APPELLATE CIVIL

Before Mr. Justice Patkar and Mr. Justice Baker.

1928 *January* 19

ANNABHAT SHANKARBHAT ALVANDI AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS *v.* SHIVAPPA DUNDAPPA MANVI (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu Law—Joint Family—Trading Business—Trade started by father alone—Business ancestral—Sons are liable to pay father's debts—Liability of sons arises during father's life-time—Partition—Divided sons bound to pay debts—Liability extends to their share in family property.

Under Hindu law, sons are liable to pay the debts incurred by their father in respect of trade transactions. They are not illegal, immoral or *avyavaharika*.

Durbar Khachar v. *Khachar Harsur*[1]; *Ramkrishna* v. *Narayan*[2]; *Chhakauri Mahton* v. *Ganga Prasad*[3]; *Venugopala Naidu* v. *Ramanadhan Chetty*[4]; *Hanmant Kashinath* v. *Ganesh Annaji*[5] and *Venkatacharyulu* v. *Mohana Pandia*,[6] referred to.

The pious duty of a son to pay his father's debts arises during the life-time of the father.

Hanmant Kashinath v. *Ganesh Annaji*[5] and *Brij Narain* v. *Mangla Prasad*,[7] relied on.

A new trading business opened by the father as the manager of the family is none the less ancestral because it was started only by the father.

Suraj Bunsi Koer v. *Sheo Persad Singh*[8] and *Achutaramayya* v. *Ratnajee Bhootaji*,[9] relied on.

Sanyasi Charan Mandal v. *Krishnadhan Banerji*,[10] distinguished.

Even if partition between father and sons is proved, sons who are divided are liable for the debts of the father to the extent of the family property which comes to them under the partition.

Ramachandra Padayachi v. *Kondayya Chetti*[11]; *Kameswaramma* v. *Venkata Subba Row*[12] and *Jagannatha Rao* v. *Viswesam*,[13] referred to.

FIRST APPEAL against the decision of D. A. Idgunji, First Class Subordinate Judge at Dharwar, in Suit No. 494 of 1923.

Suit to recover money. The facts material for the purposes of this report are sufficiently stated in the judgment of Mr. Justice Patkar.

A. G. Desai, for the appellants.

*First Appeal No. 472 of 1925.

(1) (1908) 32 Bom. 348.
(2) (1915) 17 Bom. L.R. 955.
(3) (1911) 39 Cal. 862.
(4) (1912) 37 Mad. 458.
(5) (1918) 43 Bom. 612.
(6) (1920) 44 Mad. 214.
(7) (1923) L. R. 51 I. A. 129 at p. 138.
(8) (1879) 5 Cal. 148 at p. 169.
(9) (1925) 49 Mad. 211.
(10) (1922) L. R. 49 I. A. 108 at pp. 114, 115.
(11) (1901) 24 Mad. 555.
(12) (1914) 38 Mad. 1120.
(13) (1924) 47 Mad. 621.

G. P. Murdeshwar, *S. N. Akadas* and *M. M. Nadkarni*, for the respondents.

PATKAR, J. :—The plaintiff in this case sued to recover Rs. 7,144-8-9 with future interest from the defendants. Defendant No. 1 had dealings with the shop of the plaintiff since 1911 and passed to the plaintiff's firm several acknowledgments of his liability on account of the trading firm of which he was a partner. Defendant No. 2 was joined in the suit on the ground that defendant No. 2 as son was liable for the debts incurred by defendant No. 1 in respect of the trade transactions as manager of the joint family.

Defendant No. 1 contended that he was one of the six persons who entered into cotton dealings with the plaintiff under the Khata of "Kashap Manvi and Annabhat Alvandi," that the loss came to about Rs. 9,600 and as his liability was limited by agreement to the extent of Rs. 1,600, he signed an acknowledgment for Rs. 4,800 on behalf of the three partners owning an eight annas share along with him, and that he was an agriculturist, that accounts should be taken under the Dekkhan Agriculturists' Relief Act, and that the amount should be ordered to be paid by instalments. Defendant No. 2, the son of defendant No. 1, contended that the dealings were not for the benefit of the joint family and were not binding on him, that by virtue of a partition decree in terms of an award passed on December 17, 1923, he was separate from his father and was not liable for the claim.

