APPELLATE CIVIL.

Before Young C. J. and Abdul Rashid J.

PIRTHI SINGH-JOWALA PARSHAD (DEFENDANT) Appellant

versus

MAM CHAND AND ANOTHER (PLAINTIFFS) Respondents.

1935

Feb. 2.

Civil Appeal No. 468 of 1930.

Hindu Law — Joint family business — debts incurred by father (as Manager) in speculative transactions — whether binding on sons — and recoverable from joint family property.

Held, that payments made to third parties by an agent, on behalf of his principal, on account of *badni* transactions, do not constitute a wagering contract as between the principal and the agent.

Behari Lal v. *Parbhu Lal* (1), relied upon.

Held also, that the Manager of a joint Hindu family has power to incur debts for the purposes of the business carried out by the family in speculative transactions and such debts cannot be said to have been incurred for immoral or illegal purposes.

Mauluk Chand Kishanji v. *Daya Kishan* (2), relied upon.

And, if such speculative debts have been incurred by the father and the other members of the joint family are his sons, the joint family estate is open to be taken in execution proceedings upon a decree for payment of those debts, unless the debts are *proved* to have been incurred for immoral or illegal purposes.

Raja Brij Narain Rai v. *Mangal Prasad Rai* (3), relied upon.

Case-law, discussed.

First Appeal from the decree of Lala *Munshi Ram, Subordinate Judge, 1st Class, Delhi, dated 25th November, 1929, decreeing the plaintiffs' suit.*

(1) 79 P. R. 1908 (F. B.). (2) (1928) 106 I. C. 183.
(3) (1924) I. L. R. 46 All. 95 (P. C.).

1935

PIRTHI SINGH-JOWALA PARSHAD v. MAM CHAND.

KISHEN DAYAL and SHAMAIR CHAND, for Appellant.

BADRI DAS and VISHNU DATTA, for Respondents.

The judgment of the Court was delivered by—

ABDUL RASHID J.—The facts of the case bearing on the question of law involved in this appeal may be shortly stated. Mam Chand and Hem Chand, plaintiffs, are the sons of Chandu Lal, defendant No.2. The father and the sons constitute a joint Hindu family. Defendant No.1 obtained a decree against Chandu Lal, defendant No.2, for a sum of money and in execution of that decree attached the house in dispute. The plaintiffs, thereupon, brought the present suit for a declaration to the effect that the house in dispute is joint family property, that the proceedings regarding execution and sale of this house are void and ineffectual as against the plaintiffs, and that the decree obtained by defendant No.1 against defendant No.2 is not binding on them. It was stated in the plaint that Chandu Lal had lost a lot of money in *badni* transactions relating to the sale of gold and silver, and that the money due to defendant No.1 consisted of losses incurred by Chandu Lal as a result of speculative and immoral transactions. Defendant No.1 alone contested the suit. He pleaded, *inter alia*, that the house in dispute did not belong to the joint Hindu family, but was the exclusive property of Chandu Lal, that the allegations about the character of Chandu Lal were entirely false, that Chandu Lal had sustained losses in carrying on family business and that the plaintiffs were bound by the decree on account of their being members of the joint Hindu family with their father. The trial Court decreed the plaintiffs' suit and defendant No.1 has preferred the present appeal to this Court.

1935

PIRTHI SINGH-JOWALA PARSHAD v. MAM CHAND.

It appears that Chandu Lal was a *munim* of the firm Pirthi Singh-Jowala Parshad, defendant No.1. He entered into *badni* transactions with third parties and employed defendant No.1 as his agents. They paid his losses and collected his profits, and ultimately secured a decree against him for the sum due to them on account of losses sustained by him as well as commission due to them. It was contended by the learned counsel for the appellants that a cash payment made by an agent on account of *badni* transactions on behalf of a principal does not amount to a wagering contract and that such a contract is legally enforceable. Reliance was placed in this connection on a Full Bench ruling of the Punjab Chief Court—*Behari Lal* v. *Parbhu Lal* (1). It was observed in that case that when the " defendants employed plaintiffs to enter into wagering transactions for defendants' gain or loss, as the event might be, the contract between defendants and plaintiffs was not itself a wagering one. Plaintiffs stood to lose nothing and to gain nothing beyond their commission; defendants on the one hand, and the third parties, with whom plaintiffs were to enter into gambling transactions, on the other, alone stood to win or lose upon an uncertain future event. This being so, and wagering transactions being not forbidden by law, but only being a kind of transactions which the Courts are by law precluded from enforcing, it follows that when a party in the position of plaintiffs in the present case, in pursuance of his agreement with his employer pays a sum of money to a winner, the employer must recoup him." .

It was held in *Mauluk Chand Kishanji* v. *Daya Kishan* (2) that the manager of a joint Hindu family

(1) 79 P. R. 1908 (F. B.). (2) (1928) 106 I. C. 183.

