

## APPELLATE CIVIL.

*Before Mr. Justice Parsons and Mr. Justice Ranade.*

GURUSHANTAPPA (ORIGINAL PLAINTIFF), APPELLANT, v. CHANMAL-LAPPA (ORIGINAL DEFENDANT), RESPONDENT.\*

1899,  
August 14.

*Hindu law—Joint family—Bond in favour of one co-sharer—Payment of such bond made to another co-sharer when a discharge—Right to sue.*

Where a debt due to one member of a joint family has been paid by the debtor to another member of the family, the question whether such payment operates as a discharge depends on the circumstances under which it was made.

A and B were members of a joint Hindu family. Both managed the joint property for the common benefit. Each used to recover debts due on bonds taken in the other's name. In 1890 defendant passed a bond to A. In 1892 he passed a mortgage bond to B, the consideration for which was stated to be the balance due on the former bond. Subsequently A sued defendant on the bond of 1890.

*Held*, that under the circumstances the mortgage bond passed to B operated as a valid discharge of A's claim under the previous bond.

SECOND appeal from the decision of T. Walker, District Judge of Dhárwár.

The plaintiff Gurushantappa and his brother Kallyanappa were members of a joint Hindu family. They both managed their family property, and each used to recover debts on bonds taken in the other's name.

On the 22nd June, 1890, the defendant passed a bond for Rs. 400 to Gurushantappa.

On the 23rd September, 1892, defendant executed in favour of Kallyanappa a mortgage bond, the consideration for which was therein stated to be the balance due on the bond for Rs. 400 of the 22nd June, 1890.

In 1896 Gurushantappa filed this suit to recover Rs. 800, the balance due on account of principal and interest on the bond of the 22nd June, 1890.

Defendant pleaded the mortgage bond as a discharge.

The Subordinate Judge held that the mortgage to Kallyanappa could not be pleaded as a valid discharge to the plaintiff's claim in his bond. He, therefore, decreed the plaintiff's claim.

\* Second Appeal, No. 45 of 1899.

1899.

GURUSHA I  
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v.  
CHANMAL-  
LAPP A.

This decision was reversed, on appeal, by the District Judge, who was of opinion that under the circumstances of the case the mortgage given to Kallyanappa absolved defendant from payment to plaintiff. He, therefore, reversed the decree and rejected the plaintiff's claim.

His reasons were as follows :—

“ The dispute in this case is not really between plaintiff and defendant at all. It is between plaintiff and his co-sharer, Kallyanappa. These two are members of a joint family, and until about eight or nine years ago they lived together and managed their joint property for the common benefit. Thus in 1888 a mortgage bond was taken by Kallyanappa from one Shoshobhat, and plaintiff signed the receipt, and returned the bond when the debt was paid off. Plaintiff states in his deposition that ‘ up to the last eight or nine years Kallyanappa used to receive debts due on bonds taken in my name, and I used to recover debts due on bonds taken in Kallyanappa's name.’ About eight or nine years ago they quarrelled, and Kallyanappa started a branch of the family business at Byadgi, where he now lives, plaintiff continuing to reside at Katenhalli. No partition, however, has yet taken place, neither of them apparently liking to start legal proceedings, but they are apparently trying to get what they can out of the family debts, each for himself.”

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“ After some hesitation, I have come to the finding that the two united relatives were in precisely the same position as regards this family debt, and the document passed to plaintiff is discharged by Exhibit 38 passed to Kallyanappa.”

Against this decision plaintiff preferred a second appeal to the High Court.

*Shamrao Vithal* for appellant.

There was no appearance for respondent.

PARSONS, J.:—We take the law as settled that a member of a joint family can sue on a contract which he has taken in his own name, especially when it does not purport to have been obtained by him on behalf of any others but himself (see *Hari v. Mahadu*<sup>(1)</sup>). Whether, however, payment to any member of the family would be binding on the member who took the contract in his own name, seems to depend upon the facts of each particular case. In *Adaikkalam v. Marimuthu*<sup>(2)</sup> it is pointed out that the promisee under the contract would be, as regards the

(1) (1895) 20 Bom., 435.

(2) (1899) 22 Mad., 326.

promisor, the only person entitled to payment, and that the contention, that payment to any member of the family was by itself necessarily binding on the promisee, could not be supported, and that, therefore, it lay on the promisor to show that his payment to a third party was binding on the promisee. These are propositions that seem to us to be sound in principle, and we apply them to the present case.

The plaintiff and one Kallyanappa were members of a joint family and lived together and managed their joint property for the common benefit. Each used to recover debts due on bonds taken in the other's name. The defendant in 1890 passed a bond to the plaintiff. In 1892 he passed a mortgage bond to Kallyanappa wherein the debt under that bond was included and discharged.

In the ordinary course of dealings the plaintiff would have admitted the discharge, and the only reason he gives for disputing it is, that he says that he and Kallyanappa quarrelled some eight or nine years ago, (that is, in 1889 or 1890), and that Kallyanappa started a branch business at Byadgi. He admits, however, that no partition took place and no notice of any kind was given to the defendant. We find, moreover, that in 1894 the plaintiff received a debt due under a mortgage bond passed to Kallyanappa in 1888. We think, therefore, that the payment by the defendant to Kallyanappa must be held to be good as against the plaintiff, and accordingly we dismiss the appeal.

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## CRIMINAL REVISION.

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*Before Mr. Justice Parsons and Mr. Justice Ranade.*

IN RE MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY v.  
HARI DWARKOJI.

1899.  
*August 23.*

HARI DWARKOJI, APPLICANT.\*

*Bombay City Municipal Act (Bom. Act III of 1888), Sec. 381—Low ground—Low-lying ground—Notice by Municipal Commissioner requiring owner of low-lying ground to fill it with sweet earth up to a certain level.*

Under section 381 of the Bombay Municipal Act (Bom. Act III of 1888) the Municipal Commissioner for the City of Bombay issued a notice to the appellant

\* Criminal Revision, No. 151 of 1899.