
(1975) 02 MP CK 0007

In the Madhya Pradesh High Court

Case No : Second Appeal No. 481 of 1968

Smt. Chabirani Bai and Others

APPELLANT

Vs

Girdharilal and Others

RESPONDENT

Date of Decision : 27-02-1975

Acts Referred:

Citation : AIR 1976 MP 69 : (1976) JLJ 130 : (1976) 21 MPLJ 20

Hon'ble Judges : S.M.N. Raina, J

Bench : Single Bench

Advocate : K.N. Agrawal, for the Appellant; V.S. Pandit, for the Respondent

Final Decision : Dismissed

Judgement

S.M.N. Raina, J.

This is a second appeal by the plaintiffs arising out of a suit under Rule 63 of Order XXI of the Code of Civil Procedure,

Plaintiff No. 1, Smt. Chhabirani, is the wife of Ramkar-an (defendant No. 5); while plaintiffs Nos. 2 to 4, viz., Ambika Prasad, Ramesh Chand and Tapesch Chand, are his sons. The plaintiffs are governed by the Mitakshara School of Hindu Law. Defendant No. 1, Mangal Prasad, had filed a civil suit No. 36-B of 1961 in the Court of Civil Judge, Class I, Maihar, against Maniram (defendant No. 2) and Mohanlal (defendant No. 3). During the pendency of that suit, Ramkaran (defendant No. 5) stood surety for defendants Nos. 2 and 3 to get their property released from attachment before judgment. The suit was ultimately decreed on 5-5-1961. On the strength of the surety bond executed by Ramkaran, the decree-holder proceeded to execute the decree by attachment of a double-storeyed house belonging to Ramkaran. The plaintiffs preferred an objection to the attachment on the ground that the house belonged to the joint family; but it was dismissed on 20-1-1964. The house was ultimately sold at an auction-sale and was purchased by Girdharilal (defendant No. 4). Plaintiffs thereupon filed the present suit seeking a declaration that the house was not liable to attachment in

execution of the decree.

The plaintiffs alleged that the judgment-debtors had obtained the surety bond from Ramkaran fraudulently and by exercising undue influence upon him. They further alleged that the house was not liable to attachment as it was part of joint family property. The trial Court decreed the claim of the plaintiffs; but in appeal the learned Additional District Judge, Mandla, set aside the decree of the trial Court and dismissed the suit. Being aggrieved thereby, the plaintiffs have filed this second appeal.

The finding of the trial Court that the house in suit was joint family property does not seem to have been questioned before the first Appellate Court and was not questioned before me as well. There is also no evidence to show that Ramkaran had executed the surety bond under undue influence or fraud, as pointed out by the learned Additional District Judge in paragraph 3 of his judgment. Thus, the only point that remains for consideration is whether, in the circumstances of the case, the decree-holder was entitled to attach the house on the basis of the surety bond executed by Ramkaran and, in fact, the learned counsel for the appellants addressed the Court only on this point.

Under the Hindu Law, where the sons are joint with their father, they are under a pious obligation to pay the debts contracted by the father, which are not illegal or tainted with immorality, to the extent of their interest in the joint family property vide Hindu Law, by Mulla, Fourteenth Edition, at p. 354. This liability arises from the religious obligation of the son, as laid down in the ancient texts. It is well settled that the liability of the sons exists whether the father be alive or dead. :

The main point for consideration, therefore, is whether the pious obligation of a son exists even in respect of the father's liability under a surety bond. For this purpose it is necessary to consider whether a pecuniary liability incurred by the father on the basis of a surety bond is an *avyavaharika* debt or not. It appears that according to both *Yajñavalkya* and *Bṛhaspati*, a debt under a surety bond is to be regarded as *avyavaharika* only where the surety is for the appearance or for the honesty of another person, but not where the surety is for payment to be made by a third person vide Hindu Law by Mulla, Fourteenth Edition, Article 298, at pp. 386 and 387 and Hindu Law by Raghavachariar, Sixth Edition, at pp. 342 and 343.

In *Dwarka Das v. Kishan Das*, AIR 1933 All 58,7 it was held by a Division Bench of the Allahabad High Court that the sons are liable for the surety debt of their father for payment, even without consideration. A similar view was expressed by that Court in *Daljit Singh Vs. Harkishan Lal Sah and Brothers and Others*, .

