which led to the commission of the crime, and that altercation is mentioned also by Ishar (P. W. 5) and Shera (P. W. 6).

The guilt of the appellant, who has produced no evidence in his defence, has in our opinion been clearly established. We accordingly dismiss the appeal, confirming the sentence of death.

N. F. E.

Appeal dismissed.

APPELLATE CIVIL.

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

KHEM CHAND (PLAINTIFF) Appellant,

versus

NARAIN DAS AND OTHERS (DEFENDANTS) Respondents.

1925

June 19.

Civil Appeal No. 904 of 1922.

Hindu Law—Mitakshara—*Father's insolvency—Debts incurred for family business—Liability of minor son's share in the joint family property.*

Where a Hindu father has mortgaged joint family property for debts incurred in the ordinary course of the business of a firm in which the family was represented by the father, and not for immoral purposes, and has subsequently been adjudged an insolvent—

Held, that under the principles of Hindu Law the share of the minor son in the joint family property is liable for the debts, and the Official Receiver was competent to proceed against such property for the recovery of the debts.

Mulla's Hindu Law, 4th Edition, pages 242 and 245, sections 198 and 200, referred to.

Sat Narain v. *Bihari Lal* (1), discussed and distinguished.

First appeal from the decree of Malik *Ahmad Yar Khan, Senior Subordinate Judge, Multan, dated the 9th February 1922, dismissing the claim.*

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(1) (1924) I. L. R. 6 Lah. 1 (P.C.).

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GOBIND RAM, KHANNA and FAKIR CHAND, for Appellant.

D. C. RALLI, for B. R. PURI and J. L. KAPUR, for Respondents.

The Judgment of the Court was delivered by—

ZAFAR ALI J.—This first appeal arises out of a suit by a *Hindu* minor for a declaration to the effect that the mortgage of ancestral property effected by his father Chanun Ram was not binding on him.

The father and son are coparceners of the property and under the law of *Mitakhshara*, to which they are subject, neither had any separate defined share in that property. The said Chanun Ram, who figures as defendant 2 and one Sita Ram, entered into partnership in 1890 and carried on business at Multan for a number of years under the name and style of 'Sita Ram-Chanun Ram'. Thau Ram (defendant) was the copartner of his brother, Sita Ram. The latter died in 1905 leaving three minor sons, who became his representatives in the concern after his death. It appears that the firm suffered heavy losses in about 1909, and in order to pay its debts Chanun Ram mortgaged certain family properties to 'Beli Ram-Baldeo Das' for a sum of Rs. 20,000 on the 3rd of September 1909. Thau Ram also on his own behalf and on behalf of his minor nephews mortgaged certain properties to 'Beli Ram-Baldeo Das' for the same debt of Rs. 20,000. In April 1911 the firm closed its business, and the firm of Ralli Brothers brought a suit against Chanun Ram, Thau Ram and the sons of Sita Ram to recover the money due from them. The suit was decreed, but the Chief Court held on the strength of *Joykisto Cowar* v. *Nittyanund Dundy* (1), and section 247 of the Indian Contract Act that the liability of the sons of Sita Ram,

(1) (1878) I. L. R. 3 Cal. 738.

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who were minors, was confined to their shares in the assets of the firm. But Chanun Ram, whose liability was personal, was arrested in the execution of the decree of Ralli Brothers, and he then sought the protection of the Insolvency Court and was adjudged an insolvent on the 4th of November 1912. The Court then appointed a Receiver and the latter took possession of his property. Chanun Ram's minor son filed objections against this action of the Receiver, but the District Judge dismissed the same on the 20th of March 1919. He then instituted the present suit, contending that the mortgage as well as the adjudication order was inoperative as against his interest in the joint family property, because the debts which necessitated the mortgage and later on compelled Chanun Ram to appear in the Insolvency Court had been incurred in *satta bazi*, *i.e.*, in transactions of a speculative character. The contesting defendants, *i.e.*, the Receiver and the mortgagees, pleaded *inter alia*, that the order of the District Judge in the insolvency proceedings was final and a complete bar to the suit, and that the property of Chanun Ram whether ancestral or self-acquired vested in the Receiver. On these pleadings the trial Court framed preliminary issues of which the only vital one was to the following effect:—Did the joint family property of the plaintiff and his father vest in the Receiver? and was the plaintiff not competent to maintain this suit to protect his interest therein?

This was decided against the plaintiff on the authority of *Harmukh Rai-Munna Lal* v. *Radha Mohan* (2), and the suit was dismissed with costs.

The contention that the learned counsel for the plaintiff-appellant most strenuously urges is that the

(2) 158 P. R. 1919.