1935

PIRTHI SINGH-JOWALA PARSHAD v. MAM CHAND.

has an implied authority to contract debts for the ordinary purposes of the business carried on by the family. He has power to incur debts for the business in speculative transactions as such debts cannot be said to be immoral. The pious obligation of Hindu sons to pay off their father's debts extends to commercial debts.

We agree with the authorities quoted above, and are of opinion that the contract between defendant No.1 and defendant No.2 was not a wagering contract, and that debts incurred by defendant No.2 to pay off the dues of defendant No.1 cannot be regarded as debts incurred for immoral or illegal purposes.

The house in dispute has been held by the trial Court to be joint family property. The next question for consideration, therefore, is whether this property is liable to attachment and sale in execution of the decree of defendant No.1 against defendant No.2. It is true that the managing member of a joint Hindu family cannot alienate or burden the joint family estate except for purposes of necessity. If, however, speculative debts are incurred by the father, and the other members of the family are his sons, the estate is open to be taken in execution-proceedings upon a decree for payment of those debts unless the debts are proved to have been incurred for immoral or illegal purposes. The whole law on the subject has been exhaustively discussed in the Privy Council ruling *Raja Brij Narain Rai* v. *Mangal Prasad Rai* (1). The following quotation from that ruling may be reproduced *in extenso* :—

" It cannot be denied that the law on the subject of what binds an estate when the manager of the joint

(1) (1924) I. L. R. 46 All. 95 (P. C.).

family estate is the father, and the reversionaries are the sons, is in a state which is somewhat illogical and in the absence of binding authority could not be accepted. On the one hand, it is settled law that the manager as such cannot bind the estate at his own free will and without any compelling cause so as to bind the reversionaries. He can bind it for necessity, the necessity being the necessity of the family, and so far there is no difficulty in principle, though the question of whether in any particular instance there was a necessity may, like other questions of fact liable to be involved in a question of degree, be difficult to decide. But then there comes in the further doctrine that debt has been contracted by the father, and the pious obligation incumbent on the son to see his father's debts paid prevents him from asserting that the family estate, so far as his interest is concerned, is not liable to purge that debt. It may become liable by being taken in execution on the back of a decree obtained against the father, or it might become liable by being mortgaged by the father to pay the debt for which otherwise decree might be taken and execution be sought."

On behalf of the respondents it was urged that it was open to the sons in the present case to dispute the legality of the debts of their father and to show the real nature of the transaction. It was further urged that sons were not bound to pay the speculative debts of the father. Reliance was placed in this connection on *Ramchandra Singh* v. *Jang Bahadur Singh* (1), *The Benares Bank, Ltd.* v. *Hari Narain* (2), *Bhagwan Das Naik* v. *Mahadeo Prasad Pal* (3) and *Thanesher Pershad* v. *Ram Chand* (4). These rulings

(1) (1926) I. L. R. 5 Pat. 198.
(2) (1932) I. L. R. 54 All. 564 (P. C.).
(3) (1923) I. L. R. 45 All. 390.
(4) 1929 A. I. R. (Lah.) 468.

1935

PIRTHI SINGH-JOWALA PARSHAD v. MAM CHAND.

are, however, clearly distinguishable as in these cases the father or the *karta* of the family mortgaged or sold joint family property for speculative enterprises, and there were no antecedent debts of the father for the payment of which any property was sought to be sold in execution.

For the reasons given above, we accept the appeal, set aside the judgment and the decree of the trial Court, and dismiss the plaintiffs' suit with costs throughout.

P. S.

Appeal accepted.

LETTERS PATENT APPEAL.

Before Addison and Din Mohammad JJ.

1935

Feb. 4.

DEVI DAS, DECEASED (JUDGMENT-DEBTOR) THROUGH HIS LEGAL REPRESENTATIVE—Appellant

versus

SADUR-UD-DIN, DECEASED (DECREE-HOLDER) THROUGH HIS LEGAL REPRESENTATIVES—Respondent.

Letters Patent Appeal No. 139 of 1934.

Decree — ordering payment of a certain sum "within three months from to-day" *— whether first day can be excluded in computing the period — Punjab General Clauses Act, I of 1898, section 7 and Indian General Clauses Act, X of 1897, section 9 : principle of — whether applicable.*

On 18th April, 1933, the decree-holders obtained a decree against the judgment-debtor ordering him to pay Rs.6,000 to the decree-holders or to deposit the amount in the trial Court "within three months *from to-day*;" if the sum was not so paid, the plaintiff's suit was to be deemed to have been decreed in full. On 18th July, 1933, the judgment-debtor deposited Rs.6,000 in the trial Court, but the decree-holders contended that the payment was one day late.