APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

DINKAR AND OTHERS (ORIGINAL DEFENDANTS NOS. 4, 5, 1 AND 6), APPELLANTS v. APPÁJI (ORIGINAL PLAINTIFF), RESPONDENT.* 1894. *December 10*

Hindu law—Joint family—Manager of joint family—Power of manager to revive a time-barred debt—Limitation.

The manager of a Hindu family has no power to revive by acknowledgment a debt barred by limitation, except as against himself.

SECOND appeal from the decision of Ráo Bahádur Lálshankar Umiáshankar, Joint Subordinate Judge of the First Class, A. P., of Thána, in Appeal No. 190 of 1801.

Three brothers, Rávji, Parashrám and Sitárám, were members of a joint Hindu family.

In April, 1870, the three brothers passed two bonds (Exhibits 6 and 7) in favour of the plaintiff's father for debts incurred for the benefit of the joint family.

After this Rávji died, leaving behind him his widow and two minor sons (defendants Nos. 4 and 5).

On the 14th October, 1874, Parashrám and Sitárám passed a bond (Exhibit 8) for Rs. 1,990-5-0, being the balance due on the previous bonds (Exhibits 6 and 7), mortgaging certain family property. The claim in respect of the previous bonds was at that time barred by limitation.

In 1879, Parashrám and Sitárám adjusted the account of the debt due on Exhibit 8, and executed for themselves, and as guardians of defendants Nos. 4 and 5, two mortgage-bonds (Exhibits 10 and 11) in plaintiff's favour for Rs. 2,500 and Rs. 466-7-0, respectively.

In 1890, the plaintiff sued to recover Rs. 3,999 due on Exhibit 11 by sale of the mortgaged property as well as from the defendants personally.

Defendants Nos. 1, 2 and 3 (who were sons of Parashrám) and defendant No. 6, Sitárám, contended that they were not personally liable.

* Second Appeal, No. 420 of 1893.

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Defendants Nos. 4 and 5, the sons of Rávji, contended (*inter alia*) that their uncles, Parashrám and Sitárám, had no authority to execute the bond sued upon as their guardians, or to revive the debt in respect of which it was passed, so as to affect their shares in the family property, and that the debt was not for the benefit of the family.

The Court of first instance held that the bond sued upon was passed for a debt incurred for the benefit of the joint family; that the mortgage was not binding on defendants Nos. 4 and 5; and that the shares of defendants Nos. 1, 2, 3 and 6 in the mortgaged property, as well as the defendant No. 6 personally, were liable to pay the debt. The Court passed a decree accordingly, and dismissed the suit as against defendants Nos. 4 and 5.

On appeal, the Subordinate Judge with Appellate Powers found that the debt was contracted for the benefit of the whole family, and, therefore, binding on all the defendants; and that the shares of defendants Nos. 4 and 5 were liable. He, therefore, amended the first Court's decree by directing that the defendants should pay to plaintiff Rs. 2,895-0-6 and costs within six months from the date of the decree, and in default the plaintiff should recover the amount by sale of the mortgaged property.

The following extract from his judgment gives his reasons:—

"It is contended that on the dates of Exhibits 10 and 11, the old debts were barred by limitation as against defendants Nos. 4 and 5, and that Parashrám and Sitárám had no right to renew them, so as to bind the minors (defendants Nos. 4 and 5). But as the old debts due on Exhibits 6, 7 were joint, and binding on all the members of the joint family, the bond Exhibit 8 was binding on defendants Nos. 4 and 5, even if their names did not appear therein. The joint family property was also liable for the joint debt (I. L. R., 5 Bom., 38). As the disputed property was joint, and as it was mortgaged for the joint debt, I hold that the contention of defendants Nos. 4 and 5 is not good, and that the shares of all the members of the family in the disputed property are liable to pay the debt."

Against this decision the defendants Nos. 1, 4, 5 and 6 appealed to the High Court.

N. G. Chandávarkar for appellant:—At the date of Exhibit 8, the debt due on Exhibits 6 and 7 was time-barred. Neither Parashrám nor Sitárám had any right to revive a time-barred debt. The manager of a Hindu family is not competent to do

so—*Gopálnáráin* v. *Muddomulty*(1); *Chinnáya* v. *Gurunátham*(2); *Náranji* v. *Bhagvándás*(3); *Sobhánadri Appá Ráu* v. *Sriramulu*(4).

