a result of these findings the suit of the plaintiff was decreed in its entirety.

On appeal the learned District Judge upheld the findings of the trial Court, and dismissed the appeal. The defendants have now preferred a second appeal to this Court, and we have heard the case argued at considerable length by Mr. Fakir Chand on their behalf. Mr. Fakir Chand's first contention is that the *onus* of proving that the decretal debt in question had been incurred for the benefit of the joint family was upon the plaintiff, and that he has failed to discharge this *onus*. It is pointed out that the defendant's father Shi Ram had misappropriated large sums of money while acting as the manager of the plaintiff's estate, and that in consequence a decree was subsequently passed against him for such sums of money as he was not able to account for. It is urged that a *Hindu* son is under no pious obligation to discharge a debt of the father which consists of money misappropriated by the latter, and which as a decent and respectable man he ought not to have incurred. Reliance is strongly placed on the cases of *Mahabir Parshad* v. *Basdeo Singh* (1), *Pareman Das* v. *Bhattu Mahton* (2), *McDowell* v. *Ragava Chetty* (3), and *Durbar Khachar Shri Odha Ala* v. *Khachar Harsur Oghad* (4), which apparently seem to negative the liability of the son under such circumstances. The whole question has, however, been

(1) (1884) I. L. R. 6 All. 234.
(2) (1897) I. L. R. 24 Cal. 672.
(3) (1903) I. L. R. 27 Mad. 71.
(4) (1908) I. L.R. 32 Bom. 348.

elaborately discussed in the case of *Chhakauri Mahton* v. *Ganga Parsad* (1), where Mookerjee J. has held that the liability imposed by the Court upon the father to indemnify the person with whose property he had improperly interfered creates a debt for which the ancestral property in the hands of the son might justly be held liable. This view is in entire accord with the opinion of the learned judges of the Madras High Court the case of *Natasayyan* v. *Ponnusami* (2), where it has been observed that—

"the son is 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, namely, to restore to those lawfully entitled money he had unlawfully retained. Upon any intelligible principle of morality a debt due by the father by reason of his having retained for himself money which he was bound to pay to another would be a debt of the most sacred obligation, and for the non-discharge of which punishment in a future state might be expected to be inflicted, if in any."

The question appears to have again recently come up for discussion in the case of *Venugopala Naidu* v. *A. Ramanadhan Chetty* (3). In that case the learned Judges entirely dissented from the view taken in *Durbar Khachar Shri Odha Ala* v. *Khachar Harsur Oghad* (4) and preferred to follow Mr. Justice Mookerji and held the expression '*Avyavahariká*' debt to mean—

"A debt which is not supportable as valid by legal arguments, and on which no right could be established by a creditor in a Court of Justice."

Consequently it was laid down that sons were answerable for the liability of a *Hindu* father who as a member of a *Devastanam* Committee had unauthorisedly spent the *Devastanam* funds for expenses of a litigation and was afterwards directed by the Court to pay the costs out of his own private funds. The same principle has been affirmed by the Patna High Court in the case of *Hanumat Mahton* v. *Sonadhari Singh* (5). There the *karta* of a joint Hindu family has raised money to defray the expenses of defending a criminal case against him. It was held that the family property was liable for the debt incurred, Jwala

(1) (1911) I. L. R. 39 Cal. 862.
(2) (1892) I. L. R. 16 Mad. 99.
(3) (1912) I. L. R. 37 Mad. 458.
(4) (1908) I. L. R. 32 Bom. 348.
(5) (1919) 4 Pat. L. J. 653.

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Prasad and Das, JJ., being of opinion that among the Hindus the stigma of a criminal charge against a member of a joint family is regarded as a disgrace to all the members of a family, and that consequently any expense incurred to protect the family from such a threatened disgrace is necessarily in the interests of all the members of the family.

In our opinion the view taken by Mookerji J. in *Chhakauri Mahton* v. *Ganga Parsad* (1) is the sounder view, and we see no valid reason to dissent from it. It is unnecessary, however, to pursue this matter any further as on the facts found in this case it cannot be said that Shi Ram, father of defendant No. 1, was guilty of any criminal misappropriation or that there was any dishonesty on his part which could constitute an immoral act within the meaning of the Hindu Law. The only evidence produced in support of this plea was a copy of the decree obtained by the plaintiff against the defendant's father, but this decree does not give any indication as to the nature of the liability incurred. Admittedly the father was not criminally prosecuted, and the suit was one for accounts which he had failed to deliver. Every breach of civil liability does not necessarily involve a moral turpitude, and in the present case we have no hesitation in holding that it has not been shown that the debt in question was immoral in law for the discharge of which the son was not liable.

The next point urged by Mr. Fakir Chand is that the hypothecation by the defendant's father of joint family properties as security for the proper discharge of his duties as a manager of the plaintiff's estate was altogether unauthorised, and that consequently the decree obtained by the plaintiff for the sale of the hypothecated properties on the basis of this deed is also of no binding force on the defendants. The well-known Privy Council case of *Sahu Ram Chandra* v. *Bhup Singh* (2) is relied on in support of this contention, and it is urged that as the sale held under the decree did not convey any valid title to the plaintiff, the latter has no right to maintain this suit. This conten-

(1) (1911) I. L. R. 39 Cal. 862. (2) (1917) I. L. R. 39 All. 473 (P. C.).

tion was never raised in any of the Courts below, and has not been mentioned even in the grounds of appeal to this Court, and we consequently decline to allow Mr. Fakir Chand to take up this entirely new point at the last stage. No arguments have been addressed to us on behalf of *Mussammat* Parmeshri, and we take it that the appeal so far as she is concerned is dropped.

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

A. R.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Zafar Ali.

BUDHA AND OTHERS (PLAINTIFFS) Appellants,

versus

Mst. FATIMA BIBI AND ANOTHER (DEFENDANTS) Respondents.

1922

Dec. 19.

Civil Appeal No. 2122 of 1919.

Custom—Succession—Self-acquired property—Jats of Mauza *Begowala, District Sialkot—whether collaterals exclude daughters—Value of entry in* Riwaj-i-am, *when opposed to general custom.*

Held, that the plaintiff-collaterals, on whom the *onus* lay, had failed to prove a special custom among *Jats* of Begowala, District Sialkot, by which they exclude daughters from succession to self-acquired property.

Rattigan's Digest of Customary Law, article 23, *clause* (2), referred to.

Held also, that it is now a well established rule that a statement in a *Riwaj-i-am* opposed to general custom and unsupported by instances possesses very little evidential value.

Chhuttan v. *Hazari Lal* (1), *Wazira* v. Mst. *Maryam* (2), and *Khuda Bakhsh* v. Mst. *Fatteh Khatun* (3), followed.

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(1) 7 P. R. 1916. (2) 84 P. R. 1917.
(3) 13 P. R. 1919.