

APPELLATE CIVIL.

Before Addison and Agha Haidar JJ.

DEVI DAS (DECREE-HOLDER) Appellant

versus

JADA RAM AND ANOTHER, MINORS, THROUGH THEIR
MOTHER (JUDGMENT-DEBTORS) Respondents.

Civil Appeal No. 1639 of 1931.

Hindu Law — Mitakshara — father predeceasing his father—son's liability for the debts incurred by the father—whether personal—or limited to his interest in the joint family property—Civil Procedure Code, Act V of 1908, sections 52, 53.

One *U. C.* incurred a debt in the life-time of his father and died before his father. After the death of the father, the creditor obtained a decree due against the sons of *U. C.* as his legal representatives, in execution of which joint family property was attached. It was objected that the property was not liable to be sold in execution of their father's debt as it did not belong to their father but to the joint family of which their grand-father was the manager.

Held, that under the *Mitakshara* Law, as administered in British India, the liability of sons to pay the debts of their father is no longer a personal one and is limited to their interest in the joint family property; and this liability is not affected by the fact that their father predeceased their grand-father, nor by the fact that in the Punjab a son cannot sue for partition in the father's life-time.

Shivram v. Sakharam (1), and *Nihal Chand-Gopal Das v. Ram Lal* (2), relied on.

Binda Prasad v. Raj Ballabh Sahai (3), not followed.

Mulla's Hindu Law, section 290, referred to.

Miscellaneous Appeal from the order of Mian Mohammad Afzal Makhdum, District Judge, Dera Ghazi Khan, dated the 2nd May, 1931, affirming that of Thakar Ishwar Singh, Subordinate Judge, 1st

(1) (1909) I. L. R. 33 Bom. 39. (2) (1932) I. L. R. 13 Lah. 455.

(3) (1926) I. L. R. 48 All. 245

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Class, Dera Ghazi Khan, dated the 29th January, 1931, holding that the property could not be made liable to attachment and sale in execution of the decree against the property of Uttam Chand

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M. L. PURI, and S. L. PURI for Agnihotri, for Appellant.

HAR GOPAL, for Respondents.

ADDISON J.—One Uttam Chand incurred a debt in the lifetime of his father Pheru Mal. Uttam Chand died before his father. After the death of both Uttam Chand and Pheru Mal, the creditor obtained a decree for the amount due against Jada Ram and Haru Ram, the sons of Uttam Chand, as his legal representatives. In execution the joint family property was attached. It was objected that the property did not belong to their father but to the joint family of which the grand-father Pheru Mal was the manager. It was, therefore, not liable to be sold in execution of a decree for their father's debt. This objection was upheld in the Lower Courts on the strength of *Binda Prasad v. Raj Ballabh Sahai* (1). The second appeal came before a Single Judge who, owing to the difficulty of the question involved, referred it to a Division Bench.

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The decree was obtained against the sons as legal representatives of their deceased father Uttam Chand under the provisions of section 52 of the Civil Procedure Code. Section 53 of the Civil Procedure Code, however, lays down that for the purpose of section 52 property in the hands of a son or other descendant which is liable under the Hindu Law for the payment of the debt of the deceased ancestor, in

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respect of which a decree has been passed, shall be deemed to be the property of the deceased which has come into the hands of the son or other descendant as his legal representative. This section was obviously enacted in order that a creditor could follow the joint family property in the hands of sons or grandsons in all cases of execution. It is claimed, however, on behalf of the respondents that where a Hindu father incurs a debt and dies in the lifetime of his father his sons are relieved from their pious obligation to pay the debt from the joint family property, though in all other cases their liability to pay their father's debts, which are not immoral, was admitted before us.

