BOMBAY HIGH COURT

Mulchand Hemraj

Vs

Jairamdas Chaturbhuj

(B.J. Wadia, J.)

14.08.1934

JUDGMENT

B.J. Wadia, J.

1. Plaintiffs' firm carried on-business in Bombay as commission agents at the date of the suit, but has since been dissolved. They acted as commission agents in Bombay for the firm of Chaturbhuj Pitamberdas & Co., and filed this suit to recover from the defendants as constituting the firm of Chaturbhuj Pitamberdas & Co. the sum of Rs. 29,984-12-0 with further interest in respect of their several dealings with the firm. According to the plaintiffs, the original 1st defendant and his two sons, the 2nd and 3rd defendants, formed a joint and undivided Hindu family of which the original 1st defendant was the 'karta' or manager ; the 4th defendant and his son the 5th defendant formed another joint and undivided Hindu family of which the 4th defendant was the manager; and the original 1st defendant and the 4th defendant on behalf of themselves and their respective joint families and the 6th and 7th defendants-carried on business in partnership in the name of .Chaturbhuj Pitamberdas & Co. at Behrein in the Persian Gulf. It is the plaintiffs' case that on June 22, 1925, a sum of Rs, 12,082 was found due and payable to them at the foot of the account of their dealings with the firm, and the original 1st defendant signed an acknowledgment in the plaintiffs' books of the correctness of the account. I may mention here that it was pointed out by plaintiffs' counsel that the date mentioned in the plaint, viz., July 10, 1926, is a mistake for June 22, 1925, as the calculation ought to be according to the, Sindhi year which terminates at the end of Jeth and begins from Ashad Sud 1. The acknowledgment was signed on behalf of the firm of Chaturbhuj Pitamberdas & Co.; the original 1st defendant has admitted liability not only for himself, but for "us", presumably meaning his firm.

2. It is the plaintiffs' case further that they and Chaturbhuj Pitamberdas & Co. did business in partnership in pearls in Duboi, also in the Persian Gulf, in the name of Gordhandas Dwarkadas Chaturbhujdas Pitamberdas since about May, 1924. Gordhandas and Dwarkadas are the sons of Mulchand Hemraj a partner of the plaintiffs' firm since deceased. The shares of the plaintiffs and

of Chaturbhuj Pitamberdas & Co. in the pearl business were equal. The names of the partners representing Chaturbhuj Pitamberdas & Co. in the written agreement of partnership are those of the 1st, 4th and 6th defendants only, but it is stated that the firm at Duboi shall be managed by the 6th defendant as well as the 7th defendant who are admittedly partners of Chaturbhuj Pitamberdas & Co., and the share of Chaturbhuj Pitamberdas & Co. is mentioned in Clause 10 as eight annas in the rupee. There was a loss in the pearl business, and the share of the loss debitable to Chaturbhuj Pitamberdas & Co. along with some cash drawings came to Rs. 10,064-9-6. This amount was debited to Chaturbhuj Pitamberdas & Co. in the account of the commission agency business in the plaintiffs' books in Bombay on the instructions contained in a letter written to the plaintiffs by the 1st, 4th and 6th defendants, the correct date of which is May 28, 1925, and in another letter by the 7th defendant, also written to the plaintiffs and dated June 24, 1925. The acknowledgment was signed by the original 1st defendant in the plaintiffs' books after the sum of Rs. 10,064-9-6 had been debited according to the instructions of the 1st, 4th and 6th defendants. Thereafter, there was a further loss in the pearl business, and the amount of the loss debitable to Chaturbhuj Pitamberdas & Co. came to Rs. 15,760-1-6. This sum was also debited to the firm of Chaturbhuj Pitamberdas & Co. in the commission agency account in the plaintiffs' books in Bombay under the instructions of the 1st, 4th and 6th defendants conveyed to the plaintiffs by a letter, the correct date of which is June 3, 1926. A sum of Rs. 20 was paid to the plaintiffs on or about February 27, 1928, and after debiting interest at six per cent, and other items of expense and some cash drawings to Chaturbhuj Pitamberdas & Co. and after crediting them with their share of the outstandings recovered in the pearl business, a sum of Rs. 29,984-12-0 was found due and payable to the plaintiffs at the foot of the account on March 22, 1928. Plaintiffs have filed the suit to recover this sum from the defendants jointly and severally, and it is added in parenthesis in the prayer of the plaint that the 2nd, 3rd and 5th defendants are liable "only to the extent of their respective interests in the respective properties of their respective joint family firms."