The learned Subordinate Judge held that defendant No. 1 was an agriculturist, and that he carried on the transactions in suit on behalf of the trading family of defendants Nos. 1 and 2, and passed a decree against the defendants for Rs. 7,144-8-9 to be paid in three yearly instalments from the joint family estate of the

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defendants and from the separate property of defendant No. 1.

It is contended that defendant No. 2 is not liable for the plaintiff's claim on the ground that the debt was in respect of a trade started by the father, and was not on account of an ancestral family trade, that the liability of defendant No. 2, by virtue of the pious duty of a son to pay his father's debt, did not arise till after the death of the father defendant No. 1, and that he was not liable as he became separate from his father by virtue of the partition decree in pursuance of the award on December 17, 1923. It has been further urged on behalf of the appellants that the manager of a joint Hindu family cannot start a new business for the benefit of the family so as to bind the shares of the minor members in the family estate. Reliance is placed on the observations of the Privy Council in the case of *Sanyasi Charan Mandal* v. *Krishnadhan Banerji*,[1] and on the judgment in *Swamirao* v. *Channappa*.[2] The case of *Sanyasi Charan Mandal* v. *Krishnadhan Banerji*[1] relates to a manager of the family who was the brother of the other members of the family and does not relate to the case of a manager of a joint family who is the father of the other minor members. The point was not decided in the judgment in *Swamirao* v. *Channappa*,[2] referred to in the course of the argument. A distinction is made between the manager of a joint family and the father with regard to the liability of the sons to pay the father's debts. See the case of *Brij Narain* v. *Mangla Prasad*.[3] It is the pious duty of the son to pay the debts of the father which are not tainted with illegality or immorality. The Mitakshara deals with the point on Yajnyavalkya's verse 47 Bk. II Ch. III, Gharpure's translation, pages 73

[1] (1922) L. R. 49 I. A. 108 at pp. 114, 115. [2] (1926) 29 Bom. L. R. 301.
[3] (1923) L. R. 51 I. A. 129.

and 74. Mayukha, Ch. V, section 4, pl. 15, Gharpure's translation, p. 155, deals with the texts of Yajnyavalkya, Brahaspati and Usanas. The text of Usanas is as follows:—" A son need not pay a fine or the balance of it, a toll or its balance and also whatever is not *vyavaharika*, i.e., legal or capable of being recovered by a suit." The question in each case would be whether the debt is *avyavaharika* (अव्यवहारिक) which has been differently translated as not sanctioned by law or custom, not customary or usual, not proper, and repugnant to good morals. See *Durbar Khachar* v. *Khachar Harsur*,[1] *Chhakauri Mahton* v. *Ganga Prasad*,[2] *Venugopala Naidu* v. *Ramanadhan Chetty*,[3] *Hanmant Kashinath* v. *Ganesh Annaji*,[4] and *Venkatacharyulu* v. *Mohana Panda*.[5] The debt incurred by the father in respect of trade transactions cannot be said to be illegal or immoral or *avyavaharika*. In *Ramkrishna* v. *Narayan*[6] it was held that the debt created by the father, a Government servant, for trade carried on in violation of Government servants' conduct rules was not *avyavaharika*. It would, therefore, be the pious duty of the son to pay the debts of the father incurred by him on account of trade liabilities. According to the case of *Hunoomanpersaud Panday* v. *Mussumat Babooee Munraj Koonweree*[7] the freedom of the son from the obligation to discharge the father's debt has respect to the nature of the debt and not to the nature of the estate, whether ancestral or acquired by the creator of the debt, and it is the pious duty of the son to pay the father's debts, and the ancestral property, in which as the son of his father he has acquired an interest by birth, is liable for his father's

(1) (1908) 32 Bom. 348.
(2) (1911) 39 Cal. 862.
(3) (1912) 37 Mad. 458.
(4) (1918) 43 Bom. 612.
(5) (1920) 44 Mad. 214.
(6) (1915) 17 Bom. L. R. 955.
(7) (1856) 6 Moo. I. A. 393 at p. 421.

