

made a deposit of Rs. 200, as he now says, against each separate tender, then, if the tender was not accepted for four coupes, ordinarily speaking he would be entitled to the return of his deposit *pro tanto*, and we presume he is still entitled to ask for that return, as the period of limitation would run from the date of demand of such deposit and its refusal.

CRUMP, J.:—I agree.

COYAJEE, J.:—I concur.

*Appeal allowed.*

R. R.

### APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.*

SHRIPAD GOPALKRISHNA CHANDAVARKAR, RECEIVER OF THE ESTATE OF APPA YESHWANT MANERIKAR (ORIGINAL PLAINTIFF), APPELLANT *v.* BASAPPA, RUDRAPPA DANDI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS<sup>o</sup>.

1925.

*April 9.*

*Hindu joint family—Property held jointly by father and son—Attachment of property by judgment-creditor—Insolvency of father—Son's share not vested in Receiver.*

A and his father, B, were members of a joint Hindu family. C obtained a decree against A and B and attached certain property belonging to them both jointly. B was thereafter adjudicated an insolvent and his estate vested in a Receiver. The Receiver applied for a declaration that the property attached was not liable for the satisfaction of the decree obtained by C against A.

*Held*, that the interest of A did not vest in the Receiver on the insolvency of B and that C was therefore entitled to execute his decree against A.

*Sat Narain v. Behari Lal*<sup>(1)</sup>, followed.

Per MACLEOD, C. J.:—"Speaking for myself I do not think that when the manager of a joint Hindu family is adjudicated insolvent, the power which he had before his insolvency to dispose of family estate for proper purposes must be considered as vesting in the Receiver or Official Assignee."

THIS was an appeal against the decision of J. T. Lawrence, Assistant Judge at Belgaum, reversing the decree passed by S. A. Aranah, Subordinate Judge at Belgaum.

<sup>o</sup> Appeal No. 184 of 1924 from Appellate Decree.

(1) (1924) L. R. 52 I. A. 22.

1925.

Suit for declaration.

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SHRIPAD  
v.  
BASAPPA.

Defendant No. 1 obtained a decree against defendant No. 2 and his father and filed a Darkhast to execute the decree. In execution he obtained the attachment of certain property belonging jointly to defendant No. 2 and his father. Defendant No. 2's father was subsequently adjudicated an insolvent and his estate became vested in a Receiver.

The Receiver (plaintiff) filed an application objecting to the sale of defendant No. 2's share contending that it had already vested in him. His application was dismissed. The plaintiff then filed this suit for a declaration that defendant No. 2's share in the joint property was not liable for the satisfaction of the decree obtained by defendant No. 1 against defendant No. 2.

The lower Court found that defendant No. 2's share in the joint property was bound by the order passed against his father in the insolvency proceedings and granted the declaration sought.

On appeal, the decree of the lower Court was reversed. The plaintiff appealed to the High Court.

*G. P. Murdeshwar*, for the appellant.

*D. R. Manerikar*, for respondent No. 1.

MACLEOD, C. J. :—The plaintiff sued for a declaration that the suit property was not liable for the satisfaction of the decree obtained by defendant No. 1 against defendant No. 2 in Suit No. 564 of 1914 in the Court of the Subordinate Judge at Bagalkot on November 1, 1915. The defendant No. 1 had obtained a decree against the defendant No. 2 and his father, who was adjudicated an insolvent on November 10, 1916, in the Court of the Subordinate Judge, Belgaum. The plaintiff was a Receiver of the estate of the insolvent father of defendant No. 2. The suit property had been attached before judgment in Suit No. 554 on December 20, 1914. After succeeding in the suit, defendant No. 1 filed Darkhast

1925.

SHRIDAD  
v.  
BASAPPA.

No. 271 of 1916 in the Court of the Subordinate Judge at Belgaum, on June 29, 1916, and the property in suit was again attached by that Court. When defendant No. 2's father was adjudicated insolvent, the attachment on his interest of the property would have to be released, and his interest in the property would vest in the Receiver. In the last decision on the point (*Sat Narain v. Behari Lal*<sup>(1)</sup>), it was held by the Privy Council that "Upon a Hindu being adjudicated an insolvent under the Presidency-towns Insolvency Act, 1909, the property of the joint Hindu family consisting of himself and his two sons does not thereby become vested in the Official Assignee, although under section 52, sub-section 2, of the Act, or in some other way, that property may be made available for the payment of his just debts". So that the interest of the defendant No. 2 would not vest in the Receiver on the insolvency of his father, and the plaintiff in order to get the declaration he asked for had to contend that the right of the father of a joint Hindu family to dispose of family property for legal necessity had become vested in him. Speaking for myself, I do not think that when the manager of a joint Hindu family is adjudicated insolvent, the power which he had before his insolvency to dispose of family estate for proper purposes, must be considered as vesting in the Receiver or Official Assignee. The defendant No. 1, therefore, is entitled to execute his decree against the solvent son irrespective of the rights which were vested in the Receiver with regard to the interests of the defendant No. 2's father.

The appeal is dismissed with costs.

COYAJEE, J. :—I concur in holding, on the facts of this case, that the decree of the lower appellate Court is right.

*Appeal dismissed.*

R. R.

<sup>(1)</sup> (1924) L. R. 52 I. A. 22.