view of that I think this Court should lean in favour of the construction that we put upon it. The document does not of itself indicate, at any rate clearly, that it was merely intended that the grantees should have the benefit of a certain amount of produce, as was indicated by certain expressions used in the grants considered in *Secretary of State for India in Council* v. *Srinivasa Chariar*[1] and *Raghunath Roy Marwari* v. *Raja of Jheria*[2]. I, therefore, concur in the order proposed by the learned Chief Justice.

Solicitor for appellant: Government Solicitor.

Solicitors for respondent: Messrs. *Craigie, Blunt & Caroe.*

Appeal dismissed.

O. H. B.

[1] (1920) L. R. 48 I. A. 56: 44 Mad. 421.

[2] (1919) L. R. 46 I. A. 158: 47 Cal. 95.

APPELLATE CIVIL.

Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and Mr. Justice Fawcett.

NARAYAN GANESH PATANKAR (ORIGINAL DEFENDANT), APPELLANT *v.* SAGUNABAI, WIFE OF GANGADHAR RAMCHANDRA PATANKAR (ORIGINAL PLAINTIFF), RESPONDENT*.

1924. *August 7.*

Hindu law—Debts—Decree against father—Son brought on record in appeal—Execution—Interest of father and son in ancestral property liable to attachment.

A decree was obtained against G. While the appeal was pending in the District Court G died and his son N was brought on the record as his legal representative. The decree was confirmed in appeal. The plaintiff sought to execute the decree by attaching the interest of G and N in the ancestral house. It was contended that N's interest was not liable to be attached but it was only the interest which G had during his life-time that was liable to attachment in execution of the decree.

* Second Appeal No. 482 of 1923.

1924.

NARAYAN GANESH v. SAGUNABAI.

Held, that he interest of both G (father) and N (son) was liable to be attached.

Under Hindu law a father can by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceedings upon a decree for payment of that debt, if the other member of the family happens to be his son.

Brij Narain v. *Mangla Prasad*[1], referred to.

SECOND appeal against the decision of E. Clements, District Judge of Satara, confirming the decree passed by R. V. Bodas, Subordinate Judge at Wai.

Proceedings in execution.

One Gangadhar brought a suit against Ganesh for account and recovery of his share in the income received by Ganesh as Mukhtyar of the family. A decree was passed against Ganesh for Rs. 1,221-11-1 in the Subordinate Judge's Court. Ganesh preferred an appeal to the District Court. During the pendency of the appeal Ganesh died and his son Narayan was brought on record. The appeal was dismissed. Narayan preferred a second appeal (No. 730 of 1917) but it was also dismissed on August 4, 1919.

Sagunabai, the widow of the decree-holder, Gangadhar, sought to execute the decree against Narayan by attaching the one-third share of Narayan and Ganesh in the ancestral house.

Narayan contended that the house was not liable to be attached inasmuch as the decree was a personal decree against Ganesh, and the house was a joint property of Narayan and his then co-parceners to whom it went after the death of Ganesh by right of survivorship.

The Subordinate Judge held that Narayan being a party to the decree it was not open to him to contend that his right of survivorship to the undivided share of his father in the house was superior to the plaintiff's

(1) (1923) L. R. 51 I. A. 129 : 46 All. 95.

right under her decree and that Narayan was also bound under Hindu law to satisfy the decretal debt of his father to the extent of the property inherited by him. The Subordinate Judge, therefore, ordered the house to be attached in execution of the decree.

On appeal the District Judge confirmed the decree.

The defendant preferred an appeal to the High Court.

M. V. Bhat, for the appellant :—The defendant was brought on record, during the pendency of the appeal, as the legal representative of his deceased father. The liability of such a legal representative is now regulated by section 50 of the Civil Procedure Code, 1908. He is liable only to the extent of the assets of the deceased which have come to his hands and have not been duly disposed of. The question is whether the father's undivided one-sixth alone is liable for his debts, or whether the son's one-sixth which belonged to him by birth is also liable.

According to the principles of Hindu law, the father's one-sixth not being attached during his life-time is absolutely vested in the other co-parceners by survivorship. This, however, being the case of father and son, the father's one-sixth becomes available for his debts owing to the pious obligation of the son. Mulla's Hindu Law, 4th edition, page 282.

Under section 2 of Bombay Act VII of 1886, the liability of a son or grandson in respect of debts of the deceased ancestor is only as his legal representative and is limited to the extent of the property of the deceased which comes into his hands and which remains unapplied. Section 52 of the present Civil Procedure Code lays down the same rule. It is, therefore, submitted that only the undivided one-sixth of the father in the ancestral house is liable for his debts.

1924.

NARAYAN GANESH v. SAGUNABAI.

