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**(1886) 10 AHC CK 0003**  
**In the Allahabad High Court**

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| Bhup Singh and Another   | Vs | APPELLANT  |
| Zain-ul-abdin and Others |    | RESPONDENT |

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**Date of Decision :** 19-10-1886

**Acts Referred:**

**Citation :** (1887) ILR (All) 205

**Hon'ble Judges :** Tyrrell, J;Straight, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Straight and Tyrrell, JJ.—The following are the facts material to the determination of the questions raised by this appeal:

2. On the 19th September 1863, Musammat Ulfat-un-nissa, wife of Zain-ul-abdin, defendant No. 1, executed a bond in favour of Bhup Singh, plaintiff-appellant No. 1, hypothecating thereby 10 biswas of the village Tahirpur, which, for convenience, we will call bond No. 1.

3. On the 3rd May 1872, Zain-ul-abdin and his son Ismail Husain made a bond for Rs. 2,000 in favour of Bhup Singh and Har Dayal Mal, plaintiff-appellant No. 2, hypothecating 6 1/4 biswas of Tahirpur. This we will call the "joint bond." On the same date Siraj-ud-din Husain, the deceased husband of defendant No. 3, executed a surety-bond, guaranteeing Zain-ul-abdin's payment of the principal and interest borrowed, and as security charged certain mortgagor rights in mauza Amirpur Gangu.

4. On the 2nd December 1872, Zain-ul-abdin made another bond in favour of Bhup Singh, plaintiff-appellant No. 1, in which he hypothecated 10 biswas of Tahirpur, and this we will call bond No. 2.

5. On bond No. 1 Bhup Singh obtained a decree on the 16th January 1866 and in execution of it, he, on the 20th November 1872, brought the 10 biswas to sale, and they were bought by Zain-ul-abdin with money lent him by Bhup Singh.

6. On bond No. 2 Bhup Singh got a decree on the 6th February 1877, and on the 20th July of the same year 10 biswas of Tahirpur were sold and purchased by Bhup Singh. On the 11th April 1883, Bhup Singh sold those 10 biswas to Musammat Dewa, defendant-respondent.

7. The only questions with which we are concerned in the present appeal relate to 6 1/4 biswas of the 10 biswas of Tahirpur in the hands of Musammat Dewa, and the right of the plaintiffs to enforce the surety-bond given by Siraj-ud-din against the 10 biswas of Amirpur Gangu; and a point as to costs. As to the former of these two matters, it may be convenient, first, to consider what effect the sale of the 20th November 1872, under bond No. 1, and Zain-ul-abdin's purchase, had upon the joint bond of May 1872. Now, though the suit of Bhup Singh, in 1866, was for enforcement of the lien created by bond No. 1, the decree he obtained was, as we read it, a simple money decree, and Zain-ul-abdin's purchase under it therefore cannot be regarded as operating in defeasance of the joint bond. We think, therefore, that the sale of the 20th November 1872 left the rights of the parties wholly unaffected quoad that instrument.

8. It next becomes necessary to consider the effect of the sale of the 20th July 1877, under bond No. 2, and of Bhup Singh's purchase thereof of the 10 biswas of Tahirpur upon the joint bond. At that date 6 1/4 biswas out of the 10 biswas were undoubtedly subject to the charge created by the joint bond; and we do not think it can seriously be denied that had Bhup Singh been the sole obligee of the instrument of the 3rd May 1872, his purchase in enforcement of his subsequent charge of the 2nd December 1872, would have satisfied and extinguished the earlier incumbrance. The question then is, does the fact of Har Dayal Mal being jointly interested with him under the joint bond alter the position? This involves the point of how far one of two joint obligees is bound, in regard to the joint rights under a bond, by the acts of the other in respect to the joint contract. According to the terms of the instrument of the 3rd May 1872, it is clear that the rights of the two obligees were joint and indivisible, and it cannot be denied that, in the absence of fraud, had the obligors, or either of them, paid the whole debt in cash to either of the obligees, such payment would have satisfied the bond, and could have been successfully pleaded in answer to any suit brought upon it. We cannot see that any distinction can properly be drawn between satisfaction obtained in this way and that secured, as in the present case, under the circumstances stated in regard to Bhup Singh's purchase of the 20th July 1877. If, in the one instance, he can rightly be regarded as the agent of his co-obligee, and, as such, binding him equally, so is the principle applicable in the other; and we have no hesitation whatever in holding that the effect of Bhup Singh's purchase of the 10 biswas of Tahirpur upon the joint bond of the 3rd May 1872, was as effectually to extinguish the joint incumbrance thereon as if Har Dayal Mal had been associated with him in buying it. It follows, as a necessary consequence, that when Bhup Singh sold the 10 biswas to Musammat Dewa on the 11th April 1883, they were free of all incumbrance under the joint bond, and

that he passed to her a clean title which she can assert as a complete answer to the present suit in regard to the 6 1/4 biswas of Tahirpur. We are of opinion, therefore, that as to the first question raised by this appeal, the Subordinate Judge was right, and the contention urged before us fails.

9. As to the second point, namely, the liability of the heirs of Siraj-ud-din to have the 10 biswas of Amirpur Gangu brought to sale, it is clear that that document was a guarantee for Zain-ul-abdin alone, and for any personal obligation by him under the joint bond. The present suit does not seek the enforcement of any such personal obligation against Zain-ul-abdin, probably for the best of all reasons, that any claim of that kind would be barred by limitation. But the prayer alone is for enforcement of lien against the hypothecated property. The only right Bhup Singh and Har Dayal Mal had against Siraj-ud-din under his surety-bond was in respect of the personal default of Zain-ul-abdin to pay the bond money; and it was only as to such personal default of their principal debtor that a cause of action could accrue to them as against the surety. That default, as we have said, occurred beyond the period of limitation within which a suit could have been maintained against Zain-ul-abdin for his personal failure to pay the money, and, being time-barred as to the principal debtor, is also barred in respect of the surety. This being so, had there been a claim in the plaint to obtain a decree personally against Zain-ul-abdin, the plea of limitation by which he could have defeated it would have been equally efficacious as regards the heirs of Siraj-ud-din. But no such claim is made in the plaint, and the obligation of the surety under his bond of the 3rd May being confined to the personal default of Siraj-ud-din, his heirs have been wrongly imported into the present litigation, which alone seeks to enforce the hypothecation of the joint bond against the hypothecated property.

10. The only other matter which was incidentally urged by the appellants' pleader had reference to the question of costs, and as to this we think there is some room for objection to the Subordinate Judge's decree. We consider that one set of costs was enough for the heirs of Siraj-ud-din Husain and the auction-purchaser from them of Amirpur Gangu, as their defences were identical, and that with regard to Musammat Dewa, the amount of her costs should be calculated on the value of the 6 1/4 biswas of Tahirpur. We therefore to this extent decree the appeal with costs in proportion, and modify the decree of the Court below. As to the residue, the appeal is dismissed with costs.