The Hindustan Commercial Bank Ltd., Amritsar Vs Shri Sohan Lal and Others

Regular Second Appeal No. 612 of 1955

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 6, 1961

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 34 Rule 4

Citation: (1962) 1 ILR (P&H) 735

Hon'ble Judges: Tek Chand, J

Bench: Single Bench

Advocate: H.R. Sodhi, U.S. Sawhney and K.L. Kapur, for the Appellant; D.R. Manchanda, for the Respondent

Final Decision: Dismissed

Judgement

Tek Chand, J.
This is a Regular Second Appeal preferred by the Hindustan Commercial Bank Ltd., against the decree and judgment of

the Senior Sub-Judge, Amritsar, granting declaration to the plaintiff that the property in suit is ancestral joint Hindu family property and that the

formal decree passed in favour of the bank against Gaggu Mal was not binding upon Gaggu Mal"s son Sohan Lal and for an injunction restraining

the bank from getting the property sold in execution of the bank"s decree against Gaggu Mal. The parties were left to bear their own costs. The

Senior Sub-Judge agreed with the findings of the trial Court on the issues and had merely modified the trial Courts decree as he felt that it had not

been happily worded. To all intents and purposes, both the Court"s had given decision in favour of the plaintiff and against the defendant-bank.

2. Gaggu Mal had three sons, Sohan Lal, Mohan Lal and Madan Lal and a daughter Vidya Wati. Mohan Lal, the second son of Gaggu Mal, was

the sole proprietor of Messrs. G.M. Mohan Lal and Co., and had dealings with the appellant-bank. On 26th January, 1945, Gaggu Mal executed

a letter of guarantee in favour of the appellant-bank which had given cash credit facilities to Messrs. G.M. Mohan Lal and Co. to the extent of Rs.

85,000/-. A guarantee was given by Gaggu Mal for the payment of all moneys then or hereinafter due from the principal debtor during the period

of the continuance of the guarantee. It was stated in the document that the guarantee would bind his respective heirs, executors, and administrators,

and would be enforceable by the bank and its assignees. Gaggu Mal had on the same day deposited with the bank title-deeds and had thus

created an equitable mortgage upon his estate and interest in the property to which the documents related, for the purpose of securing the payment

to the bank of moneys due from Messrs. G.M. Mohan Lal and Co., (vide Exhibit D. 3). These title-deeds related to immovable property.

3. On the basis of the equitable mortgage thus created in favour of the bank and as evidenced by the letter of guarantee referred to above, a suit

for the recovery of Rs. 47,208-11-3 was tiled by the bank and on 26th January, 1949 a preliminary decree was awarded in favour of the bank for

the above amount with costs against the then defendants recoverable by the sale of mortgaged property in terms of Order 34, rule 4, Civil

Procedure Code. It was directed that if the defendants would not pay by 25th April, 1949 the sum decreed, then the mortgaged property or

sufficient part thereof would be sold by auction and if the price fetched by the sale would be insufficient then it would be open to the Bank to make

an application for the grant of a personal decree. The final decree was passed under Order 34, rule 6, on 18th August, 1949. The bank had sued

out execution of the final decree passed in its favour.

4. The present suit is instituted by Sohan Lal, one of the sons of Gaggu Mal, for a declaration that the properties mentioned in the plaint are

ancestral, undivided, and joint Hindu family properties of the plaintiff and of Gaggu Mal who was impleaded as defendant No. 2. The decree which

had been made final was not binding on the plaintiff. Prayer was made for the grant of a perpetual injunction restraining the bank from bringing the

property to auction-sale in execution of the decree against Gaggu Mal. It was contended that Mohan Lal, the other son of Gaggu Mal, was the

sole proprietor of Messrs G.M. Mohan Lal and Co. It was maintained that the execution of the letter of guarantee by Gaggu Mal in favour of the

bank was without legal necessity and for no benefit of the joint Hindu family. The plaintiff, in the circumstances, was not bound by that decree. It

may be stated here that the stage for filing an application under Order 34, rule 6, Civil Procedure Code, for grant of personal decree for the

balances against the mortgagor, Gaggu Mal, has not yet arisen.

5. This suit was contested on behalf of the defendant-bank and it was denied that the property was either ancestral or formed part of the joint

Hindu family property. It was pleaded that the mortgage money was used for discharging the debts of G.M. Mohan Lal and Co. G.M., Mohan Lal

and Co. was the joint Hindu family firm and letters "G.M." stood for Gaggu Mal and Mohan Lal was Gaggu Mal"s eldest son. It was also

contended that the plaintiff was under a pious obligation to pay the debts of his father and these debts had not been raised for any immoral

purpose.

6. The following issues were framed:-

(1) Whether the property in dispute is ancestral joint Hindu family property qua the plaintiff?

