

I concur in the order proposed by the learned Chief Justice, that the Peoples Bank of Northern India, Limited, be wound up by the Court.

Order of the Court.—The petitioner will have his costs of the petition from the company. Pleader's fee Rs.100.

A. N. C.

Petition accepted.

LETTERS PATENT APPEAL.

Before Addison and Din Mohammad JJ.

ATMA RAM (DEFENDANT) Appellant

versus

MUKHI RAM ETC. (PLAINTIFFS)
GULAB RAI-GUJJAR MAL AND } Respondents.
OTHERS (DEFENDANTS)

Letters Patent Appeal No. 37 of 1934.

Debtor and Creditor — Priority of claim of creditor against his deceased debtor's property — over creditor of the heirs of deceased who have succeeded to that property.

Held, that the personal debts of a deceased person are a first charge on the property left by him and take priority over all claims against the heirs who are then in possession of that property, and who are entitled only to the residue left after satisfaction of the personal debts of the deceased.

Bholanath v. Magbulunnissa (1), *Kinderley v. Jervis* (2), and *Haji Abdulla v. Allanji Abdul Latif* (3), followed.

Letters Patent Appeal from the order passed by Abdul Rashid J. in C. A. No.705 of 1933, on 27th February, 1934, reversing that of Mr. I. M. Lall, District Judge, Hoshiarpur, dated 6th January, 1933 (who reversed that of Lala Maharaj Kishore, Subordinate Judge, 2nd Class, Hoshiarpur, dated 6th June,

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MADAN GOPAL

v.

PEOPLES BANK
OF NORTHERN
INDIA.

TEK CHAND J.

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Jan. 31.

(1) (1904) I. L. R. 26 All. 28. (2) (1856) 22 Beav. 1.

(3) (1920) 57 I. C. 854.

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1932), and ordering that Atma Ram, defendant No.1, do pay to the plaintiffs the sum of Rs.966-6-6.

FAKIR CHAND, for Appellant.

ACHHRU RAM and HEM RAJ MAHAJAN, for (Plaintiffs) Respondents.

The judgment of the Court was delivered by—

DIN MOHAMMAD J.—The facts bearing upon the question of law involved in this Letters Patent Appeal are as follows :—

The firm Gulab Rai-Gujjar Mal instituted a suit for recovery of Rs.26,000 against Salig Ram and his grandsons. On the 11th June, 1921, the parties filed a compromise discharging Salig Ram and holding his grandsons alone liable for the amount found due. Salig Ram died some time in 1924. On the 2nd June, 1924, Salig Ram's creditors, Mukhi Ram and others, brought a suit for recovery of their debt due from Salig Ram personally. This suit was instituted against Salig Ram's grandsons as his legal representatives or heirs. A decree was made in this suit in favour of Mukhi Ram and others. In the course of the execution-proceedings taken by the firm Gulab Rai-Gujjar Mal against Salig Ram's grandsons, a house belonging to Salig Ram was attached and sold. Mukhi Ram and others claimed priority for their claim in the sale proceeds of this house, on the ground that the property being personal of Salig Ram, his debt due to them must be satisfied first. This claim was resisted by the firm Gulab Rai - Gujjar Mal, on the ground that as the property was then in the hands of the grandsons, it should be deemed to be their property for all purposes and hence liable for the firm's decree against them. Mukhi Ram and others' claim was disallowed. They then instituted the present

suit on the same allegations, which was decreed by the Subordinate Judge, but dismissed by the District Judge on appeal. An appeal was preferred to this Court against the order of the District Judge and Abdul Rashid J. before whom the appeal was heard, reversed his judgment and ordered that the deceased's property should first be applied to the satisfaction of the decree against the estate of the deceased, and that the firm be required to refund the amount received by it by the sale of the house. The firm appeals.

We have no hesitation in affirming the decision of the learned Judge of this Court. The law applied by him is well established, being based on sound principles of English Law. A similar question came before a Division Bench of the Allahabad High Court in *Bhola Nath v. Maqbulunnisa* (1), and the learned Judges there following *Kinderley v. Jervis* (2), held that the personal debts of the deceased, being a first charge on the property left by him, took priority over all claims against the heirs who were then in possession of the property. In *Haji Abdullah Sahib v. Alanji Abdul Latif Sahib* (3), the Allahabad judgment was cited and approved. At page 857, Wallis C. J. who delivered the judgment, remarked as follows :—

“ I consider the father's creditors have a prior claim to the money as it belonged to the father and could be taken by the sons only subject to their rights to have their debts paid from it.”

As remarked above, we are in respectful agreement with this view. When an heir succeeds to the property of the deceased, he takes it subject to the

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charge of his debts. In other words, that portion of the property does not devolve in fact on the heirs, which is required to satisfy the debts of the deceased and it stands apart, as it were, for the creditors of the deceased. That being so, the creditors' prior claim cannot be resisted in law, the heirs being entitled only to the residue, left after the satisfaction of the personal debts of the deceased.

The question of refund presents no difficulty. This suit was instituted at a time when the assets had not yet been realised by the firm, and if in the meantime they have done so, they must refund the amount wrongfully received by them.

We, therefore, uphold the judgment of the learned Judge and dismiss this appeal with costs throughout.

P. S.

Appeal dismissed.