

APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.
MUTSADDI LAL AND OTHERS (DEFENDANTS)

Appellants

versus

SAKHIR CHAND AND OTHERS
 (PLAINTIFFS)
SHANTI LAL AND OTHERS
 (DEFENDANTS)

Respondents

1935
 May 17.

Civil Appeal No. 1957 of 1932.

Hindu Law — Joint family — Debts contracted on promissory notes by the senior members of the family for the benefit of the family — Other adult members — whether personally liable or only to extent of their interest in the family property.

Debts were incurred by two senior members of a joint Hindu family, on promissory notes signed only by them, for the benefit of the joint family. The plaintiffs sought to make the other adult members of the family also personally liable.

Held, that the other co-parceners, whether they be adults or minors, are liable only to the extent of their interest in the joint family property. They are not liable personally unless in the case of adult co-parceners, the contract sued upon, though purporting to have been entered into by the manager alone, is in reality one to which they can be treated as being contracting parties by reason of their conduct, or one which they have subsequently ratified.

Mulla's Hindu Law, para. 240, and *Bulaqi Das v. Lal Chand* (1), relied upon.

First Appeal from the decree of Sheikh Nasir Ali Shah, Subordinate Judge, 1st Class, Jhang, dated 29th August, 1932, granting plaintiffs a decree for Rs.11,000 against defendants.

R. C. MANCHANDA and NAND LAL SALUJA, for Appellants.

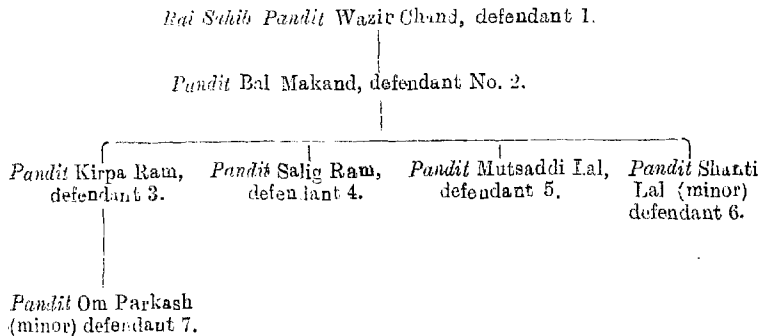
BADRI DAS and CHARANJIVA LAL AGGARWAL, for (Plaintiffs) Respondents.

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The judgment of the Court was delivered by—

ADDISON J.—The joint Hindu family, consisting of *Lala Sakhir Chand*, his sons and grandsons, sued the joint Hindu family of *Rai Sahib Wazir Chand* and *Pandit Bal Mukand*, etc., for recovery of Rs.11,000, principal and interest, on the strength of a promissory note. The following pedigree-table of the joint Hindu family of the defendants is necessary :—



During the pendency of the suit the eldest member of the defendants' joint family, *Rai Sahib Wazir Chand*, died. Money was advanced to *Wazir Chand* and his son, *Bal Mukand*, from time to time on promissory notes which were signed by *Wazir Chand* and *Bal Mukand* only. The last promissory note signed was one for Rs.13,000 on the 24th August, 1927, on which interest at Re.1 *per cent. per mensem* was agreed to be paid. It is on this promissory note that the present suit was brought.

Various defences were put forward by the defendants, which were all decided against them with the result that a personal decree for the amount claimed was given against the adult members of the family, *Bal Mukand* and his three sons, *Kirpa Ram*, *Salig Ram* and *Mutsaddi Lal*. As regards the minors *Shanti Lal* and *Om Parkash*, it was held that they were liable only to the extent of their share in the

joint family property. The finding of the Subordinate Judge was that Wazir Chand and the other defendants were members of a joint Hindu family and that the debts were incurred for the benefit and interest of the joint Hindu family. Against this decision only three persons have appealed. They are the three sons of Balmukand, Kirpa Ram, Salig Ram and Mutsaddi Lal, who were held personally liable along with their father, Balmukand, although they did not sign the promissory note, all the transactions having been entered into by Wazir Chand and Balmukand.

The argument before us was confined to the contention that these appellants were not personally liable but that, on the findings of the Subordinate Judge that they were members of a joint Hindu family along with Wazir Chand and their father, Balmukand, and that the debts were incurred for the benefit of the family, it should have been held that they were merely liable to the extent of their share in the joint family property.

In paragraph 240 (1) of Mulla's Hindu Law it is stated that where debts have been incurred, the other co-parceners, whether they be adults or minors, are liable, but to the extent only of their interest in the joint family property. They are not liable personally unless, in the case of adult co-parceners, the contract sued upon, though purporting to have been entered into by the manager alone, is in reality one to which they are actual contracting parties, or one to which they can be treated as being contracting parties by reason of their conduct, or one which they have subsequently ratified. There is nothing in the present case to show that the contract sued upon was in reality

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one to which the members of the family other than Wazir Chand and Balmukand were actual contracting parties or one to which they can be treated as being contracting parties by reason of their conduct or one which they subsequently ratified. The promissory note was signed by Wazir Chand and Balmukand, who were the heads of the family, and it is no doubt true that the debt contracted was for the benefit of the joint family. The ordinary rule, however, is, as stated in the passage from Mulla above and in *Bulaqi Das v. Lal Chand* (1), that the other members of the family are only liable to the extent of their share in the joint family property. No conduct showing that they ought to be treated as the actual contracting parties has been established nor is there anything to show that in reality they were actual contracting parties. The contracting parties were the two persons, Wazir Chand and his son, Balmukand. They had, however, full authority as the two senior members of the family, who were managing its affairs, to bind the others to the extent of their share in the family property, but that is all.

There has been some difference of opinion as to whether in the case of a promissory note all the members of the family can be sued or only the actual contracting parties. In *Krishna Ayyar v. Krishnasami Ayyar* (2) it was held that all the members of the undivided family could be held liable, if it was a joint family debt, and not merely those who signed the promissory note; but it is clearly set forth in that decision that the other members are liable only to the extent of their share in the joint family property. On the other hand, Page J. held in *Ramgopal Ghose v.*

(1) 1934 A. I. R. (Lah.) 865.

(2) (1900) I. L. R. 23 Mad. 597.

Dhirendra Nath Sen (1) that a debt contracted under a promissory note signed by a *karta* for family purposes does not attract the *Hindu* doctrine of family responsibility for family debts, and such a doctrine is incompatible with the object and effect of the law relating to negotiable instruments. It is not necessary, however, to go into this question further as the only contention before us was that the appeal should be accepted to the extent of holding that the three appellants were not personally liable on the promissory note in suit, but only to the extent of their share in the joint family property. We have no doubt that this is the correct decision in the present case, there being nothing established on the record except that the debt was incurred for family purposes.

We accept the appeal to the extent of declaring that the appellants Kirpa Ram, Salig Ram and Mutsaddi Lal are not personally liable under the decree but, like the minors, Shanti Lal and Om Parkash, are liable under the decree only to the extent of their shares in the joint family property. There will be no order as to the costs of the appeal.

P. S.

Appeal accepted.

(1) (1927) I. L. R. 54 Cal. 380.

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