

---

**(1953) 11 MP CK 0008**  
**In the Madhya Pradesh High Court**  
**Case No : Second Appeal No. 64 of 1951**

Kavarlal Hiralal

APPELLANT

Vs

Shivchand Mandalal Dhakad and Another

RESPONDENT

---

**Date of Decision :** 19-11-1953

**Acts Referred:**

**Citation :** (1953) 11 MP CK 0008

**Hon'ble Judges :** Nevaskar, J

**Bench :** Single Bench

**Advocate :** Chafekar, for the Appellant; Khabya, for the Respondent

---

## Judgement

Nevaskar, J.—Shivchand and Nandlal, father and son, obtained a decree for Rs. 3128-8-0 against Kavarlal in the Court of Civil Judge Garoth.

2. An application for execution of this decree was filed by Shivchand and in this in the column regarding names of parties he mentioned all the three names but name of Nandlal was ment(sic) that of Kavarlal.

3. Notices were issued both to Kavarlal (sic) Nandlal of this execution. In response to (sic) notices both Nandlal and Kavarlal appeared. (sic)

Nandlal asserted that he had settled the (sic) in execution with judgment-debtor Kavarlal (sic) his capacity as a decree-holder and had cert(sic) the adjustment to the Court and the exec(sic) application was incompetent. judgment-d(sic) Kavarlal too asserted that he had effected an(sic) justment of the decretal debt with Nandlal (sic) had obtained a receipt of complete satisfa(sic) on 30-10-1949 and that Nandlal had certified(sic) adjustment to court on 9-11-1949. He ther(sic) also prayed for the dismissal of the execution(sic) plication.

4. On 9-10-50 an application was submitted(sic) behalf of the judgment-debtor and pressed b(sic) counsel stating that the claim in execution(sic) been adjusted and adjustment had been cer(sic) and that the decree-holders are father and(sic) were joint, the decree too was obtained while(sic) were joint and further that

Nandlal was(sic) authorised to recover the amount. At the e(sic) the main part of the application, a statemen(sic) made that the application was not in accor(sic) with law and a prayer was made for time (sic) allowed for argument.

5. This application was granted and the (sic) was fixed for argument.

6. The Court after hearing argument held (sic) so-called adjustment by Nandlal was not bi(sic) upon Shivachand by reason of provisions of (sic) Rule 15 and also because Nandlal was the son(sic) not the father. He therefore directed the e(sic)tion to proceed in respect of the full amount(sic)

7. In appeal preferred against this dec(sic) apart from the contentions already raised(sic) more contention was put forward viz., the d(sic) holder cannot take out execution for the(sic) amount but only to the extent of his half(sic)

8. The District Court in its decision held (sic) although the decree-holder Shivchand has de(sic)ed Nandlal as a judgment-debtor this error (sic) be corrected and the application is not b(sic) this reason.

The adjustment according to its view, th(sic) certified by Nandlal was not on behalf of(sic) for the benefit of both. It was therefor(sic) binding.

With regard to the new contention raised (sic) it, it held that it was not possible to dete(sic) Shivchand's share in the absence of a stat(sic) on behalf of the judgment-debtor as to the (sic) of it. This could only be determined, acc(sic) to its view in the trial court.

Other contentions raised viz., that the (sic) in execution was not within the competen(sic) the trial Court and the execution was (sic) benefit of all the decree-holders, were found(sic) incorrect on facts. The appeal was dismiss(sic)

9. Kavarlal, the judgment-debtor has no(sic) ferred this 2nd appeal.

10. Question for consideration in this (sic) is where there is a decree in the name of (sic) and son and the son certifies the payment(sic) justment can the father execute the decre(sic) if he is not shown to have authorised the (sic) of this payment by the son.

11. In order to arrive at the decision (sic) point on the facts of the present case it (sic) sary to refer to certain authorities bea(sic) the point.

12. First important case bearing on this point "Periasami v. Krishna Ayyan" 25 Mad 431 (sic) (B) (A).

13. In that case a joint decree was passed in (sic)our of three brothers who were then minors. (sic)ter at the time when first application for exe-(sic)tion was made two of them attained majority (sic)lle the third continued to be minor. This was (sic)ne more than three years a after the decree. More (sic)an three years later another application was (sic)ade. By this time the third brother also had (sic)come major but when this was done more than three years had not clapsed since he attained majority. It was held by the Full Bench that this (sic) barred by

time.

14. During the course of this decision Bhashyam expressed some opinion regarding the position the joint decree-holders which became foundation for consideration in later cases.

