
(1950) 09 AHC CK 0050
In the Allahabad High Court
Case No : Second Appeal No. 2329 of 1943

Angney Lal Narain Das and Others

APPELLANT

Vs

Angney Lal Munni Lal

RESPONDENT

Date of Decision : 01-09-1950

Acts Referred:

Citation : AIR 1951 All 400 : (1951) 21 AWR 276

Hon'ble Judges : P.L. Bhargava, J; Agarwala, J

Bench : Division Bench

Advocate : M.L. Chaturvedy, for the Appellant; R.B. Jaini, G. Kumar and R.B. Awasthi, for the Respondent

Final Decision : Dismissed

Judgement

Agarwala, J.—This is a defendants' appeal arising out of a suit for recovery of money on the basis of a simple mortgage bond. The facts found and not now in dispute are as follows: One Narain Das was possessed of considerable property. He died in 1910 leaving his widow Shrimati Chironja. Defendant-appellant I, Angne Lal, was Narain Das's posthumous son. During Ms minority, Shrimati Chironja was appointed his guardian. In 1916 she died and then one Baldeo Prasad, maternal uncle of Narain Das, was appointed guardian. Narain Das in his life-time used to carry on money-lending, cloth and corn business. After his death, the said business could not be continued. When Baldeo Prasad was appointed guardian, in 1916, he started Kirana and cloth business on behalf of Angne Lal, minor. This business was carried on in one of the shops belonging to Narain Das after ejecting tenants from it. In 1927 Angne Lal's first son Ram Rakshpal, defendant 2 was born and then his second son Mool Chand was born. Angne Lal attained majority in 1931 and continued the said business which had been started by Baldeo Prasad. On 26-10-1931 he borrowed a sum of Rs. 1,000/- from the plaintiff-respondent by executing a simple mortgage bond hypothecating certain ancestral properties. The bond recited that the money was borrowed for purposes of investment in the cloth shop and continuation of the

Kirana shop. It is in evidence that this sum was in fact utilised for the purposes of this business.

2. The plaintiff-respondent sued for recovery of the money due upon the bond in 1941. The defendants to the suit were Angne Lal himself and his two sons Ram Rakshpal and Mool Chand. Their defence was that the money was not borrowed for any legal necessity and, as such, the mortgage was not binding on them. They raised several other defences also with which we are not concerned. The trial Court held that the business for which the money was borrowed was not ancestral and was a new business started by or on behalf of Angne Lal and that, therefore, the sons of Angne Lal were not bound by the alienation in dispute, and dismissed the suit. The lower appellate Court came to a contrary conclusion and held that the cloth business which was started by Baldeo Prasad on behalf of Angne Lal was a continuation of the old ancestral business of Narain Das and that the Kirana business was not a business of hazardous nature or a new venture. It further held that the family of Angne Lal was a trading family, and that he had entered into Kirana business in order to derive more income for the family. It, therefore, held that the money borrowed was for legal necessity and, as such, binding on the appellants.

3. In this second appeal the point urged on behalf of the defendants-appellants is that the finding of the Court below that the money was borrowed for an ancestral business is not correct and that, therefore, its finding that the money was borrowed for legal necessity cannot be maintained.

4. On behalf of the respondent it has been urged, firstly, that the business started by Baldeo Prasad was a continuation of the old business carried on by Narain Das, secondly, that, at any rate, since Ram Rakshpal and Mool Chand, sons of Angne Lal, were not in existence when the business was started in 1916, they cannot question the alienation made by Angne Lal for the purpose of such a business and that thirdly, in any case, the transaction was for the benefit of the family because the business was the only means of sustenance of the family, and was as such binding on the defendants-appellants.

5. Whether a business started by a member of a joint Hindu family is, or is not, a continuation of an ancestral business is essentially a question of fact, but help may be obtained from decided cases.