3. Different written statements have been filed on behalf of the defendants. The original 1st defendant and the 4th and 6th defendants contend that the acknowledgment is not valid and binding on the firm of Chaturbhuj Pitamberdas & Co. as the plaintiffs admitted to the 6th and 7th defendants on or before February 27, 1928, in Bombay that the accounts had not been adjusted, and that they would not make a claim against the firm until the final disposal of another suit, viz., Suit No. 2260, of 1927, and that therefore this suit is premature. The sum of Rs. 20 was according to them paid expressly at the plaintiffs' request to save the bar of limitation. They further say that they ; and the 7th defendant alone were partners in the firm of Chaturbhuj Pitamberdas & Co., and that some of the partners of the plaintiffs' firm did business in pearls in partnership with the 1st, 4th and 6th defendants. They do not admit the correctness of the

account, and say that the acknowledgment was signed by the original 1st defendant, and certain letters were written to the plaintiffs, on false representations made by the plaintiffs. They, therefore, counterclaim for the taking of the accounts of the commission agency and the pearl business. The 2nd, 3rd and 5th defendants deny that they are members of the respective joint families alleged by the plaintiffs, or that they were in any way concerned with the business of Chaturbhuj Pitamberdas & Co. either in commission agency or in pearls. The 7th defendant denies that he was a partner in the pearl business. He also denies the validity of the acknowledgment, and says that on correct accounts being taken of the commission agency dealings between the parties nothing will be found due to the plaintiffs.

4. None of the defendants are at present in Bombay, and an application was made on behalf of all of them to have the suit adjourned. The application was opposed, and rejected, as the suit is an old one, and the negotiations for settlement between the parties had long since broken off. The next day counsel appeared for the 2nd, 3rd, 5th and 7th defendants only, and the suit was partly heard, but was adjourned for a week, as defendants' attorney was ill, and the account books of Chaturbhuj Pitamberdas & Co. which, as the Court was then informed were in the office of the attorney, could not be produced. At the adjourned hearing counsel has appeared for the 2nd, 3rd and 5th defendants only, and with regard to the production of the books the attorneys appearing only for the 2nd, 3rd and 5th defendants wrote a letter to the plaintiffs' attorneys that these books were no longer with them. A large number of issues was raised, some of which are unnecessary. Issues Nos. 9 and 17 do not arise, as counsel is not appearing either for the 7th defendant or for defendants 1 a and 1 b. There was correspondence between the attorneys after the death of the original 1st defendant in 1929 about his heirs and legal representatives. On the plaintiffs learning that he left only two sons, namely, the 2nd and 3rd defendants, they were impleaded as his heirs and legal representatives as 1 a and 1 b defendants. Subsequently, the defendants' attorneys informed the plaintiffs that there were two other sons of the original 1st defendant, and at one time the plaintiffs were willing to bring them on the record, but have not done so. It was argued by counsel for the 2nd, 3rd and 5th defendants that the suit had abated by reason of the other heirs not having been impleaded, and he contended also that the suit had abated not only as against the original deceased 1st defendant, but as a whole. It has, however, been held that it is sufficient compliance with Order XXII, Rule 4, of the Civil Procedure Code, if one legal representative alone is brought on the record, and that it is not necessary that all of them should be impleaded : see Jekrabi v. Bismillabi ; see also *Muhammad Zafaryab Khan v. Abdul Razzaq Khan*[1] If one or more of the legal representatives is or are unknown, it is sufficient if the known legal representative is impleaded. Even if the suit be deemed to have abated for that reason, though I hold that it has not, it can only be deemed to have abated against the original 1st defendant and not as a whole. That is clear from the words of Order XXII, Rule 4 (3).