Mánekshán Jehángirshán for respondent:—Under the Hindu law, a debtor is bound to pay his debts, whether they are barred or not by limitation. A manager of a Hindu family can pay a time-barred debt, just as an executor can do under the English law—*Tillakchand* v. *Jítámal*(5). Suppose the manager were to pay a barred debt, can the other members of the family be allowed to question his act? A manager can acknowledge a debt, so as to give a fresh starting point to limitation—*Bhásker* v. *Vijalál*(6). If he can do so, why may he not revive a barred debt? A widow can pay a time-barred debt of her deceased husband; it is her duty to do so. The manager is under a similar obligation to pay off the debts of the family. He does not exceed his authority if he revives a barred debt.

JARDINE, J.:—The first question raised in this appeal relates to the mortgage-bond (Exhibit 8) dated the 4th October, 1874. This was given in satisfaction of two money-bonds (Exhibits 6 and 7) by Parashrám and Sitárám, as managers of the Hindu family, to which defendants Nos. 4 and 5, minor sons of Rávji, belonged. It is found as a fact that at the date of this mortgage-bond (Exhibit 8), the debt evidenced by the two earlier bonds was barred by limitation.

The Subordinate Judge held under these circumstances that the defendants Nos. 4 and 5 were not bound by Exhibit 8. The lower Court of appeal has held the contrary, considering the revival of the debt to be within the authority of the managers, but without citing any text of Hindu law or judicial decision. Mr. Mánekshán, who supported this view, has urged that the manager is in a position like that of an executor at English law—*Tillakchand* v. *Jítámal*(5)—with a duty imposed on him to pay debts. But on this point a contrary view has been expressed by Couch, C. J., in *Gopálnáráin* v. *Muddomutty*(1), that "the manager of a joint Hindu family has no power to revive a debt by an acknowledg-

(1) 14 B. L. R., 21.
(2) I. L. R., 5 Mad., 169.
(3) P. J., 1881, p. 238.
(4) I. L. R., 17 Mad., 221.
(5) 10 Bom. H. C. Rep., 206.
(6) I. L. R., 17 Bom., 512.

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ment except as against himself." The same view was taken under the Limitation Act of 1877, section 19, by a Full Bench at Madras in *Chinnáya* v. *Gurunátham*(1), which followed the decision in *Kumára Sámi* v. *Pála*(2), on the words "generally or specially authorized" in section 20 of the Limitation Act (IX of 1871). See also *Náranji* v. *Bhagvándás*(3) and *Wajibun* v. *Kádir*(4), as regards acknowledgments. Following these authorities we must disallow the claim against defendants Nos. 4 and 5 altogether; they are not liable either personally or as regards their shares in the mortgaged property.

The lower Court of appeal allowed Rs. 1,103-15-6 to the defendants on the sixth issue, being seven years' rent at Rs. 99 per annum, plus Rs. 410-15-6 interest. But *per incuriam* it assumed that the plaintiff had not filed his books of account, whereas it appears that they were brought to Court, and the defendants filed extracts therefrom. It is contended for the respondent that the questions about the amount of rent and the plaintiff's possession of the land have thus been dealt with by the lower Court of appeal on a misconception of the case. Taking that view, we refer the sixth issue to the District Court for a fresh finding on the evidence on the record, to be certified within two months.

This Court will pass directions about interest and costs when it makes the final decree.

Order accordingly.

(1) I. L. R., 5 Mad., 169.
(2) I. L. R., 5 Mad., 385.
(3) P. J., 1881, 238.
(4) I. L. R., 13 Cal., 292.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

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JETHA'BHÁI DAYA'LJI (ORIGINAL DEFENDANT), APPELLANT, *v.* GIRDHAR (ORIGINAL PLAINTIFF), RESPONDENT.*

Registration Act (III of 1877), Sec. 50—Priority—San-mortgage optionally registrable, but not registered—Subsequent mortgage registered—Decree passed on san-mortgage—Execution—Purchaser at execution sale—Priority of mortgagee under registered mortgage to such purchaser—Notice.

In 1875 the land in dispute was mortgaged to defendant No. 2 under two *san* mortgage bonds, which were optionally registrable, but were not registered. In

* Second Appeal, No. 301 of 1893.