6. In *Ramkrishna Muraji v. Ratan Chand*, AIR 1931 PC 136, a joint Hindu family consisting of two brothers, one of whom was a minor, was carrying on a business along with a stranger. Later on, the stranger retired from the partnership. The elder brother, who was the manager of the family, carried on the same business under a different name and with a different set of account books. It was held that this was a continuation of the old business.

7. In *Damodharam Chetty Vs. Bansilal Abeerchand and Others*, , the business carried on by the grandfather ceased to be carried on in his lifetime. Some time after his death, the father started the business again. It was held that it was a

continuation of the old business. It was observed that the business was simply suspended for some time owing to commercial considerations, and that it could not be said that restarting the same business after a few years was a new business. It was further held that in order to determine the question whether a business was a continuation of an old one or was a new venture, one must have regard to the recognised business, profession, means of livelihood or "Kulachar" of the family, and that the mere fact that the business, when restarted, consisted in the purchase and sale of commodities other than those which were purchased and sold by the ancestor, should not be held to be outside the scope of the family business.

8. In *Chimakurthi Venkatarathnam Vs. Nooney Sambasiva Rao and Others*, , the father was doing a business as commission agent in various goods including indigo and cotton. His elder son continued for some time the commission business in partnership with a cousin. Several years later, the elder son began to do an independent business in yarn and cloth in partnership with another stranger. The family was a trading family. It was held that the yarn business was not a continuation of the old commission business.

9. In *D. A. Kalandar Rowther v. Sivapunyam Chettiar*, AIR 1939 Mad. 686 : 188 I. C. 843 a rice-milling business started by the father was stopped in his lifetime. Its assets were not liquidated until after his death. But there was apparently a complete termination of the business by the sale of all the plants followed by an interval of a years in which no rice milling business of any kind was done by the family and then there was a purchase by the son of a new rice mill generally financed by borrowed money by mortgaging the family property. On these facts, it was held that the business started by the son was not a continuation of the old business.

10. It appears to us that no hard and fast rule can be laid down for determining whether a business is a continuation of the old one. In our view, on the facts proved in the present case, the finding of the Court below that the cloth business was a continuation of the old ancestral business cannot be held to be vitiated by any error of law. As regards the Kirana business, the fact that it was not carried on by the father but was started by the son, or on his behalf, by his guardian, does not, in our opinion, make the business a new venture, because when the family is a trading family and is doing business in the purchase and sale of one kind of goods, it may very well do a similar business not more speculative or adventurous than the previous one and thus extend the scope of its business activity for the benefit of the family. In such circumstances the extension of the old business cannot be said to be a new business altogether. The kirana business, in the circumstances of the case, must be deemed to be a justifiable extension of the old business.

11. Assuming, however, that the business which was started in 1916 was not a continuation of the old business carried on by Narain Das and that it was a new business started for the first time by Angne Lal or, on his behalf, by his guardian,

the question is whether the business, having been started at a time when Angne Lal was the sole surviving coparcener of the joint Hindu family, can be considered to have become a family business when Ram Rakshpal and Mool Chand were born, and whether the latter can question the alienation made for the purpose of such a business.

12. It cannot be denied that Baldeo Prasad started the business in 1916 not with his own funds but with the funds that had come into his hands as belonging to the minor Angne Lal. These funds were the assets left by Narain Das. The business, therefore, was started out of the ancestral funds. So long as there were no other coparceners in the family, and Angne Lal was the sole surviving coparcener, he could start any business with the ancestral funds in his hands. A business thus started by him with ancestral funds would partake of the other property in his hands. When Ram Rakshpal and Mool Chand were born in the family, they became coparceners with Angne Lal in all the ancestral estate including the business. If they became coparceners in the business, the business became a family business. The rules that apply to an ancestral family business also apply to a new family business started either by the consent of all the members of the joint Hindu family (where the members are all adults), or by a sole surviving coparcener.