5. There is one other preliminary issue which I should like to deal with before' dealing with the main issue, viz., whether the suit is maintainable on the ground of multifariousness. It was argued by counsel for the 2nd, 3rd and 5th defendants that there was a misjoinder of defendants and causes of action, as the suit is for an amalgamated liability in respect of the commission agency business as well as the pearl business of Chaturbhuj Pitamberdas & Co., and the 7th defendant was not a partner in the pearl business. Plaintiffs' counsel referred to certain letters written to them by the 1st, 4th and 6th defendants arid also by the 7th defendant, by virtue of which the plaintiffs agreed to release the partners in the pearl business and to look to the partners in the commission agency business of Chaturbhuj Pitamberdas & Co. for their joint claim in respect of both. That, however, is not the case made out by the plaintiffs in paragraph 3 of the plaint, for it is there distinctly alleged that the plaintiffs arid the defendants carried on business in partnership at Duboi in pearls. That assumes that the 7th defendant was a partner also in the pearl business of Chaturbhuj Pitamberdas & Co. I will deal with the question of the 7th defendant's partnership later, because if it is held that he was a partner, the suit cannot be said to be bad on the ground of multifariousness.

6. The original 1st defendant and the 4th, 6th and 7th defendants were the principal defendants in the suit. The original 1st defendant is dead, and the other 6th and 7th defendants have not appeared at the hearing. The only defendants who have been represented by counsel are the 2nd, 3rd and 5th defendants, and they too are not at present in Bombay. I have already held that the acknowledgment was signed by the 1st defendant on behalf of Chaturbhuj Pitamberdas & Co., and as there is nothing before me to show that it was signed on any alleged false representation made by the plaintiffs to him, I hold that the acknowledgment is binding upon the firm of Chaturbhuj Pitamberdas & Co. I also hold that the two sums of Rs. 10,064-9-6 and Rs. 15,760-1-6 have been rightly debited by the plaintiffs to Chaturbhuj Pitamberdas & Co., and that they have also rightly credited that firm with their share of the outstandings in the pearl business which have been recovered by the plaintiffs. There is nothing to show that the plaintiffs have not accounted for all the outstandings of the pearl business recovered by them. The account kept by the plaintiffs in their books is in order, and the amount has been carried forward from year to year with the addition of the interest due thereon at six per cent, per annum.

7. With regard to the 7th defendant it must be stated that his name has not been clearly mentioned as a partner in the partnership agreement of Gordhandas Dwarkadas Chaturbhujdas Pitamberdas, the pearl partnership, but as I have said before, the names of the 6th and 7th defendants, two of the partners of Chaturbhuj Pitamberdas & Co., are mentioned in the second clause as managers, and it is Chaturbhuj Pitamberdas & Co, who .are, according to Clause 10, to have eight annas' share in that business. There is further his letter dated June 24, 1925, in which he asks the plaintiffs to credit a certain sum to "our account", meaning the account of the pearl business, and

to debit the half share of that sum as loss to Chaturbhuj Pitamberdas & Co, The letter is not very clearly worded, but it seems to have been signed by him as a partner in the pearl business, as otherwise there was no reason for him to write when the other defendants who were admittedly partners had already written a separate letter to the plaintiffs. According to the 1st defendant's written statement, the 7th defendant was not a partner in the pearl business, but he admits that it wag the 6th and 7th defendants who met the plaintiffs in Bombay in February, 1928, when the plaintiffs admitted to them that the accounts both of the commission agency and the pearl business had not been made up. There would be no need for such an admission to the 7th defendant, if he was not interested in both the businesses. It is true that the letter of demand of August 27, 1927, is not addressed to the 7th defendant, but that seems to me to be an inadvertent omission, as the amount claimed includes the liability in the commission agency business in which the 7th defendant was admittedly a partner. In any event, the 7th defendant is not here to meet the allegations made against him, and I hold that he is liable as a partner not only in the commission agency business but also in the pearl business of Chaturbhuj Pitamberdas & Co. I also hold that the suit is not bad on the ground of multifariousness, and is maintainable as framed.