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debts. The dictum of Westropp C. J. in *Udaram* v. *Ranu*[1] to the effect that (p. 83) "subject to certain limited exceptions (as for instance debts contracted for immoral or illegal purpose), the whole of the family undivided estate would be, when in the hands of the sons or grandsons, liable to the debts of the father or grandfather," has been approved by their Lordships of the Privy Council in *Suraj Bunsi Koer* v. *Sheo Persad Singh.*[2] In *Achutaramayya* v. *Ratnajee Bhootaji*[3] it was held, following the case of *Girdharee Lall* v. *Kantoo Lall*,[4] that the sons were liable for all the debts of the father which were neither illegal nor immoral, and that the trade was none the less ancestral because it was started only by the father. It would, therefore, follow that it is the pious duty of defendant No. 2, as son of his father, to pay the debts incurred by defendant No. 1 in respect of trade transactions. The pious duty of the son arises during the lifetime of the father, and the contention of the appellants that it arises only after the death of the father is opposed to the decision in *Hanmant Kashinath* v. *Ganesh Annaji*,[5] where it was held that the liability of the sons, according to the Hindu law, was not affected by the fact that the father was alive at the time, and that the shares of the sons in the ancestral property could be attached and sold during the lifetime of the father for the satisfaction of his personal debt not tainted with illegality or immorality. See also *Brij Narain* v. *Mangla Prasad*.[6]

At the date of the institution of the suit on November 12, 1923, defendant No. 1 and defendant No. 2 were joint. The partition was effected by virtue

(1) (1875) 11 Bom. H. C. 76.
(2) (1879) 5 Cal. 148 at p. 169.
(3) (1925) 49 Mad. 211.
(4) (1874) L. R. 1 I. A. 321.
(5) (1918) 43 Bom. 612.
(6) (1923) L. R. 51 I. A. 129 at p. 138.

of an award, Exhibit 67, on December 17, 1923, under which most of the lands in British territory were assigned to defendant No. 2 and the lands in foreign territory, that is, Moglai lands were allotted to defendant No 1. It is not suggested that the partition is not *bonâ fide* though the apparent effect of the award is to delay and defeat the claims of the present plaintiff. If the contention of the appellants is accepted, it would enable the father to incur debts in respect of the family firm or firm carried on for the benefit of the family, and soon after the institution of a suit by the creditor effect a partition between himself and his sons with a view to secure the shares of the sons from attachment and sale in respect of his trade liabilities.

In the present case defendant No. 2 is sued along with his father for recovery of the debt due by the father, and the partition is effected after the institution of the suit. The profits of the business carried on by the father were found by the lower Court to have been applied for the purposes of the family. Reference may be made in this connection to Yajnyavalkya verse 50 (Gharpure's translation, p. 76): "When the father has gone abroad, is dead or is immersed in difficulties, his debt should be paid by the sons and grandsons, when established by witnesses in case of a dispute." While commenting on this verse the Mitakshara (in Book II, Ch. III, Gharpure's translation, p. 77) says: "By the use of the plural number in 'sons and grandsons,' (it is indicated that) if there are several sons who are divided, they should pay according to their respective shares. If they are undivided, and are living jointly in a body, giving the managership according to qualifications, it appears that the manager alone should pay. As says Narada (Ch. 1, verse 2): Therefore, where the father is dead, the sons should pay the debt each according to his share,

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when they are divided; or if undivided (it should be paid) by one who holds the lead (in the family)." The liability of the sons to pay the father's debt arises according to the decision of the Privy Council in *Brij Narain* v. *Mangla Prasad*[1] even during the lifetime of the father. In *Ramchandra Padayachi* v. *Kondayya Chetti*[2] where a father and two sons were carrying on business in an undivided trading Hindu family, and the father as the managing member entered into a contract by which he undertook to pay to the plaintiff any shortfalls that might take place in respect of consignments of indigo, and the creditor sued to enforce the contract against the divided son, it was held that the son was liable to the extent of the family property which had come to him under the partition. To the same effect is the decision in *Kameswaramma* v. *Venkata Subba Row*.[3] In *Jagannatha Rao* v. *Viswesam*,[4] where a *bona fide* partition between a Hindu and his son omitted to provide for an unsecured debt incurred by the father not being for an illegal or immoral purpose, it was held that the creditor could sue the son also and recover the debt from the joint family properties allotted to the son in partition.

