## APPELLATE CIVIL.

*Before Mr. Justice Broadway and Mr. Justice Zafar Ali.*

RALLIA RAM (DEFENDANT), Appellant

*versus*

BALMOKAND (PLAINTIFF)
JATTU MAL AND OTHERS (DEFENDANTS) } Respondents.

1926
*Nov. 3.*

**Civil Appeal No. 2801 of 1922.**

*Hindu Law—Ancestor's debts—payment of—by alienation of ancestral house—Necessity—Suit by reversioner—Son's pious duty—where father's debts are due to acts of criminal misappropriation*—onus probandi.

The plaintiff, a Hindu, governed by the Mitakshara Law, sued for a declaration that the alienation of a house by his ancestors should not affect his reversionary rights, and produced evidence of the fact that the alienors had been convicted for criminal misappropriation.

*Held*, that though the family was not a respectable one, failing proof that the debts for the payment of which the alienation took place had arisen *as the result* of his ancestors' crimes, the evidence merely of their conviction and punishment was insufficient to discharge the burden of proof under the rule of Hindu Law regarding the pious duty of a son to pay his father's debts.

*Pareman Das* v. *Bhattu Mahton* (1), and *McDowell and Co., Limited* v. *Raghava Chetty* (2), distinguished.

*Brij Narain* v. *Mangal Prasad* (3), referred to.

*First appeal from the decree of* Lala *Parbhu Dayal, Senior Subordinate Judge, Amritsar, dated the 18th July 1922, declaring that the sale of the shop in dispute does not bind the plaintiff, etc.*

FAKIR CHAND and VAS DEV, KUMARIA, for Appellant.

BADRI DAS and JAGAN NATH, AGGARWAL, for Respondents.

(1) (1897) I. L. R. 24 Cal. 672. (2) (1903) I. L. R. 27 Mad. 71.
(3) (1924) I. L. R. 46 All. 95 (P.C.).

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JUDGMENT.

BROADWAY J.—On the 5th May 1919, a deed of sale was executed by Jaitu Mal, his son Daulat Ram and *Mussammat* Rattan Devi, wife of Daulat Ram, under which a certain house was conveyed to *Lala* Rallia Ram for a sum of Rs. 5,300. The consideration was paid by wiping out two former mortgages to the extent of Rs. 2,600. Rs. 700 were paid to *Mussammat* Rattan Devi in cash, Rs. 400 to Mansa Ram, a relative of *Lala* Rallia Ram and Rs. 800 were to be paid to Vasdeo, son-in-law of Jaitu Mal, by Rallia Ram in settlement of a decree of Rs. 800 and the balance of Rs. 800 was to be paid by the vendee to certain creditors who were specified in the deed.

Soon after the execution of this deed of sale *Mussammat* Rattan Devi commenced criminal proceedings against *Lala* Rallia Ram, as a result of which she was paid by Rallia Ram Rs. 864, which it was said she had paid off to all the creditors named in the deed of sale and which had to be paid by the vendee. On the 5th January 1920, *Mussammat* Rattan Devi gave birth to a male child whose name is Balmokand. On the 5th October 1920, this male child Balmokand instituted a suit through his grandmother's sister *Mussammat* Bhochi in which he sought a declaration to the effect that his rights in this property would not be affected in any way by the sale after the death of his father and grandfather. Both these two gentlemen were said to be whoremongers, gamblers and persons addicted to all sorts of vices.

Rallia Ram pleaded that the transaction was perfectly honest and straightforward as far as he was concerned, and also challenged the plaintiff's rights to sue on the ground that he was an after-born

child, that is to say, a child born after the alienation had been effected.

The trial Court held that inasmuch as the child was in his mother's womb on the date of the alienation, under the *Mitakshara* Law which governs the family, the plaintiff had a right to sue. It was further held that so far as the previous mortgages were concerned, they having been executed before the plaintiff was born, he was not in a position to challenge their correctness. A decree was accordingly passed in favour of the plaintiff declaring that his rights would not be in any way affected by this alienation on the death of his father and grandfather, except in so far as the sum of Rs. 2,600 was concerned, *i.e.*, he would have to pay the amount of the mortgages. Against this decree the vendee Rallia Ram has come up to this Court on appeal through Mr. Fakir Chand and the minor has filed cross-objections *qua* the mortgage money through Mr. Jagan Nath.

At the hearing Mr. Jagan Nath stated that having regard to the recent authority of *Brij Narain* v. *Mangal Prasad* (1), the cross-objections could not be pressed. He urges that his client should not be mulcted in costs *qua* this point. We note that the cross-objections were filed on the 23rd February 1925.

On behalf of the appellant Mr. Fakir Chand urges that the evidence on the record clearly shows that the view taken by the learned Subordinate Judge is untenable. He has taken us laboriously through the evidence and a careful examination of it clearly shows that there is no real evidence to show that either Jaitu Mal, or his son Daulat Ram, was

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the unmitigated blackguard that the plaintiff would have us believe. There is no real evidence to show that they were drunkards or gamblers, although it is true that these two persons have been charged with, convicted of, and punished for misappropriating gold in their possession as *zargars* for the purpose of making ornaments. There can be no doubt that the family, including *Mussammat* Rattan Devi, is by no means what might be regarded a respectable one, but that is a different thing from saying that the family propery has been sold as a result of debauchery and immorality.

