APPELLATE CIVIL.

Before Bhide and Currie JJ.

1931

May 20.

SRIMATI WIDYA WANTI (PLAINTIFF) Appellant

versus

JAI DAYAL AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 3144 of 1924.

Hindu Law—Money paid to pay off debt due owing to criminal breach of trust—whether recoverable by the payer—Sale of joint family property to raise part of the money—whether binding on son of payer.

H. (a Hindu) embezzled considerable sums of money belonging to his master *J.* and on discovery had to admit his guilt and when pressed for payment paid and handed to *J.* Rs. 4,277 in cash, jewellery valued at Rs. 5,500 and a sum of Rs. 8,000 obtained by the sale of *H.'s* share in the ancestral house. Soon afterwards, however, suits were filed by *H.* his two sons (one of whom *W.* was a minor) and his daughter-in-law, to repudiate these transactions and to deprive *J.* of the amounts paid to him. *H.* pleaded that he had not been guilty of embezzlement and that by threats and coercion he had been compelled to pay the cash and sell the house, and that even if he had been guilty of embezzlement, the subsequent settlement by virtue of which cash and jewelry were paid to *J.* was made in order to stifle a criminal prosecution and was therefore void. *W.* (the minor son of *H.*) pleaded that he was not bound by the sale of the joint family property effected by *H.* in order to pay off the money due to *J.*, the debt being of an immoral character.

Held, (as regards *H.'s* suits) that it was incumbent on *H.* to prove that the consideration for the settlement consisted of a promise on the part of *J.* not to prosecute him. The settlement was made in connection with *H.'s* civil liability to repay sums of over Rs. 23,000 and it would not be void merely because *H.* may also have hoped thereby to escape criminal prosecution.

Shanti Sarup v. *Lal Chand* (1), and *Badar-ud-Din* v. *Mehr Din* (2), followed.

(1) 1927 A. I. R. (Lah.) 530. (2) (1928) 107 I. C. 605.

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Held also, that the sale of the joint family house having been made by *H.* in order to pay off a debt which had resulted from a criminal breach of trust on his part, *W.* the son of *H.* was not bound by it.

Chhakauri Mahton v. *Ganga Prasad* (1), followed.

Kartar Singh v. *Ganga Mal* (2), distinguished.

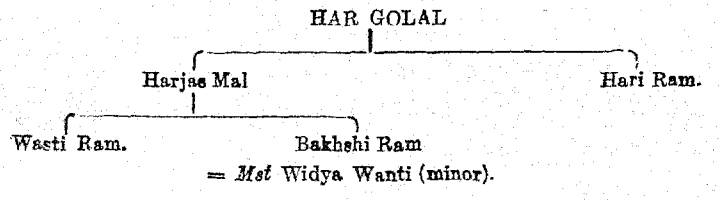
First appeal from the decree of Sardar *Ali Hussain Khan Kazilbash, Senior Subordinate Judge, Amritsar, dated the 22nd December 1923, dismissing the plaintiff's suit.*

BADRI DAS, NAND LAL and BASANT KRISHAN, for Appellant.

CHANDRA GUPTA, FAKIR CHAND, and HUKAM CHAND BHASIN, for Respondents.

BHIDE J.

BHIDE J.—Civil appeals Nos. 3144 of 1924 and 1152 to 1156 of 1925 are connected and can be conveniently disposed of together. The following short pedigree table will show the relationship of the appellants :—



Harjas Mal was employed as an accountant by Jai Dyal, a paper merchant of Lahore, from the year 1915 to 1921. Harjas Mal used to be entrusted with cash in order to deposit the same with banks, and was apparently subject to little supervision with the result that he embezzled considerable sums of money from time to time. The matter came to light in 1921, and when the accounts were carefully checked it was discovered that a sum

(1) (1912) I. L. R. 39 Cal. 862, 871, 872. (2) 128 P. R. 1879.

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of over Rs. 23,000 had been embezzled by Harjas Mal. Harjas Mal had to admit his guilt and when pressed for payment, paid first Rs. 4,277 in cash, together with jewelry valued at Rs. 5,500, and later a sum of Rs. 8,000 obtained by the sale of his share in the ancestral house. Soon afterwards, however, suits were filed by Harjas Mal, his two sons Bakhshi Ram and Wasti Ram, and his daughter-in-law *Mussammat* Widya Wanti to repudiate these transactions and to deprive Jai Dyal of the amounts paid to him. Another suit was filed by Nihal Chand and Fakir Chand, to whom the house had been sold, for rent. The main issues involved in all the cases being the same, these suits were tried together and disposed of by one judgment by the Court below. The suits instituted by Harjas Mal, his two sons and his daughter-in-law were dismissed, while the suit for rent was decreed. From this decision, the present appeals have been preferred.

