
(1934) 10 BOM CK 0013
In the Bombay High Court
Case No : First Appeal No. 21 of 1934

Shamrao Keshav Rajadhyaksha

APPELLANT

Vs

Shantaram Balaji Naik

RESPONDENT

Date of Decision : 05-10-1934

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : AIR 1935 Bom 174 : (1935) 37 BOMLR 123

Hon'ble Judges : Sen, J;Murphy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Murphy, J.—This is a plaintiffs' appeal. These had filed a suit to obtain a declaration that their half share in the plaint property was not liable to be attached and sold in execution of the decree in suit No. 10 of 1928. Suit No. 10 of 1928 had been brought against the appellants' father, Keshav Anant, in the following circumstances :-

Keshav Anant's wife's brother, one Gajanan Yeshvant Havaladar, had started a shop in the Savantvadi State, and in order to stock it with goods entered into an agreement with the defendant Shantaram Balaji Naik by which the latter was to supply him with money. Since Havaladar had not much credit, the plaintiff's father, Keshav, undertook to stand surety for him to the extent of Rs. 10,000. In the end Havaladar's business did not prosper and he got into debt, and when accounts were made up, Rs. 10,413 were found to be due. Rs. 413 were paid down in cash, and as to the remainder, plaintiff's father executed a promissory note for Rs. 10,000. This was on January 15, 1925. As he did not pay the amount secured by the promissory note, the suit in question, No. 10 of 1928, was brought against him and a decree was passed. In that suit the plaintiff's father had prayed for instalments and these were granted to him at the rate of Rs. 1,500 per annum. The plaintiff's father died, and the present plaintiffs succeeded to his estate and, it appears, paid the first instalment without any

protest. They failed to pay the subsequent ones and execution proceedings were started against them, in which they were represented by the eldest of these brothers who, at the time, had attained majority.

2. We find on looking into the record that the eldest brother was appointed by the Court as guardian ad litem of his minor brothers in the execution proceedings. The plaintiffs contended that their shares of the property in suit were not liable for the debt, on the ground that they had not been benefited, and an issue was raised to the following effect-

Are the shares of the sons of the deceased judgment-debtor liable to be sold in execution ?

The original Court held that the shares were so liable and directed that the execution should proceed against them. There was an appeal to this Court, *Vasant Keshav v. Shantaram Balaji* (1932) F.A. No. 201 of 1931, decided by Patkar and Murphy JJ., on August 2, 1932 (Unrep.) which was heard by Mr. Justice Patkar and myself. The contention then again was that the debt was not shown to be to their benefit, and that the appellants were not liable for the debt of their father incurred as a surety for his brother-in-law. But the decision went against them, and the Court held on the authority of *Tukarambhat v. Gangaram* ILR (1898) 23 Bom. 454 and after considering the cases of *The Benares Bank Ltd. Vs. Hari Narain*, . and 28 CWN 253 (Privy Council) that the then appellants were liable for their father's debts. The original Court's order in execution was thereupon confirmed and that appeal was dismissed.

3. The learned Subordinate Judge, before whom the suit out of which this appeal arises was prosecuted, has held that the suit is barred by Sections 11 and 47 of the CPC and that the plaintiffs' shares of the property are liable for their father's debt on the promissory note. The suit has consequently been dismissed.

4. Mr. Thakor's argument for the appellants against the propriety of this dismissal has mainly been concerned with the substantial question of law underlying the technical ones on which" the suit has in fact been dismissed. But, it seems to us, that there are considerable difficulties in his way. The argument is based on the Privy Council decisions in *Brij Narain v. Mangla Prasad* and AIR 1922 237 (Privy Council) . In *Brij Narain v. Mangla Prasad* there is a statement of the cases in which the liabilities of the sons for an antecedent debt incurred by their father not being for an immoral purpose are set out. The generalization there does not include the case of the liability for a father's debt on a surety bond guaranteeing repayment of money lent, and the argument is that this is not a case in which the application of the general principle in that case is possible.

5. The second line of argument is based on the decision in *Benares Bank, Ltd. v. Han Narain*, viz., that the sons are not liable for debts incurred by a father who starts a new business and becomes liable for them in this pursuit. The logic is that if the sons are not liable for their father's debt in those circumstances, a fortiori they cannot possibly be liable for a debt incurred by his standing surety

for another person who similarly starts a new business. But it seems to us that the "a fortiori" in the argument cannot so be assumed. In fact, this argument, or something very similar to it, was used for the appellants in Vasant Keshav v. Shantaram Balaji, already referred to, dealing with the same facts, and was rejected by the judgment in that case, and it does not seem to us that any real distinction from that ruling can now be made, and that that ruling being that of a division bench binds us here.

6. But there is another line of argument which I think is also relevant to the point. The ruling in Tukarambhat v. Gangaram is based on certain texts of Hindu law there referred to, which specially provide for the liability of the sons of a Hindu father for a debt incurred by him on standing surety to make good the payment of money lent to another person, and this, it appears to us, is a totally distinct universe of discourse from the ones before their Lordships of the Privy Council, in the cases I have just discussed. It appears, therefore, that this point must be decided against the appellants.

7. Also, although the former decision was in the course of execution proceedings and the present one arises out of a suit, and Section 11 does not cover proceedings in execution, yet admittedly it has been held that even where Section 11 does not apply, the principle it contains must be applied where it is relevant, and that therefore the suit in this case is so barred.

8. We think that the learned Subordinate Judge's judgment was correct. We confirm his decree and dismiss this appeal with costs.