

(1924) 02 AHC CK 0028
In the Allahabad High Court

Mahabir Prasad Misir alias Chaukat Misir	APPELLANT
Vs	
Amla Prasad Rai and Others	RESPONDENT

Date of Decision : 08-02-1924

Acts Referred:

Citation : 79 Ind. Cas. 517

Hon'ble Judges : Sulaiman, J; Ryves, J

Bench : Division Bench

Judgement

1. This is an appeal by a decree-holder arising out of certain execution proceedings. In 1907 the objectors' father Bam Piare Rai executed a mortgage-deed in favour of the decree-holder for a sum of Rs. 1,499. A suit was brought on the basis of this deed and a preliminary decree was passed on the 23rd of August 1918. This was made absolute on the 27th of March 1919. While an application for execution of this final decree was pending, Ram Piari Rai, the mortgagor, died on the 2nd of May 1919. His sons were brought on the record as his representatives and they raised the objection that the debt incurred by Ram Piare Rai had not been incurred for any family necessity and was not binding on them. Parties adduced evidence on the question raised and the Court of first instance came to "the conclusion that the debt had been contracted in connection with the business for the purchase and sale of elephants, which Ram Piare Rai had been conducting. The learned Subordinate Judge was fully satisfied that the money was borrowed for the elephant business which Ram Piare Rai did for the family benefit and not for the sake of his hobby. The objections were accordingly disallowed by him. On appeal by the judgment-debtors the lower Appellate Court has allowed the objections. On the question of fact raised, it came to the conclusion that a business for the purchase and sale of elephants had been started by the objectors' father some 7 or 8 years before the mortgage in question, and that it was in connection with that business that the father borrowed the money. It was distinctly of opinion that the family must have benefited from any resultant profits out of the elephant trade assuming that there was any such profits. It, however, held that the business not having been

an ancient family business or ancestral business the debt incurred by the agent would not be binding on the other members of the family.

2. The decree-holder has come up in appeal and the finding of the lower Appellate Court on the question of law raised is challenged. The learned Additional District Judge has drawn a distinction between a simple debt and a mortgage-debt and has expressed the view that if it had been a case of a simple debt it would have been binding.

3. The point which we have to consider is whether the amount borrowed by the manager of a Hindu family in connection with a family business is such as is binding on the other members of the family. The decree-holder is not seeking to enforce the debt against the sons on the ground of any pious obligation of theirs. It is well understood that the manager of a Hindu family has power to contract debts for the purposes of a family business, and this power is well recognised. It is not necessary that such business should necessarily be an ancestral one. So long as it is not a separate business of the manager himself and it is a family business carried on for the benefit of the family, the debts incurred for carrying it on would be binding on the whole family and it is by no means incumbent on the creditor to prove that the family actually benefited out of that transaction. On principle, it would make no difference whether it is or it is not an ancestral business. The ordinary presumption would be that the money required for the carrying on of the business is required for a family necessity and the business is carried on with the consent and acquiescence of all the members of the family. If the creditors were called upon to prove legal necessity or family benefit for each such advance it would practically be impossible for a Hindu family to carry on any business, as no one would ever give it credit.

4. We are fortified in this view by the observations contained in a number of cases to which we may briefly refer.

5. In the case of *Johurra Bibee v. Sreegopal Misser* 1 C. 470 : 1 Ind. Dec. (N.S.) 293, at page 475, the view taken in the case of *Bamlal Thakursidas v. Lakmichand* 1 B. H.C.R. App. 51 at p. 71. was quoted with approval, that persons carrying on a family business in the profits of which all the members of the family would participate must have authority to pledge the joint family property and credit for the ordinary purposes of the business, and, therefore, that debts honestly incurred in carrying on such business must override the rights of all members of the joint family in property acquired with funds derived from the joint business. In other words, it seems to me that those who claim to participate in the benefits must also be subject to the liabilities of the joint business."