During the pendency of the appeals, Harjas Mal died and his two sons Bakhshi Ram and Wasti Ram were brought on the record as his legal representatives. Bakhshi Ram and Jai Dyal became insolvents during the pendency of the appeals and the official Receiver decided to defend the appeals on behalf of Jai Dyal but declined to prosecute the appeals on behalf of Bakhshi Ram. In one of the appeals (Civil Appeal No. 1154 of 1925) Bakhshi Ram is the sole appellant and as the official receiver has declined to prosecute the appeal, the appeal must be dismissed. The learned counsel, who appeared for Bakhshi Ram, desired permission to file security and to prosecute the appeal, but he was unable to cite any authority in support of his contention that Bakhshi Ram was entitled to pro-

ceed with the appeal, although the official Receiver had declined to prosecute the same.

Out of the other appeals, I shall first deal with the two appeals preferred by Harjas Mal. These appeals can proceed in spite of the official Receiver's refusal to prosecute the appeals on behalf of Bakhshi Ram as his brother Wasti Ram is also brought on the record as a legal representative of Harjas Mal and is thus a co-appellant. There were two suits instituted by Harjas Mal, one for recovery of Rs. 4,277 on account of cash paid by him to Jai Dyal and the other for the cancellation of the sale of the ancestral house. In both these suits Harjas Mal pleaded that he had as a matter of fact not been guilty of any embezzlement that Jai Dyal brought false charges of embezzlement against him and by threats and coercion compelled him to pay the cash and sell the house. No reasonable explanation is given as to why Jai Dyal should have suddenly brought false charges against a man who had been in his service for 5 years. The allegation that these charges were brought merely owing to a quarrel between the wife of Harjas Mal and the mother-in-law of Jai Dyal sounds absurd. The evidence produced is also worthless. It is stated by the witnesses that Harjas Mal was detained in custody by Jai Dyal, that he was beaten with hockey sticks and that one of his teeth was broken, but it is significant that Harjas Mal made no complaint whatever to the police or to any Court after his release. It is impossible to believe that a man in the position of Harjas Mal could have been induced to part with cash and sell the house merely by threats, if he were really innocent. As a matter of fact defendant Jai Dyal has produced statements in the handwriting of

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Harjas Mal himself admitting that he had embezzled various items amounting to Rs. 23,505-2-0 as alleged by Jai Dyal. Harjas Mal has admitted that these statements are in his handwriting, and his allegation that he wrote them under threats cannot be believed. It appears further that Harjas Mal admitted his guilt in the presence of Attar Chand (D. W. 2), and Mehta Amin Chand, *Vakil* (D. W. 4) who appear to be disinterested witnesses. His own brother Hari Ram has also deposed that Harjas Mal admitted that he had been guilty of the embezzlement. The defendant Jai Dyal has further produced his *Munim*, Mangal Sen and other witnesses to prove the embezzlement.

It was urged on behalf of the appellant that the defendant had not produced his account books in order to prove the embezzlement. But in view of the statements in the handwriting of Harjas Mal in which the embezzlement was admitted, the burden lay on Harjas Mal to show that the embezzlement did not as a matter of fact take place. It was open to him to call for the defendant's accounts but he did not do so. It appears further from the record that the defendant Jai Dyal did want to produce account books, but the same were ruled out by the Court on the ground that they were produced late. In my opinion the statements in the handwriting of Harjas Mal together with the other evidence referred to above prove beyond any doubt that Harjas Mal did misappropriate a sum of over Rs. 23,000 or so, as alleged by the defendant.

The next contention put forward by the learned counsel for the appellant was that even if Harjas Mal was guilty of embezzlement, the subsequent settlement by virtue of which cash and jewelry were paid to Jai

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Dyal was made in order to stifle a criminal prosecution and was therefore void. This was, however, not the plea put forward by Harjas Mal in his plaint. He denied absolutely that there was any embezzlement and did not allege that any settlement was arrived at with a view to stifle criminal prosecution. As a matter of fact, no prosecution had yet been launched. It is, of course, possible that Harjas Mal paid up such amount as he could in order to save his skin, but this fact by itself would not render the settlement void in law. It was incumbent on Harjas Mal to prove that the consideration for the settlement consisted of a promise on the part of Jai Dyal not to prosecute him but there is no evidence to establish this fact. The evidence referred to above proves clearly that Harjas Mal was liable to refund a sum of over Rs. 23,000, and if any settlement was made in connection with this liability, it would not be void merely because Harjas Mal may have hoped thereby to escape criminal prosecution. The law on the subject has been discussed at length by a learned Judge of this Court in *Shanti Sarup* v. *Lal Chand* (1), which was followed by another learned Judge in *Badar-ud-Din* v. *Mehr Din* (2). These authorities fully support the contention of the learned counsel for the respondent that the settlement was valid and binding on Harjas Mal in the circumstances. As a result the two appeals of Harjas Mal must fail.

