

Upon these grounds we affirm the decree so far as it dismisses the suit. The first and second defendants must bear their own costs throughout, the plaintiff must pay to the third defendant his costs of the suit and of the regular appeal as directed by the Courts below, but the parties, respectively, must bear their own costs of this special appeal.

Decree affirmed.

1878.

SANGA'PA'
BIN
BASLINGA'PA
v.
GANGA'PA'
BIN
NIRANJA'PA'
AND OTHERS.

[APPELLATE CIVIL.]

Before M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

NARSINBHAT BIN BA'PUBHAT (ORIGINAL PLAINTIFF), APPELLANT v.
CHENA'PA' BIN NINGA'PA' (ORIGINAL DEFENDANT), RESPONDENT*

1877.
December 13.

Undivided Hindu family—Ancestral property—Liability of an undivided Hindu for the debts of his deceased brother.

P, an undivided Hindu co-parcener, died on the 7th August 1874, leaving him surviving, a brother C, and a son N. N subsequently died on the 2nd July 1875. In a suit brought by plaintiff against C, on a bond executed by P as surety for one B,

Held that the family property, which on N's death became vested by survivorship in C, was not in his hands liable for the separate debts of P or N.

THIS was a special appeal from the decision of W. Sandwith, District Judge of Dharwar, in Appeal No. 37 of 1876, reversing the decree of Gopál Vináyek, Subordinate Judge at Gadag, in Original Suit No. 665 of 1874

The Subordinate Judge awarded the plaintiff's claim. In appeal, however, the District Judge, after remand, reversed the decree of the first Court on the ground that the defendant Chenápá was not the next heir to the deceased Parápá at the date of the institution of the suit, and that the property in Chenápá's hands was joint family property. The principal question raised in special appeal was whether or no Chenápá was liable for the debts of his deceased brother Parápá to the extent of the latter's share in the family property.

* Special Appeal No. 205 of 1877.

1877.

NARSIING-
BHAI BIN
BA'PUBHAI
v.
CHENA'PA'
BIN
NINGA'PA'

Maneksháh Jehangirsháh appeared for the appellant.

Ghanashám Nilkanth Nádkarni appeared for the respondent.

WESTROFF, C. J. :—This is a suit against Chenápá on a bond executed by his brother Parápá as surety for one Rángo. Parápá died on 7th August 1874, leaving a son, Ningangavdá. This suit was instituted against Parápá on the 1st, December 1874. Ningangavdá died on the 2nd July 1875. Parápá, Ningangavdá, and the defendant Chenápá were, at the decease of Parápá, members of an undivided Hindu family. Ningangavdá and Chenápá continued undivided until the death of Ningangavda. On his death Chenápá became, by survivorship, entitled to the whole of the family property. No separate property belonging to Parápá or Ningangavdá is shown to have come to the hands of Chenápá or to exist. Chenápá, in his written statement filed on the 12th June 1875, objected that Ningangavdá ought to be made a party to the suit, but he never was made a party to it. Chenápá never was personally responsible for the separate debt of his brother Parápá, or nephew Ningangavlá, and the joint family property, which has now, as stated, vested by survivorship in Chenápá, is not in his hands liable for their separate debts, as shown by the authorities quoted in *Udarám Sitárám v. Ránu Panduji*.⁽¹⁾ The liability of joint family property in the hands of a son or grandson for the debts of the father of the one and the grandfather of the other, is there shown to be exceptional. It is not asserted here that Parápá entered into his suretyship for Rángo for the benefit of the undivided family to which Parápá belonged; nor is it pretended that he executed any mortgáge or gave any other special lieu on his share in the family property.

On these grounds we affirm the decree with costs.

(1) 11 Bom. H. C. Rep. 76.