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IN THE MATTER OF MEHTA KRISHAN CHANDRA.

fit to engage him to prosecute the case instituted by him in connection with a totally different incident. In these circumstances had the pleader appeared and defended the persons charged throughout the case he would not, in my judgment, have committed any breach of the Legal Practitioners Act and no further action is necessary.

BROADWAY J.

ADDISON J.—I agree.

ADDISON J.

N. F. E.

Reference dismissed.

APPELLATE CIVIL.

Before Mr. Justice Addison and Mr. Justice Agha Haidar.

SOTAM RAM AND OTHERS (DEFENDANTS), Appellants.

versus

PARDUMAN RAM AND OTHERS (PLAINTIFFS), Respondents.

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April 28.

Civil Appeal No. 2828 of 1924.

Hindu Law—Joint family—Contract by Manager—breach of—Presumption of being for benefit of family—whether arises—liability of other members—onus probandi—*Indian Contract Act, IX of 1872, section 74—Compensation for breach—sum specified in contract claimed but not proved as loss—burden of proof.*

A suit in which the plaintiff claimed (*inter alia*) the sum of Rs. 500 which had been agreed upon beforehand by defendant No. 2 as the amount payable in the event of the breach of a certain contract, was decreed in full, not only as against defendant No. 2 (who had actually entered into the contract and committed the breach complained of) but against his father and brothers (defendants Nos. 1, 3 and 4) on the ground that, although none of them carried on any commercial business they belonged to the joint Hindu family of which defendant No. 2 was the Manager.

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Held, that in the absence of evidence as to the loss actually incurred by the plaintiff as the result of the breach, the sum claimed, having been agreed upon by the parties as the measure of damages, had been rightly decreed, it being for the defendant to prove that no loss or less loss had been incurred by the plaintiff.

Held further, that in order to render defendants 1, 3 and 4 liable, in the absence of evidence that there existed a joint family business, the *onus* was upon the plaintiffs to establish that the contract entered into by the Manager was for the benefit of the joint family, there being no presumption to this effect.

Mela Mal v. *Gori* (1), *Khazana Mal* v. *Jagan Nath* (2), and *Banu* v. *Balla* (3), followed.

Second appeal from the decree of H. H. Jenkyns, Esquire, District Judge, Kulu at Dharamsala, dated the 25th July 1924, affirming that of H. L. Shuttleworth, Esquire, Senior Subordinate Judge, Kulu, dated the 10th June 1924, directing that all the defendants do pay to the plaintiffs the sum of Rs. 1,292-7-0, etc.

M. L. PURI and SHAMBHU LAL PURI, for Appellants.

MEHR CHAND MAHAJAN and NAWAL KISHORE, for Respondents.

JUDGMENT.

ADDISON J. ADDISON J.—On the 5th January, 1922, Bhikhe Ram executed an agreement to the effect that he would supply Ram Saran, now deceased, with 500 maunds of Indian corn at Rs. 2-6-0 per maund and he further agreed that he would pay Rs. 500, if he committed breach of the contract. In order to carry out the contract he was given Rs. 1,000 as an advance by Ram

(1) (1922) I. L. R. 3 Lah. 288. (2) (1923) I. L. R. 4 Lah. 200.
(3) (1924) 6 Lah. L. J. 441.

Saran. After the death of Ram Saran, the joint Hindu family firm, of which he was a member, sued Bhikhe Ram, his father, and two brothers for Rs. 1,500, namely, the sum of Rs. 1,000 given as an advance and the sum of Rs. 500 on account of the breach on the ground that all the defendants were joint and were thus liable under the contract which had not been carried out.

The trial Court held that 61½ maunds, valued at Rs. 146-1-0 had been supplied. It found the other issues in favour of the plaintiffs and decreed the suit to the extent of Rs. 1,292-7-0 with future interest and with proportionate costs. This sum is made up as follows, namely, Rs. 1,000 *minus* Rs. 146-1-0, *i.e.*, Rs. 853-15-0 out of the original advance, *plus* Rs. 438-8-0 the proportionate part of the penalty on account of the Indian corn not supplied.

The defendants appealed to the District Judge but their appeal was dismissed by him. They then presented a second appeal in this Court.

The first point argued on behalf of the appellants was that on the findings of the Courts below the father and two brothers of Bhikhe Ram were clearly not liable. There is evidence on the record that the defendants own land jointly but there is no evidence that they or any one of them carries on any commercial business or has a shop. The lower appellate Court, however, has held that Bhikhe Ram was looking after all the affairs of the family which was a joint Hindu family and that therefore the debts which he incurred must have been intended to be for their benefit. This finding means that the defendants constituted a joint Hindu family and that Bhikhe Ram was the manager of that family. Accepting that to be the case, it re-

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mained for the plaintiffs to establish that the contract was entered into for the benefit of the joint family, seeing that there is no evidence that there exists a joint family business, in which case the state of affairs might be different. In *Mela Mal* v. *Gori* (1), *Khazana Mal* v. *Jagan Nath* (2), and *Baru* v. *Balla* (3) it was held that there is no presumption that a debt contracted by a manager of a joint Hindu family is contracted for the benefit of the family. The plaintiffs, therefore, further had to prove that the contract entered into by Bhikhe Ram was for the benefit of the whole family and this they have not done.

The learned counsel for the respondents argued that the suit should be remanded for further evidence on this point as the matter was not clearly put in issue. This is not the case. Issue No. 2 runs as follows :—

" Are defendants 1, 3 and 4 joint with defendant No. 2 and jointly responsible with him for the money claimed in this suit?

This shows that the plaintiffs were put on their guard not only to prove that it was a joint Hindu family but that the joint Hindu family was responsible for payment of the debt. Further, it is clear from the judgments of both the Courts that this point was argued. It necessarily follows that the parties knew of it.

The appeal must, therefore, be accepted so far as defendants 1, 3 and 4 are concerned and the suit against them dismissed but without costs.

Another point taken by the learned counsel for the appellants was that the Courts below should not have allowed the full proportion of the penalty of

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Rs. 500. This part of the judgment, however, must stand. There is upon the record no evidence to show what loss was incurred by the plaintiffs and if defendant No. 2 desired to show that the sum of Rs. 500 agreed upon was excessive he ought to have produced evidence to prove that no loss or less loss had been incurred by the plaintiffs. In the absence of this evidence I do not think that I can interfere with the finding of the lower appellate Court on this point.

The result is that the appeal so far as Bhikhe Ram, defendant No. 2, is concerned is dismissed, but it is accepted as regards defendants, 1, 3 and 4 and the suit dismissed so far as they are concerned. Parties will bear their own costs in this Court and in the lower appellate Court, but Bhikhe Ram defendant No. 2 will pay the plaintiffs' costs in the trial Court upon the sum of Rs. 1,292-7-0.

AGHA HAIDER J.—I agree.

AGHA HAIDER J.

N. F. E.

Appeal accepted except as regards defendant 2.