We, therefore, think that the view of the lower Court that defendant No. 2 was liable for the debts of his father from the joint family properties allotted to him in partition is correct.

The next contention on behalf of the appellants is that defendant No. 1 passed several acknowledgments in favour of the plaintiff, Exhibit 58, on October 26, 1916, Exhibit 59 on November 3, 1918, and Exhibit 15 on November 10, 1920, that the amounts calculated as interest on the three occasions are respectively

(1) (1923) L. R. 51 I. A. 129 at p. 138.
(2) (1901) 24 Mad. 555.
(3) (1914) 38 Mad. 1120.
(4) (1924) 47 Mad. 621.

Rs. 1,096, Rs. 989, and Rs. 1,040, that is, in all Rs. 3,125, and that the last acknowledgment, Exhibit 15, on November 10, 1920, was for the amount of Rs. 6,054 as principal out of which the item of Rs. 3,125 was on account of interest. It is, therefore, contended that under section 13 of the Dekkhan Agriculturists' Relief Act, the Court ought to have taken accounts from the very beginning of the transactions notwithstanding any statement or settlement of account or any contract purporting to close the previous dealings and create a new obligation, and that the aggregate of the interest, on taking accounts, should not have exceeded the amount due on the principal account.

We think this argument of the appellants is well founded. Defendant No. 1 has been held to be an agriculturist and it is not contended on behalf of the plaintiff that that finding is incorrect. We think, therefore, that the accounts must be taken from the beginning of the transactions under section 13 of the Dekkhan Agriculturists' Relief Act.

We, therefore, reverse the decree of the lower Court and remand the case for taking accounts under section 13 of the Dekkhan Agriculturists' Relief Act and for passing a final decree.

Costs costs in the suit.

There will be only one pleader's fee for the respondent.

BAKER, J. :—I agree and I have very little to add to the exhaustive judgment of my learned brother. The authorities which he has quoted make it clear that the son is liable for the debts of the father, other than those contracted for an illegal or immoral purpose, and whether the father is alive or dead, and the fact that the debts were incurred in trade started by the father

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does not affect this liability (*Achutaramayya* v. *Ratnajee Bhootaji*[1]). As to the contention raised on behalf of the appellant that though the liability was incurred while the family was joint and though the decree is against the joint family property, it is open to defendant No. 2, the son, to avoid the liability by a partition made during the progress of a suit, this appears an extraordinary proposition which would render suits against a joint family nugatory in many cases, as it would be open to the members of the family to escape the decree by the device of a partition. The case from Allahabad (*Gaya Prasad* v. *Murlidhar*[2]), quoted in support of this argument, is a case where the son was not a party to the suit which was against the father alone, and we have direct authority to the contrary in *Ramachandra Padayachi* v. *Kondayya Chetti*,[3] *Kameswaramma* v. *Venkata Subba Row*[4] and *Jagannatha Rao* v. *Viswesan*.[5]

Assuming that the Allahabad decision is in conflict with the Madras decisions, though I do not say that it is so, I am clearly of opinion that the Madras decisions are in accordance with equity and public policy and I should be very reluctant to take the view that a partition designed to avoid the consequences of a decree should be upheld.

I concur in the order proposed.

Decree reversed.

J. G. R.

(1) (1925) 49 Mad. 211.
(2) (1927) A. I. R. All. 714.
(3) (1901) 24 Mad. 555.
(4) (1914) 38 Mad. 1120.
(5) (1924) 47 Mad. 621.