8. The most important question, however, in the suit relates to the liability of the 2nd, 3rd and 5th defendants who contend that they are not members of the respective joint families alleged in the plaint, and were in no way concerned with the business carried on by the original 1st defendant and the 4th, 6th and 7th defendants. The parties being Hindus, there is a presumption that they are members of a joint and undivided Hindu family which is the normal state of a Hindu family, and this presumption is strengthened when the relationship of the members is that of father and son. There can be no dispute that the 2nd and 3rd defendants are the sons of the original 1st defendant. That is admitted in the correspondence which passed between the attorneys when defendants 1 a and 1 b were brought on the record as the heirs and legal representatives of the original 1st defendant. Govindram Tawalram, the munim of the plaintiffs, who gave evidence, has stated that the 5th defendant is the son of the 4th defendant, and his testimony on that point has not been contradicted. The 2nd, 3rd and 5th defendants have not alleged any partition or separation, and therefore the onus is on them to show that they are not members of their respective joint families ; that onus is not discharged by merely alleging that they are not. There is, however, no presumption in Hindu law that a business carried on by a member of a joint family is joint family business, nor that all the other coparceners are the partners of that member in that business : see *Vadilal v. Shah Khushal*[2] There is also no presumption that a business carried on by a member of a joint family in partnership with a stranger is joint family business : *Mirza Mai Bhagwan Das v. Rameshar*[3] The trend of the earlier decisions was that a father or any other manager of a joint family could not impose upon the adult members of the family the risk

and liability of a new business, unless that business was started or carried on with their express or implied consent, or the business was adopted by all the members as an asset of the joint family, or was carried on for their common benefit. Thereafter it was held in *Annabhat Shankarbhat v. Shivappa Dundappa*[4] and also in Shankar v. Premchand that if a business was newly started by the father as the manager of the family, it would be none the less ancestral, and the father's debt for such business was binding on his issue to the extent of their shares in the joint family property. In my opinion, these decisions must be deemed to have been overruled by the Privy Council in Benares Bank, Ltd. v. Hari Narain , following *Sanyasi Charan Mandal v. Krishnadhan Banerji*[5] It was there held that the father or any other manager of the joint family, both under the Mitakshara and the Dayabhaga, had no authority to impose the risk and liabilities of a new business started by him upon the minor coparceners. Equally he could not impose any such liability upon the adult members of the joint family. The separate property of any other member of the -family is not liable for the debts of such business, unless the adult member sought to be made liable has given his consent, express or implied, to the carrying on of that business, or the transaction out of which the liability arose has been subsequently ratified.

9. That being the state of the law on the subject, what is the evidence in this case ? It is not alleged that the business of Chaturbhuj Pitamberdas & Co. was an ancestral business. It has not been proved that in the business of that firm, both as commission agents and in pearls, the original 1st defendant for himself and on behalf of the 2nd and 3rd defendants and the 4th defendant on behalf of himself and his son the 5th defendant joined the 6th and 7th defendants as partners on behalf of their respective joint families. There is nothing in the evidence to show whether the 2nd, 3rd and 5th defendants were minors or adults when these two businesses were started, or, if they were adults, to show that they were consenting parties to it, and had adopted it as their own. There is no express consent alleged, and no consent can be implied from their conduct in relation to the business. It has not even been suggested that they took part in the business. There is no evidence that the plaintiffs made any reasonable inquiries or any inquiries at all as to the character of the business alleged to have been carried on by the original 1st defendant and the 2nd and 3rd defendants and the 4th and 5th defendants, and the 6th and 7th defendants. Plaintiffs have for some reason or the other not even called a single partner of their firm, and their munim Govindram only said that he once saw the 2nd and 3rd defendants in the house of the 1st defendant when he went there to dine, and that when the original 1st defendant came to Bombay to sell pearls, his son, the 3rd defendant, used to accompany him. This, in my opinion, is not sufficient evidence to establish a joint family business. It is true that the 2nd, 3rd and 5th defendants have not appeared, but it was for the plaintiffs to show that the business carried on by Chaturbhuj Pitamberdas & Co. was joint family business or a business binding upon the 2nd, 3rd and 5th defendants. It was for the plaintiffs to have shown that the business