(2) Whether the plaintiff is not bound by the decree passed against defendant No. 2 dated 26th January, 1949 and Trade final on 18th August,

1949?

(3) Whether the debt on the basis of which the said decree was passed against defendant No. 2 was immoral or illegal and riot binding upon the

plaintiff?

(4) Whether the present suit is not maintainable in the present form without getting the decree set aside?

7. The trial Court decided issues Nos. 1, 2 and 4 in plaintiff"s favour and granted the declaration prayed for and also perpetually restrained the

bank (defendant No. 1) from bringing the property in dispute to sale. The bank then filed an appeal which was dismissed. The appellate Court

agreed with the conclusions of the trial Court on issues Nos. 1, 2 and 4. On the third issue, it was found that the mortgage debt was not proved to

have been incurred for illegal or immoral-purpose. The following additional issue was framed and the case was remanded-

Whether the mortgage in dispute was effected for legal necessity or for the benefit of the joint family or for payment of antecedent debts?

The trial Court was directed to decide the additional issue and issue No. 2 afresh after allowing the parties to produce further evidence if they so

desired. The bank"s further appeal to the High Court was unsuccessful.

8. After the remand, the trial Court decided the additional issue against the bank and the second issue plaintiff"s favour. In accordance with the

above findings, the plaintiff"s suit was decreed on 31st December, 1953. The bank went up in appeal and the Senior Sub-Judge, Amritsar, found

that Gaggu Mal, defendant No. 2, was the Karta of Hindu joint family consisting of Gaggu Mal and his sons. The decree was passed against both

Gaggu Mal and Mohan Lal but Mohan Lal was found to be the sole proprietor of Messrs. G.M. Mohan Lal and Co. with which Gaggu Mal had

no concern. Gaggu Mal had guaranteed payment of the debt due as surety for his son Mohan Lal. The mortgage decree passed in favour of the

bank did not create personal liability of Gaggu Mal for the payment of the debt and no personal decree against Gaggu Mal having been applied or

passed the plaintiff Sohan Lal was not bound in any way by that decree. The decree passed in favour of the bank against Mohan Lal had not been

challenged. On the basis of these findings, the Senior Sub Judge had granted declaration and perpetual injunction to the plaintiff as prayed for by

him in his plaint. The bank feeling aggrieved has come up in second appeal to this Court. The appeal has been filed against Sohan Lal as

respondent No. 1 and Gaggu Mal was impleaded as respondent No. 2. Gaggu Mal died on 23rd December, 1959, and his three sons mentioned

above and his married daughter Vidya Wati were made the legal representatives.

9. Mr. Hans Raj Sodhi, learned counsel for the appellant bank has assailed the findings of the lower Courts and has contended that the plaintiff

was under a pious obligation to pay his father''s debts and that it made no difference whether it was a simple debt or a mortgage debt. He also

contended that after a mortgage decree had actually been passed, no suit was maintainable on behalf of the son except on the ground that the debt

was immoral. He cited a number of authorities which will be presently considered.

10. Paragraph 290 of Principles of Hindu Law by Mulla provides that where the sons are joint with their father and debts have been contracted by

the father for his own personal benefit, the sons are liable to pay the debts provided they are not incurred for an illegal or immoral purpose. The

liability to pay the debts contracted by the father, though for his own benefit, arises from an obligation of religion and piety which is placed upon the

sons under the Mitakshara law to discharge the father''s debts where the debts are not tainted with immorality. The son''s liability was not affected

by the father not being the manager of the joint family. In para 298, Mulla has enumerated immoral (Avyavaharika) debts and they included ""debts

for being surety for the appearance or for the honesty of another."" According to Sir M. Monier-William''s Sanskrit English Dictionary, one of the

meanings of Vyavahara is ""propriety, adherence to law or custom"". According to Colebrooke ""Avyavaharika"" means ""a debt for a cause repugnant

to good morals"". There are other translations of this term vide Mayne on Hindu Law at page 398 but Colebrooke''s translation has met with the

approval of the Privy Council and of the Supreme Court as the nearest approach to its true concept (vide AIR 1943 142 (Privy Council) and S.M.

Jakati and Another Vs. S.M. Borkar and Others, The liability in question incurred by Gaggu Mal is in the nature of a surety debt.

11. The Hindu law of suretyship was well developed by the ancient law givers. Yajnavalkya classified sureties into three kinds. According to him

suretyship is ordained for appearance, for honesty, and for payment; the two first sureties and not their sons, must pay the debt on failure of their

engagements, but even the sons of the last may be compelled to pay it."" He laid down ""should a surety for the appearance or the honesty of

another die, his sons need not pay the debt; but the sons of a surety for payment or delivery must pay the sum lent or deliver the thing undertaken.