He observed as follows:

A payment made out of Court only to one of (sic) joint decree-holders cannot bind the (sic) he was also constituted, by them, (sic) in which case alone (sic) certified under (sic) Code of Civil Procedure.

(Sic) fact that one of the joint decree-(sic) is the (sic) member of an undivided (sic) Indian family consisting of the joint decree-holders will not empower him to give a valid discharge of the decree-debt, without the concurrence of the remaining members, any more than it will empower him to execute the whole decree, as of right, without the concurrence of the remaining decree-holders.

Under Section 231, CPC any one of several (sic) decree-holders, constituting a Hindu family whether he be the managing member or not, may if the Court (sic) sufficient cause, be allowed (sic) to execute the whole decree and in that case the court should pass such order as it deems (sic) necessary for protecting the interests of the persons who have not joined in the application. As (sic) general rule, such order will be a direction (sic) the applicant for execution to furnish sufficient security for the protection of the interests (sic) of such persons. If payment be made, out of (sic) Court, to a sole decree-holder or several joint (sic) decree-holders, as the case may be, such payment (sic) will of course be a sufficient discharge of the (sic) decree-debt (vide Section 259(b) ) and it is not the act (sic) the Court in recording such payment as certified that operates as a discharge, as held in (sic) "Seshan v. Rajagopala" 13 Mad 236 (B) and (sic) Zamir Hasan v. Sundar" 22 ALL 199 (C).

Under Section 258, Code of Civil Procedure, the act (sic) the Court simply consists in recording satisfaction, if the decree-holder or decree-holders (sic) certify to the Court payment to them out of (sic) court or if such payment is proved by the judgment-debtor, adversely to the decree-holder or decree-holders, within the time prescribed by (sic) 173A of the 2nd schedule to the Limitation (sic) A discharge not so recorded cannot be rectified by the Court executing the decree, (sic) for purposes of executing the decree, such (sic) is by Statute made indispensable evidence (sic) proving the alleged discharge. But payment (sic) or some of several joint decree-holders (sic) operate as a discharge of the decree-debt, (sic) recorded as certified u/s 258, Code of Civil Procedure, unless, of course, such persons were duly authorised by the others to (sic) such payment in entire or partial satisfaction (sic) of the decree.

Referring to the position of the managing Member of the family as a joint decree-holder the learned Judge said:

The mere fact that one of the joint decree-holders is the managing member of an

undivided Hindu family consisting of the joint decree-holders will not empower him to give a valid discharge of the decree-debt, without the concurrence of the remaining members, any more than it will empower him to execute the whole decree, as of right, without the concurrence of the remaining decree-holders.

15. The opinion expressed in this was followed in the cases reported in - V.N. Muthuswamy Iyer Vs. V.S. Narasimha Ayyar, ; - "Fatimabai v. Mt. Tukabai" AIR 1945 Nag 95 (E). However the aforesaid case in - "AIR 1934 Mad 330 (D)" was considered in - "Hanumanthappa v. Seethayya and Co." AIR 1949 Mad 799 (FB) (F).

This was a Full Bench case and arose in connection with a discharge given by one of the partners of a firm when the decree was obtained in the name of the firm. The majority of Full Bench including Rajamannar C.J. and vishwanath J. expressed discount from very wide words in the aforesaid observations and it was held that under certain circumstances one of the decree-holders can give valid discharge if he occupied a position of agency under general law.

Their Lordships overruled earlier Madras cases reported in - "Mohomed Silar Sahib and Co. v. Nabi Khan Sahib" AIR 1917 Mad 988 (G) and - V.N. Muthuswamy Iyer Vs. V.S. Narasimha Ayyar, ", wherein the observations of Bhashyam Ayyangar J. were followed.

They however expressed their approval with regard to the view in the case from that High Court reported in - "Duraismami Sastri v. Venkatarama Iyer" 21 MLJ 1088 (H). In the latter case, Sundar Ayer and Phillips JJ. has expressly dissented from the view expressed by Bhashyam Ayyangar J. in - "25 Mad 431 (FB) (A)", in the following terms:

If the learned Judge really meant to lay down that the provisions of Section 257, should be construed without reference to the substantive law of the parties in deciding whether one of them is entitled to receive moneys for which a decree is passed in favour of a joint Hindu family, then, with all deference, we are unable to concur with him.