was carried on with the consent of the 2nd, 3rd and 5th defendants, or was carried on for their benefit. No such allegation has been made and no evidence adduced. Even in the notice of demand of August 27, 1927, the names of the 2nd, 3rd and 5th defendants have not been mentioned as members of their joint families, or as being interested in the two businesses, in respect of the liability of which the demand was made for payment.

10. Plaintiffs' counsel next contended that even if the 2nd, 3rd and 5th defendants were not in any way concerned with the two businesses carried on by the original 1st defendant and the 4th, 6th and 7th defendants in the name of Chaturbhuj Pitamberdas & Co., the plaintiffs would still be entitled in this suit to a decree against the 2nd, 3rd and 5th defendants for the amount claimed by them, limited to the interest of the 2nd, 3rd and 5th defendants in their respective joint family properties, as the sons of their respective fathers. The liability to pay those debts arises by virtue of the pious and moral duty of a son under the Hindu law to pay his father's debts which are not tainted with illegality or immorality. It is a duty which arises even in the father's lifetime, and is incumbent not only on the son and the grandson but also on the great-grandson, and can be enforced : *Masit Ullah v. Damodar Prasad*[6] Counsel for the 2nd, 3rd and 5th defendants pointed out that there was no alternative case pleaded by the plaintiffs to the effect that the defendants were in any event liable on the ground which I have just mentioned. He also pointed out that no amendment had been asked for, and that in the absence of such an amendment the Court could not go into the question of the sons' liability under Hindu law as sons. I must admit that in the first instance I was prepared to hold that this alternative case could not be argued without an amendment, but before completing my judgment and passing my final orders plaintiffs' counsel drew my attention to certain other authorities bearing directly on the point, and I allowed it to be. further argued before the final judgment was delivered. The last issue raised by counsel is, in my opinion, sufficiently wide to cover the liability of the sons as such.

11. It has now been well settled that as long as a Hindu father remains undivided, a creditor can proceed against the interest of the son in the joint family property for the personal debts of the father which had not been contracted for an illegal or immoral purpose, A creditor can during the father's lifetime enforce his claim by a decree against the entire family property. Plaintiffs' counsel relied on the full bench decision in *Ramasami Nadan v. Ulaganatha Goundan*[7], in which it was held that a creditor can prosecute his claim against the sons in the same suit filed against the father and obtain a decree making the sons' interests in the family property liable for the father's debts. It appears that the creditor had filed two suits against the father as the executant of certain bonds, and sought to make the sons also liable on the ground that the bonds were executed by the father for the benefit of the family. The father died in 1893, but his death not having been notified to the Court, a decree was passed against him, and the suit against the sons was dismissed. The plaintiff-creditor then brought a fresh suit against the sons, and the question