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insolvency of the father could not have had the effect of vesting in the Receiver the interest of the son in the coparcenary property, and in support of this proposition he relies on the ruling of their Lordships of the Privy Council in *Sat Narain* v. *Bihari Lal*, (1). That was a suit for pre-emption by a Hindu whose father had been adjudged an insolvent under the Presidency Towns Insolvency Act of 1909, and the question that arose for determination in that case was "Does an order of adjudication against a father vest in the official assignee, his son's interest in the joint family property." That question was answered in the affirmative by a Full Bench of the Lahore High Court, but on appeal their Lordships of the Privy Council came to the contrary conclusion, and in doing so they examined and took into consideration all the case law on the point, as well as sections 2, 17, 23 and 52 of the Presidency Towns Insolvency Act and section 266 of the Code of Civil Procedure of 1882, which was reproduced as section 60 in the Civil Procedure Code of 1908. Their Lordships made it clear that their answer to the question was based entirely on the interpretation of the said sections of the Insolvency Act, and that they did not intend to say one word which might have the effect of disturbing and raising doubts as to decisions under section 266 of the Civil Procedure Code of 1882, or under section 60 of the present Code, and with regard to the cases of *Fakirchand-Motichand* v. *Motichand-Hurruckchand* (2), *Rangayya Chetti* v. *Thanikachalla Mudali* (3) and *Nunna Brahmayya Setti*, v. *Chidaraboyina Venkitaswamy* (4), their Lordships took care to observe that they were partnership cases and were not directly in point. In the present case the

(1) (1924) I. L. R. 6 Lah. 1 (P.C.).
(2) (1883) I. L. R. 7 Bom. 438.
(3) (1895) I. L. R. 19 Mad. 74.
(4) (1902) I. L. R. 26 Mad. 214.

question directly involved is that of the liability of the son for the debts incurred by the father in the course of the business which he carried on as the manager of his family, and the answer to it depends on the general well recognised principles of Hindu Law, which would apply all the same even if the son's interest in the coparcenary property was not affected by the adjudication order against the father. It may be conceded that so far as the rights of a Hindu son in the coparcenary property are concerned the effect of the order of adjudication against his father under the Provincial Insolvency Act, would not be different from that under the Presidency Towns Insolvency Act, because the provisions of both the Acts on this point are almost identical, with this difference that there is no provision in the Provincial Insolvency Act, corresponding to section 52 of the Presidency Towns Insolvency Act. And it may be noted here that the following remark made by their Lordships of the Privy Council appears to be of general applicability :—

"It is certainly a startling proposition that the insolvency of one member of the family should of itself and immediately take from the other male members of the family their interests in the joint property and from the female members their right to maintenance and transfer the whole estate to an assignee of the insolvent for the benefit of his creditors."

In the present case, however, as already stated the question is one of the liability of the son for the debts incurred by the father. The principles of Hindu Law on this point are embodied in sections 198 and 200 of Mulla's Hindu Law, 4th Edition, pages 242 and 245, respectively. The relevant portions of these sections may be cited here :—

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"198. Power of manager to contract debts for family.—The manager of a joint family business has an implied authority to contract debts for the ordinary purposes of the family business. Where such debts have been incurred the other coparceners, whether they be adults or minors, are liable, but to the extent only of their interest in the joint family property."

"200. Alienation by manager of coparcenary property.—The manager of a joint Hindu family has power to sell or mortgage "on reasonable commercial terms" joint family property, so as to bind the interests of adult as well as minor coparceners in the property provided that—(*a*) * * * *

(*b*) in the case of minor members, the sale or mortgage is made for a legal necessity including debts incurred for family business, or for the benefit of the family."

Now there is no allegation in the plaint that the father incurred the debts for immoral purposes. All that is stated is that the debts were incurred in speculative transactions. But speculative transactions cannot be said to be immoral, and there is no denying the fact that these were made in the ordinary course of the business of the firm in which the plaintiff's family was represented by his father. As held in *Amar Nath* v. *Rustamji* (1), the *onus* of proving that the debts were incurred for immoral purposes lay on the son, but he did not even assert that they were incurred for an immoral purpose. It was therefore not shown that the mortgage was not binding on the plaintiff, and the latter's interest in the coparcenary property being liable for the debts incurred by the father, the official receiver is competent to proceed against all the coparcenary property because

(1) 15 P. R. 1918.

he represents all the creditors and his position is similar to that of a judgment-creditor, who can attach and sell the coparcenary property to recover the debts incurred by the father or manager of the family property in the ordinary course of the business of the family. That the coparcenary property is available for such debts is well recognised. The plaintiff is, therefore, not entitled to any relief even if his interest in the coparcenary property did not vest in the Receiver.

The appeal, therefore, fails and is dismissed with costs.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Abdul Raoof and Mr. Justice Addison.

DARBARI MAL-RAM SAHAI (PLAINTIFF) Appellant

versus

THE SECRETARY OF STATE (DEFENDANT) Respondent.

1925

July 21.

Civil Appeal No. 691 of 1924.

Indian Railways Act, IX of 1890, section 80—Through-booked traffic—Suit for non-delivery against Railway to which goods were not handed and on which loss was not proved to have occurred—whether competent.

Goods were handed under Risk Notes A and B to the B. N. W. Railway and booked through *viâ* the N.-W. Railway. Plaintiff brought a suit (to which he refused to make the B. N.-W. Railway a party) against the N.-W. Railway through the Secretary of State on the ground of non-delivery by that Railway.