S. R. Bakhale, for the respondent, not called upon.

SHAH, AG. C. J. :—In this case a decree was obtained by Sagunabai, the plaintiff, against one Ganesh for Rs. 1,221-11-1. While the appeal was pending in the District Court Ganesh died, and his son, the present appellant Narayan, was brought on the record as the legal representative of his deceased father. The District Court confirmed the decree of the trial Court, and this Court also confirmed that decree in second appeal No. 730 of 1917. The plaintiff now seeks to execute that decree by attaching the interest of Narayan and his deceased father in the ancestral house. It is admitted that during the life-time of Ganesh, Ganesh and Narayan had one-third share in the house, and that is the interest which is attached in execution by the order of the learned District Judge in appeal.

The defendant has appealed from the order of the District Judge, and in support of the appeal it is contended that the son's interest, i.e., one-sixth share in the house, is not liable to be attached, but it is only the interest which Ganesh had during his life-time in this house that is liable to be attached. This contention is not tenable. It is contrary to the decisions of this Court in *Umed Hathising* v. *Goman Bhaiji*[1] and *Shivram* v. *Sakharam*[2]. In the case of *Shivram* v. *Sakharam*[3] the father died during the pendency of the litigation, and the son was brought on the record, as in the present case, as the legal representative of the father. It is clear that so far as the ancestral property is concerned, whatever was liable to be sold in the life-time of the father remains liable to be sold after the father's death. Section 53 of the Civil Procedure Code makes the position clear on the point which before 1908 was the same according to the decisions to which I have referred.

[1] (1895) 20 Bom. 385. [2] (1908) 33 Bom. 39.

It has been held in *Hanmant Kashinath* v. *Ganesh Annaji*[1] that during the life-time of the father the whole of the one-third share in the house including the interest of the son in this ancestral house would be liable to be attached. On principle it makes no difference that the father has died and the attachment comes to be levied after his death. The position is made further clear by the recent pronouncement of their Lordships of the Privy Council in *Brij Narain* v. *Mangla Prasad*[2] where among the propositions categorically stated, it is distinctly laid down that a father can by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceedings upon a decree for payment of that debt, if the other member of the family happens to be his son. In that judgment their Lordships refer to the following observations of Mr. Justice Chandavarkar in *Govind* v. *Sakharam*[3] with approval :—

"The law is now well established that under the Hindu law, the pious obligation of a son to pay his father's debts exists whether the father is alive or dead."

It is not disputed, and it cannot be disputed, in the present case, that for this debt the son's interest in the ancestral property would be liable in respect of the debt in question during the life-time of the father, and the same liability continues after his death.

It has been urged in support of the appeal that the view taken in all these cases is contrary to the provisions of Bombay Act VII of 1866, and section 2 of that Act is relied upon. I do not think, however, that the provisions of that section help the appellant at all. If we treat the ancestral property as belonging to the deceased father, then by attachment of that property

(1) (1918) 43 Bom. 612.

(2) (1923) L. R. 51 I. A. 129 at p. 139 : 46 All. 95.

(3) (1904) 28 Bom. 383 at p. 389.

1924.

NARAYAN GANESH v. SAGUNABAI.

the provisions of section 2 of Bombay Act VII of 1866 are not in any way contravened, because that property continues to be liable for the debt of the father. That is the reason why this Act has not been held to present any difficulty in the cases prior to the Code of 1908, and section 53 in the Code of 1908 is in effect a legislative recognition of the rule that was followed in this Presidency before it was enacted. I do not feel any hesitation in holding that the contention of the appellant is without any good foundation. I would dismiss the appeal and confirm the order of the lower appellate Court with costs.

FAWCETT, J. :—I agree.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and Mr. Justice Fawcett.

1924.

August 15.

SHANKERBHAI MANORBHAI PATEL AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS *v.* MOTILAL RAMDAS SHAH AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS*.

Civil Procedure Code (Act V of 1908), section 107 (2) and Order XXII, Rule 4, Sub-Rule (3)—Suit by tenants-in-common—Death of one plaintiff during pendency of appeal by defendants—Legal representative of deceased not brought on record—Appeal abates only as against deceased respondent—Hearing of the appeal can proceed against remaining respondent.

The plaintiffs sued to recover possession of a house site from the defendants. The plaintiffs were uncle and nephew and claimed the property as tenants-in-common. The nephew (plaintiff No. 2) died during the pendency of the suit and his widow Bai Chanchal, was joined as his legal representative. A decree was passed in their favour by the trial Court on April 8, 1919. The defendants appealed to the District Court. During the pendency of the appeal, Bai Chanchal (respondent No. 2) died in November 1919. In March 1921, an

* Second Appeal No. 319 of 1922.