The next appeal is that of *Mussammat* Widya Wanti. Her allegation was that her jewelry was taken away by Hari Ram, brother of Harjas Mal, on the pretext that it was to be temporarily deposited as security with Jai Dayal in order to obtain

(1) 1927 A. I. R. (Lah.) 530. (2) (1928) 107 I. C. 605.

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Harjas Mal's release and that it was made over to Jai Dayal in payment of the alleged debt of Harjas Mal without her consent. As regards Jai Dyal, it was alleged that Hari Ram was acting in collusion with him. There is no proof of any such collusion and there is really no case at all against Jai Dyal. As regards Hari Ram, he has denied in the witness box that he took the jewelry from *Mussammat* Widya Wanti as alleged by her. The identity of the jewelry handed over to Jai Dyal has not been proved. *Mussammat* Widya Wanti in her statement in the witness box has not given even the details of her jewelry (excepting one or two ornaments which were on her person) and Jai Dyal was never asked to produce the jewelry in Court for the purpose of identification. It is true that Jai Dyal had sold some of the jewelry, but the rest, at any rate, could have been produced. The learned counsel who appeared for *Mussammat* Widya Wanti, chiefly relied on a receipt Exhibit P-1 alleged to have been given by Jai Dyal to Hari Ram, but it appears from the letter (Exhibit D-1) (which has been admitted by Harjas Mal) that it was Harjas Mal who really sent the jewelry to Jai Dayal. The evidence of Attar Chand (D. W. 2) also goes to support the same conclusion. Attar Chand, who appears to be a disinterested witness, has deposed that it was *Mussammat* Karam Devi, wife of Harjas Mal, who came to him accompanied by Hari Ram and brought the jewelry. Attar Chand, Hari Ram and Harjas Mal then appear to have gone to Jai Dyal's house and made over the jewelry to him. *Mussammat* Widya Wanti is a minor girl and the probability is that the jewelry was in the keeping of her parents-in-law and it is possible that some of it

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was utilised by them for payment to Jai Dyal when Harjas Mal got into trouble. It may be noted in this connection that the receipt for the jewelry given by Jai Dyal was produced not by *Mussammat* Widya Wanti but by Harjas Mal himself. After a careful consideration of the evidence on the record I am of opinion that *Mussammat* Widya Wanti has failed to make out any case either against Hari Ram or Jai Dyal.

I come next to the appeal of Wasti Ram, minor son of Harjas Mal. The sole point for decision in this appeal is whether the appellant is bound by the sale of the joint family property effected by Harjas Mal in order to pay off the money due to Jai Dyal. The money admittedly became due to Jai Dyal as the result of a criminal breach of trust on the part of Harjas Mal. It is contended on behalf of Wasti Ram that this "debt" being of an immoral character, Wasti Ram was not bound to pay it and therefore the sale of the joint family property, which was effected to discharge it, is not binding on him. In support of this contention reliance is placed on *Mahabir Prasad* v. *Basdeo Singh* (1), *Durbar Khachar* v. *Khachar Harsur* (2), *Preman Das* v. *Bhattu Mahton* (3), *McDowell* v. *Ragava Chetty* (4) and *Jagannath Prasad* v. *Jugal Kishore* (5). On behalf of the respondent, on the other hand, it is urged that the appellant was legally bound to repay money misappropriated by his father and hence the sale in question is binding on him. Reliance is placed in this respect on *Kartar Singh* v. *Harji Mal* (6), *Chhakauri Mahton* v. *Ganga*

(1) (1884) I. L. R. 6 All. 234.
(2) (1898) I. L. R. 32 Bom. 348.
(3) (1897) I. L. R. 24 Cal. 672.
(4) (1904) I. L. R. 27 Mad. 71.
(5) (1926) I. L. R. 48 All. 9.
(6) 128 P. R. 1879.