(Colebrooke, Vol I, p. 174). Vrihaspati added a fourth class not much different from the third. According to him-

Four sorts of sureties are mentioned by sages in the system of jurisprudence: for appearance, for honesty, for paying a sum lent, and for delivering

the debtor''s effects.

The first says, "I will produce that man"; the second says "that man is trust-worthy"; the third says "I will pay the debt"; the fourth says "I will

deliver his effects."

On failure of their engagement, the two first, but not their sons, must pay the sum lent at the time stipulated; the two last, on default of the

borrowers, and even their sons, if they die and leave assets. (Vide Colebrooke, Vol. I, p. 164).

Vyasa, in Smritichandrika, said-

The sureties "for trust" should be made to pay the debts; but not the sons of the sureties. But in the case of the sureties for "payment" or "for

proceedings", their sons should pay. (Vide Hindu Law In Its Sources, by Jha, Vol. I, p. 185).

According to Manu (VIII, 159, 160)-

159. But money due by a surety, or idly promised, or lost at play, or due for spirituous liquor, or what remains unpaid of a fine and a tax or duty,

the son (of the party owing it) shall not be obliged to pay.

160. This just mentioned rule shall apply to the case of a surety for appearance (only); if a surety for payment should die, the (Judge) may compel

even his heirs to discharge the debt. (Vide Sacred Books of the East, Vol. 25, edited by Max Muller, P. 282).

12. The above texts leave no room for doubt as to the liability of the sons for surety ship debts incurred by their father undertaking payment of

money lent. So far as case law on the subject is concerned, a number of authorities have been cited by the learned counsel on behalf of the

appellant-bank. In Sitaramayya v. Venkatramana (1888) ILR 11 Mad. 373, it was held that it would be the pious obligation of the sons under

Hindu law to pay the debts incurred by the father as a surety for the return of a loan. This proposition was affirmed in Tukarambhat v. Gangaram

Mulchand Gujjar (1899) ILR 23 Bom. 454, and again in Chettikulam Venkitachala Reddiar v. Chettikulam Kumara Venkitachala Reddiar (1905)

ILR 28 Mad. 377, and The Maharaja of Benares v. Ram Kumar Misir (1904) ILR 26 All. 611.

13. In Mata Din Kandu Vs. Ram Lakhan Ahir and Another, , it was held by a Division Bench following The Maharaja of Benares v. Ramkumar

Misir (1904) ILR 26 All. 611 that sons in a joint Hindu family are liable for the due fulfilment of hypothecatoin bond entered into by their father as

surety. In Daljit Singh v. Harkishan Lal Shah AIR (sic) All 116. A Division Bench of Allahabad High Court expressed the view that under the

Mitakshara the son is liable to pay the debt incurred by the father as the result of being a surety for payment of money lent and for delivery of

goods on the basis of pious obligation resting on the son to the extent of his interest in the joint family property.

14. Before considering the authorities cited by Mr. D.R. Manchanda, learned counsel for the respondents, it will be proper to examine the nature

of the liability of Gaggu Mal when he stood as a surety. Mr. Manchanda maintained that the liability of Gaggu Mal was not personal and the decree

passed by the Sub-Judge on i26th January, 1949, Exhibit P. 17, for Rs. 47,208-11-3 was not a personal but a mortgage decree. It was stated in

the letter of guarantee (Exhibit D. 3) executed by Gaggu Mal in favour of the bank that he was creating an equitable mortgage upon his estate and

interest in the property to which the title deed related for the purpose of securing payment to the bank which was owing from G.M. Mohan Lal and

Co. As guarantor, Gaggu Mal had created an equitable mortgage. Consequently, a preliminary decree in terms of Order 34, rule 4 was passed in

favour of the bank for recovery of Rs. 47,208-11-3. It was clearly stated in paragraph 3 of the decree that if the amount realised from the sale of

the mortgage property was insufficient then the plaintiff would be at liberty to make an application for passing a personal decree in respect of the

balance of the amount due. This leaves no doubt that personal decree had not been passed at that stage. This decree was made final on 18th

August, 1949 and it was both against Gaggu Mal and Mohan Lal. The question to be considered is whether to a liability of such a nature the

principle of sons pious obligation is attracted or not. In Raja Brij Narain Rai v. Mangla Prasad Rai AIR 1924 P.C. 50, the Privy Council summed

up the Hindu Law bearing on alienation by father of a joint family under Mitakshara into five propositions. According to the second proposition, if

the alienor is the father and the reversioners are the sons, he may, by incurring debt, so long as it is not for an immoral purpose, lay the estate open

to be taken in execution proceeding upon a decree for payment of that debt. According to the third proposition, if the father purports to burden the

estate by mortgage, then unless that mortgage is to discharge an antecedent debt, it would not bind more than his own interest. In Hira Lal and

