

(1960) 03 PAT CK 0013

In the Patna High Court

Case No : Civil Revision No. 1139 of 1958

Sheogulam Mahto and Another

APPELLANT

Vs

Kishun Chaudhuri and Another

RESPONDENT

Date of Decision : 10-03-1960

Acts Referred:

Citation : AIR 1961 Patna 212

Hon'ble Judges : N.L. Untwalia, J

Bench : Single Bench

Advocate : P.B. Ganguly, for the Appellant; Gorakh Nath Singh and Sarjoo Prasad Singh, for the Respondent

Final Decision : Allowed

Judgement

N.L. Untwalia, J.—This is an application on behalf of defendants Nos. 2 and 3 u/s 25 of the Provincial Small Cause Courts Act. The plaintiff opposite party No. 1 filed a suit for realisation of certain dues based upon a handnote executed by defendant No. 1 opposite party No. 2 before "me. She is the wife of petitioner No. 1 and mother of petitioner No. 2, According to the plaintiff's case, petitioner No. 1 was living in Bengal and was working there and during his absence, opposite party No. 2 was managing the affairs of the family and was the karta of the family to all intents and purposes. In that capacity she contracted this loan for the benefit of the family and, therefore, it is, according to the plaintiff, binding on the family. The learned Small Cause Court Judge has accepted this case of the plaintiff and has decreed the suit not only against opposite party No. 2 but also against the petitioners.

2. In my opinion, the view taken by learned Small Cause Court Judge that the wife in the circumstances of this case could, in the eye of law, act as korta on behalf of the family and contract loan for the necessity of the family which would be binding on it, is erroneous. The learned Judge has relied upon the decision AIR 1947 178 (Nagpur) . With very great respect I say that the view is not correct and in any event I am not prepared to extend the principle decided in

that case to the case of a wife in the lifetime of her husband.

The Nagpur decision has been dissented from in V.M.N. Radha Ammal Vs. The Commissioner of Income Tax, , Rakhmabai Kachu Ghadge Vs. Sitabai Kachu Ghadge, and Maguni Padhano v. Lokanidhi Lingaraj Dora., (S) AIR 1956 Orissa 1. With respect I agree with the view expressed in these cases. In my opinion, the decree has been erroneously passed against the petitioners. I allow this civil revision application, and set aside the decision and decree of the learned Small Cause Court Judge as against the petitioners. It is needless to make it clear that the decree as against opposite party No. 2 will stand. There will be no order as to costs of this court.