

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Markby, and Mr. Justice Romesh Chunder Mitter.

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May 8.

JOYKISTO COWAR (ONE OF THE DEFENDANTS) v. NITTYANUND NUNDY
AND OTHERS (PLAINTIFFS).

Hindu Law—Ancestral trade carried on for benefit of Infants—Liability of Infant—Contract Act (IX of 1872), s. 247—Decree on Appeal—Act VIII of 1859, s. 337—Act X of 1877, s. 544.

Where the ancestral trade of a Hindu was carried on after his death for the benefit of his infant children by their guardian, and debts were incurred by the firm in the course of business,—*Held*, that the guardian of a Hindu minor is competent to carry on an ancestral trade on behalf of the minor, and that, following the analogy of the rule laid down by s. 247 of the Contract Act, as to the liability of a minor admitted by contract into a partnership business, the minor is not to be held personally liable for the debts incurred in such trade, but that his share therein is alone liable.

The Court of Appeal has power under s. 337 of Act VIII of 1859 (corresponding with s. 544 of Act X of 1877) to draw up what would be a fair decree as regards all the parties to a suit, although some of them may not have appealed.

Petum Doss v. Ramdhone Doss (1), *Ramlal Thakursidas v. Lakhmichand Muniram* (2), and *Johurra Bibee v. Sree Gopal Misser* (3) followed.

THIS was a suit to recover the balance of an account for goods sold and delivered. It appeared that, on the 17th of March 1871, one Anundo Chunder Cowar died, leaving two sons, Nobokisto Cowar and Joykisto Cowar, the defendants, infants, and two widows. Anundo Chunder Cowar carried on business as a merchant and had repeated dealings with the plaintiffs, to whom he was indebted at the time of his death. After that time the widows, as the *kutrees* of the joint family, carried on the business and gave a power of attorney to manage it to one Harradhone Roy. The defendant, Nobokisto, after he came of age, managed the business jointly with Harradhone Roy. The plaintiffs continued to have dealings with the firm, and on the 12th April, Harradhone Roy, on behalf of the firm, signed a fresh hatchitta bringing forward a balance due from

(1) *Tay.*, 279.

(2) 1 *Bom. H. C. R.*, Appx., 71.

(3) *I. L. R.*, 1 *Calc.*, 470.

the defendants to the plaintiffs, which was slightly reduced in the course of further dealings between the parties, and for this balance the plaintiffs sued.

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Macpherson, J., decreed the plaintiffs' claim out of the property of Anundo Chunder Cowar. From this decree the infant defendant, Joykisto, appealed.

Mr. *Bonnerjee* and Mr. *Paulit* for the appellant.

Mr. *Branson* and Mr. *Allen* for the respondents.

GARTH, C. J.—It appears that Anundo Chunder Cowar, the father of the appellant, who is an infant, died on the 19th March 1871. Anundo Chunder, up to the time of his death, carried on business as a trader, and had dealings with the plaintiffs' firm. He died leaving him surviving the appellant and his elder brother Nobokisto, both then infants under the age of 16 years, and two widows. The sons and widows, after Anundo's death, lived as members of a joint Hindu family. The ancestral trade was carried on under the management of the widows.

The widows being purdanasheen women could not take the management of the ancestral trade directly into their own hands, but employed their son-in-law, one Harradhone, for that purpose; and it was under the direct supervision and management of Harradhone that the business was carried on. It is also proved that the appellant's elder brother Nobokisto, after he came of age, took part in the management with his brother-in-law Harradhone.

During the sole management of Harradhone, and also during the joint management of Nobokisto and Harradhone, dealings with the plaintiffs' firm continued; and in the course of these transactions, the defendants became indebted to the plaintiffs in the sum of Rs. 4,605-11-3. This debt entirely arises out of transactions connected with the ancestral business carried on by the defendants' family after Anundo Chunder's death.

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The plaintiffs brought a suit to recover the amount, and Mr. Justice Macpherson has decreed the claim with this reservation, that the amount decreed is to be realized out of the property of the deceased father, Anundo Chunder Cowar. Against this decree the infant, Joykisto, has alone appealed.

The questions that we have to determine are, whether the infant appellant is at all liable for this debt; and, if so, to what extent? It seems to us that, on the authority of decided cases—*Petum Doss v. Ramdhone Doss* (1), *Ramlal Thakursidas v. Lahmichand* (2), *Johurra Bibee v. Sree Gopal Misser* (3)—the guardian of a Hindu minor is competent to carry on an ancestral trade on behalf of the minor; consequently the contention raised in this appeal, that the infant-appellant is not liable to any extent for the debt in question, is not well founded.

On the other hand it seems to us only reasonable, as well as in accordance with legal principles, that a minor on whose behalf an ancestral business is carried on ought not to be held personally liable for the debts incurred in that business.

There must be some defined limit to the minor's liability.

The limit apparently laid down by Mr. Justice Macpherson is, that all the ancestral property is to be rendered liable. But there may be instances in which this limit would be found manifestly inadequate and unsuited to reach the justice of the case. For example, petty trade in the time of an ancestor might expand after his death into a large flourishing business in the hands of a manager for infants. Debts arising out of this business would naturally become proportionately large, and it would seem unreasonable to hold that such debts should be recoverable from ancestral property only.

On the other hand the trade might not prosper, and in this case the minor ought not to be liable to account for trade losses out of any property unconnected with the assets of the business, which he may have received from his ancestor.

In the case of a minor being admitted into partnership in the ordinary way, s. 247 of the Contract Act (IX of 1872)

(1) *Tay.*, 279.(2) 1 *Bom. H. C. R.*, Appx., 71.(3) *I. L. R.*, 1 *Calc.*, 470.

provides, that for "any obligation of the firm," the share of the "minor in the property of the firm is alone liable."

We think that this limit of the infant's liability, which has been adopted by the legislature in the case of a minor being admitted by contract into a partnership business, ought to be adopted in such a case as the present. On principle there ought not to be any difference between the nature of the liability of an infant admitted by contract into a partnership business and that of one on whose behalf an ancestral trade is carried on by a manager.

The elder brother Nobokisto has not appealed against Mr. Justice Macpherson's order, nor on the other hand have the plaintiffs appealed upon the ground that Nobokisto should have been made personally liable in the ordinary way.

We ought not, under ordinary circumstances, to make a decree which would have the effect of altering his liability, when neither he on the one hand nor the plaintiffs on the other have appealed against the decree in the Court below.

But under s. 337 of the Code of Civil Procedure (1) we are empowered, in a case like the present, to draw up what would be fair decree as regards both defendants.

We propose, therefore, to make an order, that unless the defendants admit partnership assets sufficient for the payment of the debt, there should be the usual decree for an account of the partnership property, and a direction that the debts be paid out of that property.

It will be the duty of the plaintiffs to serve Nobokisto with a copy of this judgment; and if within three weeks from the date of Nobokisto receiving a copy of this judgment neither the plaintiffs nor Nobokisto make any application to alter the terms of our proposed decree, the decree will be drawn up accordingly; but either party will be at liberty to apply within that time.

The minor defendant is entitled to the costs of the appeal.

Decree varied.

Attorney for the appellant: Mr. *Dover*.

Attorneys for the respondents: Messrs. *Swinhoe, Law, & Co.*

(1) Act VIII of 1859, corresponding with Act X of 1877, s. 544.

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