

## **NAGPUR HIGH COURT**

Pandurang Vithoba Dahake

Vs

Pandurang Ramchandra Gorle

(Puranik, J.)

07.08.1946

### **ORDER**

#### **Puranik, J.**

1. The plaintiff applicant sued the defendants for recovery of his debt advanced on pro-notes executed by their mother, who was their guardian, as well as the manager of the joint Hindu family consisting of herself and her minor sons. The defendants denied the execution of the pro-notes and legal necessity for the same and stated that the suit could not be decreed against them. The Court held that the pro-notes were executed by the mother of the minors, who was their guardian, and that the loan was for legal necessity, but dismissed the suit holding that the plaintiff was not entitled to a decree against the minor defendants on the basis of the pro-notes executed by their guardian. The plaintiff comes up in revision against this decision.

2. The Court below having found that the pro-notes were executed by the defendants' mother for consideration, which was justified by legal necessity, fell into an error in making a distinction between a guardian and a manager of the family. The Court held in para. 5 of its judgment that under Hindu law the mother is not a guardian of the joint family property of her minor sons, though she would be so of their separate property. The Court further found that the mother was the manager de facto of the joint family property, but stated that the mother though manager de facto of the joint family property could not be regarded as the manager of the joint family property under law as she was not a male coparcener of the family. Having thus ruled out the managership of the mother with respect to joint family property the Court came to the conclusion that the pro-notes executed by her were not binding on the minor sons and no decree could be obtained. The Court further went on drawing a nice distinction between a suit based on a pro-note and a suit based on a loan and stated in its judgment that the present suit was not a suit for recovery of a loan but based on pro-notes and therefore no decree could be passed against the minors or their property. The entire decision of the Court below is based on a misconception of the law governing such transactions and the right of the manager of a joint Hindu family to bind the estate of a minor by incurring loans for legal necessity.

3. An attempt was made before me on behalf of the minor defendants to show that the finding regarding legal necessity was not justified in the circumstances of the case. I have read the evidence in the case, and I have not the least doubt in holding that the Court was justified in coming to the conclusion that the consideration of the pro-notes was for legal necessity. There is evidence on record to prove that the first pro-note dated 7-4-1942 was executed by the mother of the defendants for cotton seed advance required for sowing purposes and for the purchase of bullocks and that the second pro-note was executed on 10-5-1943 on receiving the consideration of 12 maunds of Juar given for the maintenance of the family. The evidence on record establishes that the family consisted of the two minors and the mother, and it was for the maintenance of these minors and for carrying on the cultivation which belonged to the minors that the consideration was received and the pro-notes executed. Legal necessity is thus established. The suit is for recovery of the loan evidenced by these pro-notes and the loan was incurred for legal necessity by the mother of the two minor defendants, who was managing the family property on their behalf. The loan was thus incurred by the manager of the family.

4. It is not correct to say that the mother could not be the manager of a joint Hindu family. In *Kesheo Bharati v. Jagannath*<sup>1</sup>, and *Hanooman Pershad v. Mt. Babooee Munraj Koonweree*<sup>2</sup>, the mother was held to be the manager de facto and she could incur debts which were for necessity, and they were held binding on the minors. Even the alienations made by such mothers were held to be binding if legal necessity was established. At p. 10 of *Kesheo Bharati v. Jagannath*, A.I.R. 1926 Nag. 81 Hallifax A.J.C. observed that any adult member of the family, male or female, is entitled to be the manager of the family.

5. The minors' mother as guardian and manager of the family was actually managing the property on behalf of the minors and incurred this loan in dispute for purposes binding on the family. In *Sadasheo Balaji v. Shankar Govind*<sup>3</sup>, it was laid down as follows: The rule that a minor is not personally liable on the contract entered into on his behalf by his guardian is subject to two exceptions:

(1) Where the contract is for necessities supplied to or on behalf of the minor or money advanced for such supplies; and (2) when the liability is such to which the minor is liable under the personal law to which he is subject. In these two cases a decree can be passed against the estate of the minor.

6. In the present case it is proved that the loan was for legal necessity and therefore a decree could be passed against the estate of the minor, as the same is liable for such a loan under Hindu law.

7. The Judge of the Court below was wrong in not passing a decree for the amount due against the estate of the minors. I therefore set aside the decision of the Court below and pass a decree for the amount claimed against the interest of the minors in the family property. The application

for revision is allowed with costs. Counsel's fee L 15.

**Petition allowed.**

<sup>1</sup> A.I.R. 1926 Nag. 81

<sup>3</sup> A.I.R. 1938 Nag. 68

<sup>2</sup>(57) 6 M.I.A. 393