No doubt as has been pointed out in *Pareman Das* v. *Bhattu Mahton* (1), and *McDowell and Company, Limited* v. *Ragava Chetty* (2), cited by Mr. Jagan Nath " where a Hindu father becomes liable for money taken by him and misappropriated under circumstances which constitute the taking itself a criminal offence his minor sons cannot be held liable under the rule of Hindu Law as to the pious duty of a son to pay his father's debts ". In the present case, however, there is nothing on the record to show that the debts for which this alienation took place were incurred as a result of the criminal activities of the two male defendants. It is true that the son-in-law, Vasdeo, who held a decree against his father-in-law says, when produced as a witness by the defendants (see page 30), that his father-in-law squandered the sums of monies borrowed from creditors in vices, but he knows nothing about his gambling. He further says that he lent Jaitu Mal money to repay sums misappropriated by him but there can be no doubt that the son-in-law's evidence on this point cannot be

(1) (1897) I. L. R. 24 Cal. 672. (2) (1903) I. L. R. 27 Mad. 71.

relied upon. It is obvious that the family have combined in order to cheat or deprive *Lala* Rallia Ram of the benefit derived by him under this alienation, taking advantage of the fact that Balmokand was born so soon after the alienation was effected.

Turning to the items themselves Vasdeo has admitted the receipt of Rs. 734 odd due to him under the decree. The mere fact that this decree was in existence no doubt puts the vendee on enquiry, but this enquiry would not, in my judgment, lead him to suspect that the debt had been incurred for or spent on immoral purposes.

As to the sum of Rs. 700 which was paid to *Mussammat* Rattan Devi at the time of the registration, Mr. Jagan Nath has contended that no necessity has been shown, there being no antecedent debts. It appears that Vasdeo, the son-in-law, in execution of his decree sought to bring this very property to sale. *Mussammat* Rattan Devi claimed that she had spent a sum of Rs. 700 on building a *Chaubara* and that the *Chaubara* should not be sold in execution of the decree inasmuch as it was her's. The property as a matter of fact was not sold, but the appellant was approached with a suggestion that he should purchase the property as he was one of the previous mortgagees. In order to safeguard his interest he insisted that *Mussammat* Rattan Devi should be a co-vendor *qua* her property the *Chaubara* and as already stated *Mussammat* Rattan Devi did join in the execution of this deed. As a matter of fact she stated that the *Chaubara* had been built by her at her own cost, and there is nothing on the record to show that she was not entitled to it. I do not think that the plaintiff is entitled to any credit for this amount.

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There remains the sum of Rs. 400 paid to Mansa Ram, son-in-law of Rallia Ram. It appears that the negotiations for the sale had first commenced between the vendors and Mansa Ram and that Mansa Ram had paid the sum of Rs. 400 as earnest-money. The arrangement with Mansa Ram was taken over by Rallia Ram with the consent of all concerned and Mansa Ram was repaid this sum of Rs. 400 by his father-in-law. I consider that this was a valid charge.

With regard to the payment made to the creditors named in the deed of sale it has been urged that inasmuch as these creditors were not paid off by the vendee after the sale had been effected, and that *Mussammat* Rattan Devi had paid them off herself, the debts due to these creditors cannot be deemed to be antecedent debts and in support of this contention Mr. Jagan Nath refers to *Jawahir Singh* v. *Udai Parkash* (1). The facts given in that case by their Lordships of the Judicial Committee clearly show that that decision has no bearing on the present suit. There a sale for a consideration which was made up partly of previous mortgages was pre-empted by *B* who brought a suit to enforce his claim for pre-emption and it was held that *B's* right and title in the property commenced from the date of his decree and consequently that the mortgages which had formed the consideration of the sale and which were paid off during the pendency of the suit before the decree had been passed, could not be regarded as antecedent debts *qua* B. This case does not assist us in the present instance. The debts here were undoubtedly antecedent to the sale. The mere fact that *Mussammat* Rattan Devi succeeded in paying them

(1) (1925) 30 Cal. W. N. 698 (P.C.).

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off probably for a lesser sum than was entered in the deed of sale and thus got the whole of the amount entered in the deed of sale from Rallia Ram by bringing criminal proceedings does not render those debts any the less antecedent to the sale itself. In these circumstances, in my judgment, it is perfectly clear that the present suit has been brought in bad faith and I would therefore accept this appeal and dismiss the plaintiff's suit with costs.

BROADWAY J.

The cross-objections will also be dismissed with costs.

ZAFAR ALI J.—I agree.

ZAFAR ALI J.

*N. F. E.*

*Appeal accepted.*

## APPELLATE CIVIL.

*Before Mr. Justice Broadway and Mr. Justice Zafar Ali.*

MUHAMMAD BAKHSH-KARAM ELAHI
(PLAINTIFFS), Appellants

*versus*

SHADI MUHAMMAD-MUHAMMAD BAKHSH
(DEFENDANTS), Respondents.

**Civil Appeal No. 1397 of 1923**

1926

*Nov. 3.*

*Indian Evidence Act, 1 of 1872, section 102*—Onus probandi—*Suit for money due—balances of account—signed by defendants—effect of.*

In a suit for money due as the result of dealings with the defendants which had extended over a definite and stated period the plaintiffs relied upon certain balances in their favour which had been signed by the defendants. The trial Court dismissed the suit on the ground that there was no proof of the separate items upon which the balances had been struck nor of the delivery of goods to which certain of those items applied.

*Held*, (on second appeal) that the *onus* was upon the defendants to rebut the presumptions arising from their having signed the balances struck.