Their Lordships explained the case in - "Ganesha Row v. Tuljaram Row" 40 Ind App 132 (PC) (I) wherein their Lordships of the Privy Council had taken the view that where a, natural guardian or a next friend acts as such in suit on behalf of a minor he cannot enter into a compromise on behalf of the minor without express leave of the court under Order 32, Rule 7, by stating thus:

The manager of a joint Hindu family, once he accepts the position of a next friend or guardian of a minor coparcener, to that extent, must be deemed to have himself surrendered his rights under general law as manager of the family. There is no such express provision when the manager is not also the next friend or guardian of any of the minor coparceners.

Their Lordships further referred to the case of - "Administrator General, Madras v. Radha-krishna Chettiar" AIR 1936 Mad 434 (J) wherein it was held that if the

manager is not the next friend or guardian of the minor his right to receive the amount of the decree and to give a discharge so as to bind the minor is not taken away on account of the provisions of Order 32, Rule 6 or 7.

The learned Judge observed at p. 797 as follows:

So in my opinion, the legal effect of a payment out of Court to one of the partners of a firm must be determined by the general and personal law applicable to the parties. If before the passing of the decree one of the partners, by receiving payment of the debt which is the subject-matter of the suit can give a valid discharge binding on the other members of the firm, logically, I fail to see why he cannot do so after the passing of the decree.

In - Kumaid Kumar Singh Vs. Amar Nath Singh and Others, view was taken that a payment to a member of a joint Hindu family who is not Karta regarding the amount of the decree obtained in favour of the members of the family jointly does not operate as satisfaction, wholly or in part of the decree.

16. The ruling no doubt expressly follows Madras cases referred to above viz., - "AIR 1917 Mad 988 (G)"; "25 Mad 431 (FB) (A)"; "Appaswamy Chettiar v. N. Balkrishna Pillai" AIR 1925 Mad 588 (L), the proposition laid down and applied in this case as stated above cannot be disputed.

On consideration of all these authorities, it is clear that so far as decrees in favour of joint Hindu families are concerned, courts are unanimous that where payment is said to have been made to a member who is not the Karta it cannot be binding upon other members and will not operate as a valid discharge of even as regards the share of the person receiving because in a joint Hindu family during the continuance of its status as such no one coparcener has a defined share. This no doubt will put the debtors at a disadvantage but he has to take the law as it stands and act with caution in making the payment.

17. If however the status of the Joint Hindu family is broken after the decree then the position changes and one time manager cannot give valid discharge and any one of the decree-holders can give discharge and enter satisfaction of his share. In the present case Nandlal has stated that he was authorised to receive payment. This does not appear to have been believed on evidence.

18. There are other authorities besides - "AIR 1936 Mad 434 (J)" in which the view appears to have been taken that a valid discharge can be given by a managing member of a joint Hindu family where the decree is in favour of the joint Hindu family consisting of himself and other junior members. These cases are - "Ramkrishna v. Shankar" AIR 1935 Nag 25 (M); - "Achhaibar Singh v. Ram Sarup Sahu" 35 All 380 (N); - "Inderdawan Singh v. Jairaj Singh" AIR 1941 Oudh 336 (O), etc.

19. As a result of these authorities the principle deducible is that where the payment has been made outside the court to a decree-holder who has a subsisting right, to the knowledge of the judgment-debtors, to represent others

by reason of his position under the substantive law, that payment and consequent certification or adjustment would bind the rest but where his position is that of a guardian or a next friend by reason of his having been so appointed or having assumed that position then inspite of his position under the substantive law he cannot give a valid discharge without the leave of the court.

On the other hand, if he is not entitled so to represent them then he cannot give a valid discharge and his action cannot prejudicially affect the rights of others under the decree in anyway or to any extent.

In the case of a decree in favour of men(sic) of joint Hindu family if payment is made to a member who is not the Karta it would not bin(sic) own interest and cannot operate to discharge (sic) debtor's liability under the decree to the ex(sic) of payee's interest either. There is further (sic) fication to the above viz., if after the decree (sic) status of the family is broken then payment (sic) to any one will bind his share only and to (sic) extent it would be competent for him to (sic) discharge, enter satisfaction or to certify.

20. It appears that no enquiry was made (sic) the trial court and it straightway held the de(sic) to be executable to the full extent. As the (sic) involved question of fact whether it was a (sic) of a subsisting joint Hindu family and whe(sic) Nandlal had either express or implied auth(sic) to represent the rest of the family it will (sic) be possible to come to the conclusion whether (sic) decree can be held to be completely or part(sic) satisfied.

21. I therefore set aside the order of the I(sic) court and remand the case to the trial Court (sic) afford opportunity to the parties to lead such (sic) ence as they may like on the question involve(sic) this case indicated above and decide the case (sic)ording to law in light of the observations (sic) above. The costs incurred so far will abid(sic) final result of these proceedings.