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(1880) 02 AHC CK 0018

Allahabad High Court

Case No: None

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| Deva Singh | | APPELLANT |
| | Vs | |
| Ram Manohar and Another | | RESPONDENT |

Date of Decision: Feb. 19, 1880

Citation: (1880) ILR (All) 746

Hon'ble Judges: Spankie, J; Oldfield, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Oldfield, J.

It appears that the defendant Ram Manohar obtained a decree against the defendant Sheo Narain Singh, the father of plaintiff, upon a bond executed by him, and sought to execute the decree against certain joint family property pledged in the bond, and the plaintiff has brought this suit to exempt his share in the joint family property from sale on the ground that the defendant Ram Manohar only obtained a decree against his father, and it is only his father''s rights that can be taken in execution under such a decree. The decree was passed against the property pledged in the bond, and the finding of the lower Appellate Court on the facts is that father and son lived together as members of an undivided Hindu family, the property being in the father''s possession and management, and that the debt was incurred for the plaintiff''s support and benefit, and the money was lent for the use of the joint family by the defendant Ram Manohar, and the plaintiff was aware of the transaction.

2. It is undoubted that the whole ancestral property is liable for a debt contracted by a father under such circumstances, and there is no weight to be attached in the present case to the contention that, the decree being against the father only, it is only his interest that can be sold, for we cannot but hold that the suit and decree in this case must he regarded as against the father as representing the joint family.

3. In a recent case before the Judicial Committee of the Privy Council Bissessur Lall Salioo v. Luchmessur Singh L.R. 6 IA 233 : 5 Cal. L.R. 447, decided 15th July 1879, where the question was whether certain family property could be held liable under decrees obtained against members of the joint family, their Lordships appear to consider that, where the family is joint, there may be a presumption that the party sued is sued as a representative of the family, and they held that, when the decrees are substantially decrees in respect of a joint family and against the representatives of the family, they may be properly executed against the joint family property. Such appears to be the case in the suit in which this appeal has been made. Much stress has been laid by the plaintiff-appellant''s counsel on the case of Deendual Lall v. Jugdeep Narain Singh ILR 3 Cal. 198. In that case it was held that the auction-purchaser, who was also the decree-holder, "could not acquire more than the right, title, and interest of the judgment-debtor; and if he had sought to go further, and to enforce his debt against the whole property, and the co-sharers who were not parties to the bond, he ought to have framed his suit accordingly, and have made those co-sharers parties to it; by the proceedings which he took he could not get more than what was seized and sold in execution, viz., the right, title, and interest of the father."

4. But our view of the case before us, which proceeds on the representative character of the judgment-debtor as representing the family, cannot be said to be in conflict with the principle laid down in the above case.

5. We affirm the decree of the lower Appellate Court and dismiss this appeal with costs.