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Prasad (1), *Natasayyan* v. *Ponnusami* (2), *Gursaran Das* v. *Mohan Lal* (3), *Chandreka Ram Twari* v. *Narain Prasad Rai* (4), and *Penkatacharyulu* v. *Mohana Panda* (5). I have carefully considered these authorities and although there seems to be some divergence of opinion as to whether the sons of a Hindu father are bound to pay his debts, which are the result of a mere breach of a civil duty, the authorities seem to be practically agreed that they are not so bound, if the debts result from an act amounting to a criminal offence, as in this case. This fact is recognised in most of the authorities on the point see *e.g. Hanmant Kashinath* v. *Ganesh Annaji* (6), *McDowell* v. *Ragava Chetty* (7), distinguishing *Natasayyan* v. *Ponnusami* (2), *Chandreka Ram Twari* v. *Narain Prasad Rai* (4), *Chhakauri Mahton* v. *Ganga Prasad* (1), *Jagannath Prasad* v. *Jugal Kishore* (8) and *Rallia Ram* v. *Balmokand* (9).

In *Kartar Singh* v. *Harji Mal* (10), it appears, no doubt that a decree passed against a father on account of property stolen by him was held to be binding on the son. This case is, however, distinguishable on the ground that the original debt had merged into a decree.

The whole subject has been discussed at length in *Chhakkauri Mahton* v. *Ganga Prasad* (1). It will appear therefrom that the decision of the point now at issue really depends upon the interpretation of the term "avyavaharika" debt as used in Hindu

(1) (1912) I. L. R. 39 Cal. 862.
(2) (1898) I. L. R. 16 Mad. 99.
(3) 1923 I. L. R. 4 Lah. 93.
(4) (1924) I. L. R. 46 All. 617.
(5) (1921) I. L. R. 44 Mad. 215.
(6) (1919) I. L. R. 43 Bom. 612.
(7) (1904) I. L. R. 27 Mad. 71.
(8) (1926) I. L. R. 48 All. 9.
(9) (1927) I. L. R. 8 Lah. 117, 120.
(10) 128 P. R. 1879.

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Law. Under Hindu Law the son is specifically exempted from liability for certain classes of debts incurred by his father and the only class of such exempted debts under which the debt in question in the present case could fall appears to be that of " avyavaharika debts." The interpretation of this term has been the subject of some divergence of opinion, but the generally approved interpretation appears to be " not lawful, usual or customary," as held by Mookerjee J. in *Chhakauri Mahton* v. *Ganga Prasad* (1). A debt which resulted from a criminal act of the father could not, I think, by any stretch of language, be held to be " lawful, usual or customary." I am, therefore, of opinion that Wasti Ram's appeal must succeed.

The last appeal is in respect of the suit for rent for the house. It was conceded that this claim must stand or fall with the decision of the main issue in the other suits and the claim was not contested on its merits. It has been found above that the other appeals with the exception of that of Wasti Ram, must fail. This suit for rent was instituted originally against Bakhshi Ram and Harjas Mal. Harjas Mal having died, the claim now is against Bakhshi Ram and his brother Wasti Ram. Wasti Ram's appeal having succeeded the decree for rent cannot stand against him.

As a result of the above findings appeals Nos. 3144, 1152, 1153 and 1154 of 1925 must be dismissed with costs.

Civil Appeal No. 1156 of 1925 is accepted and Wasti Ram is granted a decree to the effect that

(1) (1912) I. L. R. 39 Cal. 862, 871, 872.

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the sale in dispute shall not affect his rights in the property sold.

Civil Appeal No. 1155 is accepted in part and the decree for rent is cancelled as against Wasti Ram. The decree shall stand against Bakhshi Ram.

In view of all the circumstances the parties will be left to bear their own costs in Civil Appeals Nos. 1155 and 1156 of 1925.

CURRIE J.

CURRIE J.—I agree to the orders my learned brother proposes to pass.

N. F. E.

Appeal dismissed.

APPELLATE CIVIL.

Before Bhide and Currie JJ.

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May 22.

MUSSAMMAT BEGAM BIBI (PLAINTIFF) Appellant

versus

MOHAMMAD DIN AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No 548 of 1928.

Custom—Succession—Gul Farosh Arains *of Amritsar City —daughters—whether excluded by sons.*

The ancestors of Fazal Din (deceased), a *Gul Farosh Arain*, the last male holder of the estate in suit consisting of house property and shops, originally migrated from Lahore to Amritsar some 130 years ago. In *Miran Bakhsh* v. *Mst. Allajawai* (1), the family was described as belonging to the *Bhatti* section of *Arains*. The plaintiff contended that they were *Gul Farosh Arains* of the *Multani* section. There was nothing to shew whether or not the family owned land in their village of origin (*Sanda* near Lahore) before their migration; nor to show what occupation Fazal Din's father followed. While it was established that Fazal Din himself had no immediate connection with land, but conducted a *sarafi* business in Amritsar

(1) 25 P. R. 1882.