was referred to the Full Bench, viz., whether the plaintiff could not have in the previous two suits prosecuted his claim against the sons, and obtained a decree against them making their interests in the joint family property liable for their father's debt. The question was answered by the Full Bench in the affirmative. A subsequent suit, however, can be maintained against the sons, if the sons have not been impleaded in the previous suit against the father, in respect of the same debt for which the father was held liable : see *Dharam Singh v. Angan Lal*[8] The Full Bench decision of Ramasami Nadan v. Ulaganatha Goundan was referred to with approval by the Privy Council in *Brij Narain v. Mangla Prasad*[9] in which it was held that if the manager of the joint family is the father and the other members of the family are his sons, the father might, by incurring a debt, so long as it was not for an illegal or immoral purpose, lay the whole estate open to be taken in execution proceedings upon a decree for payment of that debt. The creditor can realize his claim out of the entire estate. In *Mussamat Nanomi Babuasin v. Modun Mohun*[10], Lord Hobhouse observed as follows (p. 17) :~ Destructive as it may be of the principle of independent coparcenary rights in the sons, the decisions have for some time established the principle that the sons cannot set up their rights against their father's alienation for art antecedent debt, or against his creditors' remedies for their debts, if not tainted with immorality. On this important question of the liability of the joint estate their Lordships think that there is now no conflict of authority.The liability of the son is, however, not a personal liability. It is limited to sons who are joint with their father, and it is limited only to their interests in the coparcenary property. It subsists so long as the liability of the father subsists. It would cease on the debt becoming time-barred against the father. It is not a joint or a joint and several liability in the sense in which those terms are understood in English law. At the same time, a suit cannot be filed against the son alone. The liability arises from the obligations of religion and piety imposed upon the son under the Mitakshara law to discharge the father's debts which are not illegal or immoral, Coutts Trotter C. J. pointed out in *Achutaramayya v. Ratnajee Bhootaji*[11]:-the whole doctrine of the pious obligation is itself a relic of antiquity based originally on a religious and not a legal conception but it has been controlled and moulded into shape by a series of decisions which, in my opinion, make it a working rule which in its actual application is neither inconvenient nor unjust.The judgment in that suit, viz., that a trade is none the less ancestral because it was started only by the father must now be deemed to have been overruled by the Privy Council in Benares Bank, Ltd. v. Hari Narain , to which I have referred before, but it is still an authority for the proposition that the commercial debts of the father which are valid and binding on the father are debts to which the pious obligation of the son extends.

12. Since, therefore, it is competent for a creditor to bring a suit both against the father and the sons in the father's lifetime for payment of the father's personal debts, the question of the liability of the 2nd, 3rd and 5th defendants as the sons of their respective fathers still remains to be

considered. I have already held that they are not liable for their father's debts on the ground that the debts were incurred in a business which was not binding on them. The liability now sought to be imposed upon them is their liability as sons under the Hindu law. The question is one of law or of mixed law and fact, and the point is whether an amendment of the plaint is strictly necessary. In my opinion it is not. It follows from the Full Bench decision in Ramasami Nadan v. Ulaganatha Goundan that a creditor can prosecute his claim against the sons, as sons, although it was alleged that the moneys were borrowed for the purposes of the family. It has also been held in *Lalta Prasad v. Gajadhar Shukul*[12] that in such a case no amendment is necessary, and the learned Judge stated at p. 296 that he was not prepared to hold that because of the absence of an express allegation in the plaint that the sons were under a pious obligation to pay their father's debts the sons had in any way been prejudiced. This judgment is also referred to with approval by Sir Dinshah Mulla in his Commentary on Order VI, Rule 2, of the Civil Procedure Code, 10th Edn., p. 525. My attention was, however, drawn by counsel for the 2nd, 3rd and 5th defendants to Benares Bank, Ltd. v. Hari Narain . In that case before the Privy Council a further point was raised for the first time on behalf of the Benares Bank, Ltd., that the Bank was at least entitled to a decree for the sale of the sons' interests, the sons being minors, in execution. But the claim was negatived on the ground that the point had not been taken in the Courts below, and might involve questions of fact which had not till then been tried. The relationship of father and sons between the original 1st defendant and the 2nd and 3rd defendants and the 4th and 5th defendants has been established, as I have stated before. The nature of the debt is also indicated clearly in the plaint. But it is still open to the 2nd, 3rd and 5th defendants to prove that the debt was either time-barred or was illegal or immoral. It is also open to them to show that the joint families did not consist merely of father and sons or son but of other members also : see *Official Liquidator U. P. Oil Mills Company, Limited v. Jamna Prasad*[13] The fundamental rule is that a Hindu son is not under any liability for payment of his father's debts which are of a character that fall within one or other of the exceptions recognised by the ancient Smritis. The limitation of the son's liability for the father's debt is based upon the text which says that the sons are not compellable to pay "sums due by their father for spirituous liquors, for losses at play, for promises made without any consideration, or under the influence of lust or of wrath, or sums for which he is a surety or for an unpaid fine or an unpaid toll" or for any other debt which comes under the expression 'avyavaharika'. That expression was translated by Colebrooke as meaning a debt incurred "for a cause repugnant to good morals", but since the judgment in *Girdharee Lall v. Kantoo Lall, Muddun Thakoor v. Kantoo Lall*[14] the translation of that term has now been crystallised into "illegal and immoral". There are various decisions in Bombay and in Calcutta as to what debts come under that category or are excluded from it, but it is not necessary to deal with them for the purposes of the suit. It has, however, been held that it is a son's pious duty to pay out of ancestral property the debts of his father on account of a trade liability even though the trade might have