6. This case was approved of by a Bench of the same Court in the case of *Bemola Dossee v. Mohun Dossee* 5 C. 792 : 6 C.L.R. 34 : 2 Ind. Dec. (N.S.) 1112. which was also a case of a family business and not necessarily an ancestral business. Though it was a case under the *Diabhog* Law it was pointed out that "adult members of an undivided Hindu family who have an interest in a family business

carried on by the managing members of the family and who are maintained out of the profits of such business must, in the absence of evidence, be taken to possess the knowledge that the business might require financing and to have consented to such financing. Where, therefore, a managing member of such a family in carrying on the family business obtains an advance necessary for the purpose of the business by pledging the joint family property, the mortgage is binding on all the members of the partnership."

7. The same principle was laid down in the case of *Sakrabhai v. Maganlal* 26 B. 206 : 3 Bom. L.R. 738. which, how even, was a case where a Hindu widow had contracted debts on the credit of the assets of the business to which she had succeeded as the heiress of her deceased husband.

8. In the case of *Raghunathji Tarachand v. The Bank of Bombay* 2 Ind. Cas. 173 : 34 B. 72 86 : 11 Bom. L.R. 255, it was remarked that in connection with the legal position of an ancestral firm in its dealings with the outside world of commerce, the test to be applied in such cases is rather the apparent authority of the manager than the actual necessity of the family. And that is a perfectly reasonable position, for while there is no absolute necessity for the family to trade at all, when once the family trade is admitted, all usual acts done in the normal course of carrying it on, may be considered necessary to the trade. If this reason is right then one passes on from the ordinary Hindu Law as to a manager's power of alienation to the law of partnership."

9. The case of the Oudh Court reported in *Baba Din v. Bansraj* 27 Ind. Cas. 567 : 2 A.L.J. 55 : 18 A.C. 84, is clearly in point.

10. The learned Additional Judicial Commissioner, following the Bombay case of *Baghanathji Tarachand v. The Bank of Bombay* 2 Ind. Cas. 173 : 34 B. 72 86 : 11 Bom. L.R. 255, held that " where a joint Hindu family carries on a business or profession and maintains itself by means of it, the member who manages it for the family has an implied authority to contract debts for its purposes, and the creditor is not bound to enquire into the Bnance of the business, as long as that business forms the purpose of the debts, in order to bind the whole family thereby, because the power to contrapt debts is incidental to she carrying on of the business, from which the family derives its means of subsistence and support. There, too, the business was not an ancestral or an ancient business but had been started only 9 or 10 years prior to the debt.

11. The learned Vakil for the respondents has strongly relief on two cases. The first one is the case of *McLaren Morrison v. Verchoyle* 6 C.W.N. 429. That case, however, on the facts is clearly distinguishable. At page 437 it was remarked that "Bepin made use of the name of the firm for his own purpose after the year 1897, but the business as a business undoubtedly was determined when the mill ceased to work and from that time forward there was no necessity to borrow money for the purchase of castor seed in connection with the mill." Again at page 498 it was clearly pointed out that this business was not the ancestral business

but an entirely new business and the advances made by the plaintiffs to Bepin were not made in the course of the ordinary transactions of the ancestral business and were not made for the benefit of the joint family at all.

12. In the same way, the case of Ganpat Rai v. Munni Lai 13 Ind. Cas. 34 : 34 A.135 : 9 A.L.J. 54. is distinguishable. The learned Judges in that case disagreed with the Trial Court and held that the debts for the payment of which the mortgage-deed had been executed were gambling debts and could not, therefore, be regarded as debts contracted by the mortgagor in his capacity of a manager of a firm or family in the course of the ordinary business of the firm or family. All that was held was that there was no presumption that a debt contracted by the manager of a Hindu family or firm was contracted for the benefit of the family or firm. On the facts found in that case there can be no doubt that the sons were not bound by that debt.

13. On the findings arrived at by the learned Additional District Judge there can be no doubt that this amount had been borrowed by the father in order to carry on the family trade of purchase and sale of elephants, that this was not an isolated transaction but was in connection with the business which had been going on for some 7 or 8 years prior to the transaction and that this was the business from which the other members of the family were likely to benefit if there were any profits. On these findings we are of opinion that the mortgagors cannot escape their liability.

14. The result, therefore, is that this appeal is allowed the decree of the court below is set aside and that of the Court of first instance restored with costs including in this Court fees on the higher scale.