Others Vs. Puran Chand and Others, , a Full Bench of the Allahabad High Court examined the question and came to the conclusion that the

propositions laid down in Raja Brij Narain Rai''s case AIR 1924 P.C. 50 were not mutually exclusive and Misra J. said ""I find it difficult to

proceed upon the assumption that third proposition excludes the second."" The question under reference was answered by holding that the word

debt"" in the second proposition laid down by the Privy Council in Raja Brij Narain Rai''s case AIR 1924 P.C. 50 did not refer only to a simple

money debt, but also to a debt secured by a mortgage. The view which found favour with the Full Bench was, that according to ancient law-givers,

the debt was not conceived of merely as an obligation but as a sin which was visited on the debtor and followed him in the next world. The liability

to extricate the father from that sin by paying off his legitimate debts was the origin of the religious and moral obligation of the son. The presence or

the absence of a collateral security in the discharge of the debt, according to this decision, would be equally immaterial, for, a debt would be simple

whether or not it was realisable from some specific immovable property. A debt secured by a mortgage is as much a debt of the father as an

unsecured debt. In modern times, however, the doctrine of pious obligation is confined to the extent to which properties are inherited from the

father whether self-acquired or ancestral.

15. In Lingbhat Tippanbhat Joshi and Others Vs. Parappa Mallappa Ganiger and Others, Bhagwati J. said-

If under the terms of the surety bond the father has rendered himself personally liable, be it an ordinary personal bond or even a mortgage or a

pledge importing personal liability for the deficit if any on the realization of the security, the sons are certainly liable to pay the father''s personal

debt incurred in this manner to the extent of their right title and interest in the joint family properties.

The argument which has been urged on behalf of the respondents is that distinction should be drawn between a debt contracted by and due from

the father to which pious obligation attaches; and a debt due from third persons but guaranteed by the father. It is urged that to such a case, no

pious obligation attaches. In this case, the debtor of the bank was Mohan Lal and the father stood surety for his son''s debts.

16. The facts in AIR 1945 91 (Privy Council) bear some analogy to the facts of this case. In that case, security bond had been executed by a

Hindu father not for the purpose of any debt due by him but for the payment of a debt which was due from third parties. The Privy Council held-

Unless there was a debt due by the father for which the security bond was executed, the doctrine of pious obligation of the sons to pay their

father''s debt cannot make the ""transaction binding on the ancestral property.

The distinction between the Privy Council decision in AIR 1945 91 (Privy Council) and the Allahabad (Full Bench) decision in Hira Lal and Others

Vs. Puran Chand and Others, is that in the latter the father had himself incurred the liability and had mortgaged the property for his own debt and

not for the debt due from a third party.

17. Alla Venkataramanna Vs. Palacherla Manqamma and Others, , has been cited by the learned counsel for the respondents as an authority for

the proposition that it is not competent for the father to charge family property so as to bind his sons to secure an obligation incurred by him as a

surety when such an obligation was not antecedent to the creation of the charge. Reliance was also placed upon Bharatpur State Vs. Sri Krishan

Das and Others, In Ganga Saran and Another Vs. Lala Ganeshi Lal and Another, the Full Bench expressed the view that it was not open to the

father, who is the Karta of a joint family, to bind his family estate by executing a surety bond not as security for the due performance of a contract

which he himself had pledged but as security for payment of a debt which was due by third parties. It was held that a decree obtained against the

father upon the surety bond could not be executed against the joint family property. The view taken in the earlier Full Bench decision in Bharatpur

State Vs. Sri Krishan Das and Others, was followed.

18. The learned counsel for the appellant had relied upon a Single Bench decision of this Court in Kishan Chand v. Rakesh Kumar (1956) 58

P.L.R. 409, but that does not seem to me to be in point. It was held that proposition No. 2 laid down by the Privy Council in Raja Brij Narain

Rai''s case AIR 1924 P.C. 50 referred to those cases in which a decree had been obtained and not to those cases in which the sons merely sought

to challenge an alienation. The learned Single Judge expressed the view that distinction must be made between cases in which the mortgagee had

filed a suit on the basis of the mortgage and obtained a decree and cases in which no decree had been obtained.

19. After considering the above authorities, one line of demarcation is traceable. If the debt had been incurred by the lather, whether a personal

debt or a mortgage debt, the doctrine of sons'' pious obligation to meet his liability from the estate inherited by them is attracted, but where the

father had incurred an obligation as a surety not against the debt incurred, by him but a third person the sons cannot be compelled to meet such a

liability as that would be deemed Avyavaharika in the sense of ""a debt for a cause repugnant to good morals"" according to Colebrooke''s

translation of the term. This view is in accord with the decision of the Privy Council in AIR 1945 91 (Privy Council) and does not come into

conflict with the view held by the Hindu Jurists.

In view of what has been stated above, the appeal fails and is dismissed. In the circumstances of the case, I will not burden the appellant-bank with

costs.