The original texts on the subject were extensively considered by the Bombay High Court in *Tukaram Bhat v. Gangaram* ILR (1899) 23 Bom 454. The following observations at p. 459 in the said case are pertinent :

"It will be sufficient to state that *Bṛhaspati* recognizes four different classes of

sureties : (1) sureties for appearance, (2) sureties for honesty, (3) sureties for payment of money lent, (4) and sureties for delivery of goods. The obligation of the first two kinds of sureties is limited to themselves personally, and does not bind their sons; but the obligation incurred by the last two kinds of sureties binds them, and their sons also after their death. The commentary of Ratnakar on this text expressly states that the sons shall be compelled to pay debts incurred by their father under the last two classes of surety obligations. The texts of Narad and Yajna-valkya recognize three classes of surety obligations only--those for appearance, those for honesty and those for payment. Narad does not set forth the son's obligation in this place, but the Yajnavalkya text is quite as explicit as that of Brihaspati. The sureties of the first two classes must pay the debt, and not their sons, but the sons of the last kind of surety may be compelled to pay their father's debt incurred by him as surety. Katyayana refers to the same kind of surety when he lays down that the grandson of such a surety need on no account pay the debt, but the son must make it good without interest. The text of Vyasa makes the same distinction between the son's and grandson's liabilities for such suretyship. Manu's texts on the subject clearly distinguish between sureties for appearance or good behaviour and sureties for payment. The son shall not, according to Manu in general be compelled to pay money due for suretyship, or idly promised to musicians and actresses, or lost at play, or due for spirituous liquors, or for tolls or fines. The general words "money due for suretyship" used in the text are expressly stated by the commentator Kulluka to refer only to sureties for appearance and good behaviour, but as regards a surety for payment, it is enjoined that the Judge may compel even his heirs to discharge the debt."

It is, therefore, clear that according to the authoritative texts on the subject, pecuniary liabilities arising out of surety bonds for appearance and for honesty of a third person alone can be considered as avyavaharika debts which the son is not under a pious obligation to pay; but a pecuniary liability arising out of a surety bond for the payment of money lent to a third person stands on a different footing and the pious obligation of the son extends to such a liability.

Learned counsel for the appellants, however, relied on the decision of the Privy Council in AIR 1945 91 (Privy Council) . In the said case their Lordships made the following observations at p. 94 :

"In the present case, the security bond was executed not for the payment of any debt due by Uttam Chand, but for payment of a debt which was due from third parties. Unless there was a debt due by the father for which the security bond was executed, the doctrine of pious obligation of the sons to pay their father's debt cannot make the transaction binding on the ancestral property."

It appears that in that case the father had executed a security bond whereby a charge was created on his moveable and Immovable properties. Their Lordships held that the father, Uttam Chand, had not incurred any personal liability under the bond and as such there was no debt due from him. It is in the context of

these conclusions that the aforesaid observation of their Lordships should be read.

The aforesaid decision of the Privy Council was extensively considered by & Full Bench of the Punjab High Court in Hindustan Commercial Bank Ltd., Amritsar Vs. Sohanlal Gagu Mal and Another, and distinguished on the ground that in that case no personal liability of the father arose under the surety bond. Adverting to the observations made by their Lordships of the Judicial Committee of the Privy Council in that case, it was held that they could not be construed as making any departure from the legal position as enunciated in *Tukaratn Bhat v. Gangaram* ILR (1899) 23 Bom 454 (supra). It was held by the Court, after reviewing all the authorities on the subject, that the personal liability of the father to pay the third person's debt under a surety bond was neither an illegal nor an immoral debt and as such the joint family estate in the hands of the sons was liable for payment of the same in view of their pious obligation.

A perusal of the judgment of the Privy Council in AIR 1945 91 (Privy Council) shows that their Lordships did not take into consideration the various authoritative texts of Hindu Law and judicial decisions on the subject, apparently because they did not intend to make any departure from the principles of Hindu Law as recognized by the Courts. Their Lordships rested their decision on the sole consideration that in the case before them the father had not incurred any personal liability under the surety bond and as such there was no debt due from him. It is thus clear that the sons are under a pious obligation to pay the debt of the father arising out of a surety bond executed by him to pay a third person's debt. This liability is, however, only to the extent of their interest in the joint family property.

It is the case of the plaintiffs themselves that the house in suit is joint family property. The interest of the sons therein was, therefore, liable to be attached and sold for realisation of the surety debt in question incurred by their father.

The appeal, therefore, fails and is hereby dismissed with costs. Counsel's fee according to scale, if certified.