

Prasad and pannalal v. mst. narayani



**ASSIGN
BUSTER**

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The managing member of a joint undivided estate cannot alienate or burden the estate qua manager except for purposes of necessity, but, 2. If he is the father and other members are sons, he may by incurring debt so long as it is not for an immoral purpose lay the estate open to be taken in execution of a decree for payment of that debt. 3.

If he purports to burden the estate by mortgage then unless that mortgage is to discharge antecedent, it would not bind the estate. 4. Antecedent debt means antecedent in fact as well as in time, that is to say, that the debt must be truly independent and not part of the transaction impeached. 5. There is no rule that this result is affected by the question whether father, who contracted the debt or burdened the estate, is alive or dead. The Supreme Court has decided two important cases, namely, Sideheshwar Mukerjee v.

Bhuvaneshwar Prasad and Pannalal v. Mst. Narayani, on the doctrine of pious obligation of the sons to pay the father's debt. The Court held that under Mitakshara Law the son's obligation to pay the debt is not personal which can be said to be separate from the property received from the father. In fact the liability is confined to the extent of the share, he has inherited from him. The liability is on the sons in every condition whether he is major or minor, whether the father is alive or dead.

The only condition is that the debt should not have been contracted for immoral purposes. The liability to pay the father's debt is not dependent upon the fact that the father has taken the debt in the capacity of Karta of

joint Hindu family or in the capacity of father. The basis of liability is religious and is available against the sons only. The liability continues even after the death of the father and also after the partition has been effected between the father and sons. After obtaining a decree against the sons it can be executed against the undivided interest of the sons. Whenever a creditor obtains a decree against the father, he can get it executed against the share of the father or against the shares of his sons. Strictly, whenever a decree is obtained by the creditor on a promissory note against the father and the sons were not made parties to the suit, still the decree can be executed also against the interest of the sons. In the latter case the Supreme Court laid down that a son will be liable to pay the pre-partition debt of the father even after the partition, provided the debt was not Avyavaharik and arrangement for its payment was not made at the time of partition.

Any decree, which has been obtained against the father after partition, cannot be executed against the son with respect to the property which they got, in partition. But if the sons after the death of the father have been made parties to the suit in the capacity of legal heirs and the decree has been obtained only with respect to the property of the deceased father then in the proceedings of execution of the decree Section 47 of Civil Procedure Code will be applied and the Court may consider all those questions which are related to the property, got by the sons on partition and also the sons will have the right to claim that the property in their possession after partition could not be held liable for the payment of the debt of the father. The Gujarat High Court in Jayantilal v. Shrikant, observed that during the pendency of the insolvency proceedings against the father, in which he has

been adjudged an insolvent, a pre-partition debt incurred by him not tainted with immorality or illegality, is not recoverable out of the assets which have gone to his sons upon partition of the joint family estate between him and the sons. “ In order to make the sons liable to pay the father’s pre-partition debts, the liability of the father and sons must co-exist. As soon as the father is adjudged an insolvent, the original contractual liability in respect of his pre-partition debt, which was fastened upon the joint family estate comes to an end and is extinguished, and a new liability emerges from its ashes.

In *Fakir Chand v. Sardarani Harnam Kaur*, the Supreme Court held that a father as manager can incur debt by mortgage of joint family property for discharging his debt and his son is under pious obligation to pay the mortgage debt which his father is personally liable to pay, provided that it is not nourred for immoral purpose. In such a case, son’s liability cannot be confined only to money decree against his father. It is the existence of the father’s debt that enables the creditor to sell the property in execution of a money decree against the father. Likewise, if a mortgage decree against the father directs the sale of the property for the payment of his debt, the creditor may sell the property in execution of the decree. For the execution of the mortgage decree, an attachment of the property is not necessary and the property is sold by force of the decree. But this distinction in procedure does not affect the pious obligation of a Hindu son to pay his father’s debt.

If there is just debt owing by the father it is open to the creditor to realise the debt by the sale of the property in execution of the mortgage-decree. The son has no right to interfere with the execution of the decree or with the sale of the property in execution proceedings, unless he can show that the debt,

for which the property is sold, is either non-existent or is tainted with immorality. The doctrine of pious obligation cannot be restricted to cases where father also happens to be the manager. If this limitation was well founded, it would also follow that the father's power of disposing of the son's share for the satisfaction of his own debt must be likewise limited.

There cannot be any justification of such limitation when it is remembered that the son's obligation to pay his father's debt was under the original Smritis independent of possession of assets of joint family property. It depends purely upon the relationship of father and son. It is only by case law developed during the early part of nineteenth century that the liability of the son for father's debt was limited to assets and to joint family property. The true basis of the obligation, therefore, is the relationship of father and son and not the accident of the father being the manager of the joint Hindu family.

Where a debt is contracted by a member of the family who is not Karta for his own business, the other members of the family are not liable.