For the purpose of section 53 it has to be seen, therefore, as to what property is liable under Hindu Law in the hands of sons or other descendants for the payment of the debt of a deceased ancestor. There is no doubt about the general proposition given in section 290 of Mulla's Hindu Law. Though the debt is incurred for the father's own personal benefit the sons are liable to pay it, even in the lifetime of their father, provided that it has not been incurred for an illegal or immoral purpose. This liability arises from an obligation of religion and piety which is placed upon sons under the Mitakshara Law to discharge their father's debts where they are not immoral. As the Mitakshara Law, however, is administered in British India, the liability of the son, grandson and great grandson to pay the debts of their ancestor is no longer a personal one. It is limited to their interest in the joint family property. It is clear that if Pheru Mal had died before Uttam Chand the family property in the hands of Uttam Chand's sons would

be liable for the payment of Uttam Chand's debts. Again, it seems to me that *Shivram v. Sakham* (1) is an authority for the proposition that if a money decree is obtained against the sons as representatives of their father, in a case where the father was joint with his brothers, the sons' share in the joint family property can be attached and sold to meet the father's debt provided it is not tainted with immorality or illegality. This is the case even where the debt is incurred for the sole purposes of the father. The proposition, therefore, contended for before us is that there is an exception to the general rule that sons are under a pious duty to pay their father's debts in the case where the father has died in the lifetime of the grandfather. There is one authority which supports this view, namely, *Binda Prasad v. Raj Ballabh Sahai* (2). The reason given there is that the date of the father's death is the crucial date. That is, as the property of the father passed not only to his sons but to his father, it could not be liable for the payment of the debts of the deceased as the father of the deceased was not under a pious obligation to pay the debts of the deceased. With very great respect I am unable to follow the reasoning. I can see no reason why the sons should not remain under their pious obligation to pay their father's debts although their grandfather is alive. They are members of the joint family by reason of the fact that their father procreated them. They are liable to pay his debts to the extent of the joint family property in their hands. If, therefore, the grandfather is also dead they are liable to the extent of the entire family property in their hands. If their grandfather is still alive they

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will be liable to the extent of their share in the family property which undoubtedly accrues to them because of the death of their father. It is also true that at no stage can it be said that the property of one co-parcener passes to another co-parcener. That takes away the foundation from the reasoning in the Allahabad case. At the same time the sons share with their father in the joint family property in the lifetime of their grandfather. When their father dies their share increases and when their grandfather dies it still further increases. But that does not affect their pious obligation to pay their father's debt to the extent of the joint family property in their hands.

It was contended that in the Punjab a son could not sue for partition in the lifetime of his father. This may be so, but it has been held in *Nihal Chand-Gopal Das v. Ram Lal* (1), that a son's share can be attached and sold in execution of a decree against him in the lifetime of his father. If his debts are not immoral obviously also his son's share can be attached and sold along with his own. In the present case, therefore, had the property of Uttam Chand been attached in his lifetime half the family property would certainly have been liable. I am unable to understand how the family property escapes liability completely merely because he dies in the lifetime of the grandfather. No foundation for the dictum that the date of the father's death is the crucial date has been pointed out to us. The rule is a simple one, namely the sons are under a pious obligation to pay their father's debt to the extent of the family property in their hands. Why should this obligation be

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taken away because their father died in the lifetime of their grandfather? The decree was obtained against the sons as representatives of the father and I would hold that under Hindu Law all the joint family property in their hands is liable for the payment of the debt of a deceased ancestor.

For the reasons given I would accept the appeal with costs throughout and direct the executing Court to proceed against the joint family property in the hands of Jada Ram and Haru Ram, sons of Uttam Chand, against whom the decree was obtained in the capacity of legal representatives of their father.

AGHA HAIDAR J.—I agree.

AGHA HAIDAR J.

A. N. C.

Appeal accepted.

APPELLATE CIVIL.

Before Addison and Agha Haidar JJ.

GOBIND SINGH AND OTHERS (DEFENDANTS)

Appellants

versus

THE MANAGING COMMITTEE OF
GURDWARAS, AMRITSAR, AND OTHERS
(PLAINTIFFS); AND GURBAKHS SINGH
AND OTHERS (DEFENDANTS), Respondents.

Civil Appeal No. 795 of 1931.

Sikh Gurdwaras Act, VIII of 1925, sections 3 (3), 5 (3), 30 (ii) first proviso—Notice served on person ostensibly in possession—whether valid—Failure to exercise diligence.

The present suit was brought under section 28 of the Sikh Gurdwaras Act against Gurbakhsh Singh, Gobind Singh and others for possession of a *bunga* attached to the Golden Temple, Amritsar. The list of properties prepared under section 3 (i) of the Act included the *bunga* in question, and

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