been started by the father : see Shankar v. Premchand . I have also referred to the judgment in Achutaramayya v. Ratnajee Bhootaji where the Chief Justice of Madras pointed out that a father's commercial debts were not illegal or immoral.

13. It is, as I have said before, open to the 2nd, 3rd and 5th defendants to put forward their defences or any of them, viz., that the debt is time-barred, or illegal, or immoral, or that there are other members of their respective joint families besides the father and sons. Plaintiffs' counsel argued that as defendants had adopted the written statement of their fathers, all admissions made by their fathers are also binding upon them. Nevertheless, it is but fair that before I pass a final decree these defendants should have an opportunity to put forward any of the defences that they may wish to urge before the Court.

14. I accordingly adjourn this suit as against the 2nd, 3rd and 5th defendants till September 24 next, to be on board as a part heard and subject to a part heard case.

15. There will be, therefore, for the present a decree only as against defendants 1 a and 1 b and the 4th, 6th and 7th defendants for Rs. 29,98442-0 with interest thereon at six per cent, per annum from March 22, 1928, till judgment, costs of the suit and interest on judgment at six per cent, per annum till payment, the decretal amount as against defendants 1 a and 1b to be payable out of the assets of the deceased original 1st defendant.

16. Counterclaim of the 1st, 4th and 6th defendants dismissed with costs.

17. Nov. 20. After delivering my judgment on August 16, 1934, the suit was adjourned till September 24 for further hearing as against the 2nd, 3rd and 5th defendants in case these defendants wanted to raise the defences or any of them which I have mentioned in my judgment. The suit came on for hearing again on November 20, when the 2nd, 3rd and 5th defendants were absent, and no one appeared on their behalf.

18. Accordingly on issue No. 19, which stood over, there will be a decree for the plaintiffs in the same terms as the decree which I passed on August 16 last against defendants 1 a and 1 b and 4th, 6th and 7th defendants, the decree against the 2nd and 3rd defendants being limited to their respective interests in the coparcenary property if any of the joint family of which the 2nd and 3rd defendants and the original 1st defendant were members, and the decree against the 5th defendant being limited to the coparcenary property if any of the joint family of which he and the 4th defendant are or were members.

Cases Referred.

1(1928) I.L.R. 50 All. 857
2(1902) I.L.R. 27 Bom. 157, s.c. 4 Bom. L.R. 968

3(1929) I.L.R. 51 All. 827
4(1928) I.L.R. 52 Bom. 376, s.c. 30 Bom. L.R. 539
5(1922) L.R. 49 I. A. 108, s.c. 24 Bom. L.R. 700
6(1926) L.R. 53 I. A. 204, s.c. 28 Bom. L.R. 1402
7(1898) I.L.R. 22 Mad. 49
8(1899) I.L.R. 21 All. 301
9(1923) 26 Bom. L.R. 500, P.C
10(1885) L.R. 13 I. A. 1
11(1925) I.L.R. 49 Mad. 211 (p. 213)
12(1932) I.L.R. 55 All. 283
13(1933) I.L.R. 55 All. 417
14(1874) L.R. 1 I. A. 321, in 1874