

(1920) 05 PAT CK 0006

In the Patna High Court

Balkrishna Sahai and Another

APPELLANT

Vs

Babu Sham Sundar Sahay and Others

RESPONDENT

Date of Decision : 14-05-1920

Acts Referred:

Citation : 56 Ind. Cas. 962

Hon'ble Judges : Coutts, J;Adami, J

Bench : Division Bench

Judgement

Coutts, J.—The decree-holder obtained a decree against three persons on the basis of two Hundis. The Hundis were drawn by the defendants Nos. 2 and 3 and were accepted by the defendant No. 1. Execution was taken out against the defendant No. 1 and his property was attached. He died but no steps were taken for substitution and the execution case was dismissed. On the 6th of July 1917 the decree-holder filed another application for execution, which is the one with which we are now concerned. In that application he sought to substitute the minor son of the defendant No. 1. The minor objected that his father was only a surety and that execution could not proceed against him.

2. In the Court of first instance the objection was allowed but on appeal the order, allowing the objection, was set aside and the minor defendant has now appealed to this Court.

3. The case is completely concluded by the decision of this Court in Mahabir Prasad Sri Narayan 46 Ind. Cas. 27 : 3 P.L.J. 396 : (1918) Pat. 328 : 4 P.L.W. 437, in which it was held that a Hindu son or grandson governed by the Mitakshara Law is liable for the debt of his father or grandfather due on account of a contract of suretyship for the payment of money and which comes within the meaning of vyavarika, which has been translated as lawful, useful or customary, unless the transaction is either illegal or immoral. I agree with the view taken in this decision, which is also in accordance with the law as laid down by the Calcutta High Court. I would accordingly dismiss this appeal with costs.

Adami, J.

4. I agree.