13. The power of the manager of a joint Hindu family governed by the Mitakshara law to alienate property belonging to the family is defined in verses 27 to 29 of Chapter I of the Mitakshara. The scope of the verses was explained by the Privy Council in *Hanuman Persad Pandey v. Mst. Babooee Munraj Koonweree* 6. I. C. 393 : 18 W. R. 81 P. C . and has thereafter been a subject of discussion in numerous cases. An alienation made for the purpose of ancestral business is considered to fall within the purview of those verses because the Hindu law considers a business as a distinct heritable asset descending like other heritable property to the heirs and becoming in the hands of the heirs a joint family business. The power of a manager to carry on a family business necessarily implies a power to mortgage or sell the family property for a legitimate and proper purpose of the business. An alienation so made is binding on the family property, including the interest of the minor coparcener therein--vide, *Ramkrishna Muraji v. Ratan Chand*, AIR 1931 PC 136 . The manager has authority to raise money not only to discharge the debts arising out of the family business but also money needed to carry it on.

14. An alienation made for a new business, however, which is started by the managing member of the joint Hindu family consisting of minors as well, is not considered to be covered by verses 27 to 29 of Chap. I of the Mitakshara, because, in the words of the Privy Council in the AIR 1932 182 (Privy Council) "the manager of a joint Hindu family has no power to impose upon a minor member of the family the risk and liability of a new business started by him."

But when a business has been started by a sole surviving coparcener, or with the consent of all the members of a joint Hindu family, the members being all adults,

the business becomes a family business and the minor members of the family born after the business had been started are no longer able to say that the risk and liability of a new business cannot be imposed upon them because the risk and liability have been taken by the family and new comers in the family share the risk and liability of the business along with the assets of the joint family

16. The rule of law laid down in the case of the AIR 1932 182 (Privy Council) and in the earlier case of *Sanyasi Charan v. Krishnadhan Banerji* 49 Cal. 560 : A. I. R. 1922 P. C. 237 and in other cases of like nature, cannot apply to a new business started by the sole surviving coparcener or with the consent of all the members of the joint Hindu family before the birth of a minor coparcener. The case reported in *Ishwar Dayal v. Amba Prasad* 1942 A. L. J. 147 : A. I. R. 1942 ALL. 184 does not help the appellant because in that case it was not proved that the business started by the father before the birth of a son was started with the aid of ancestral property in his hands. The alienation in question, therefore, having been made for the purposes of a business started by Angne Lal before the birth of his sons is binding upon the sons.

16. It has been further argued on behalf of the respondent that the business was started for the benefit of the family as a whole and, as such, it was binding on the minors also. The rule laid down in the cases of *Sanyasi Charan Mandal* (49 Cal. 560 : A. I. R. 1922 P. C. 237) and the AIR 1932 182 (Privy Council) , that an alienation made for a new business by a managing member of the family was not binding on the minor members, was considered by a Pull Bench of this Court in *Ram Nath and Another Vs. Chiranji Lal and Another*, and it was held that the rule had an exception and that was that if the new business was for the benefit of the estate of the family or was for legal necessity, the alienation made even for a new business by the managing member of the family, was binding upon the minor members. It was observed that the mere fact that the money borrowed by the manager was required for the purpose of a new business would not by itself be any justification for the alienation of family property. If in addition thereto, it could be shown that there was either a pressure or necessity to continue that business as it was the mainstay of the family, or that the particular transaction was at the time beneficial to the family and the family estate, the transaction would be upheld. The question whether the transaction was for such benefit or not is a question of fact depending on the circumstances of the case; it is for the Court to decide whether it was so beneficial and was such as an ordinary prudent manager would have entered into in the interest of the family.

17. It is in evidence that the sons of Angne Lal were maintained and brought up by appellant 1 out of the income of the business started by Baldeo Prasad on behalf of Angne Lal. Having regard to the fact that this was a trading family and that a similar business was carried on by Narain Das, and having regard to the finding that this business was not of a hazardous or speculative nature, there can be no doubt that the starting of the business was a prudent act and was for the benefit of the family. There is no force in this appeal and it is dismissed with

costs.