

erection of a wall the complainant had been deprived of the possession of the property and the passage to his property. The Magistrate on revision has held that the accused had taken the law into their own hands and had blocked the passage by constructing a wall on the site, the ownership of which was in dispute and he directed the accused persons to establish their title to the land in dispute in civil courts. If it be the accused's bone fide plea that they were the owners of the site in dispute and constructed a wall thereon, then it cannot be said that they had committed any offence under section 447, Indian Penal Code. Before a conviction under section 447, Indian Penal Code, is maintained, it must be held that the accused had not occupied the land under a bona fide claim of right and that the real and dominant intention of the accused was to insult or intimidate or annoy the complainant when the accused entered into the property. In the present case it is clear that there is a bona fide dispute regarding the title to the land in dispute and in those circumstances it cannot be said that any offence under section 447, Indian Penal Code, has been committed. I, therefore, accept this petition and set aside and quash the order of the Panchayat, dated the 30th of March, 1955 and the order of the Magistrate 1st Class, Rupar, dated the 18th of July, 1955.

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and another  
v.  
Shri Rana  
Partap  
Bishan Narain,  
J.

#### APPELLATE CIVIL

*Before Kapur and Passey, JJ.*

VISHAN SINGH AND OTHERS,—*Plaintiffs-Appellants*

*v.*

NARANJAN SINGH AND OTHERS,—*Defendants-Respondents*

**Regular First Appeal No: 123 of 1951.**

*Hindu Law—Joint Family—Money borrowed by Karta for running a shop for the benefit of the Joint Hindu*

1956

Nov. 16th

*Family—Other co-parceners whether personally liable for the debt.*

*Held*, that other co-parceners whether they be adults or minors are liable to the extent of their interest in the joint family property. They are not liable personally unless in the case of adult co-parceners, the contract sued upon, though purporting to have been entered into by the manager alone, is in reality one to which they can be treated as being contracting parties by reason of their conduct, or one which they have subsequently ratified.

*Mam Raj v. Sher Singh* (1), *Mutsaddi Lal v. Sakhir Chand* (2) and *Shiv Charan Das v. Hari Ram* (3) followed; *Chalamayya v. Varadayya* (4), *Bishambhar Nath v. Sheo Narain* (5) and *Bishamber Nath v. Fateh Lal* (6), relied upon; *Ghulam Muhammad v. Sohna Mal* (7), *Bhagwant Singh and Co. v. Bakhshi Ram* (8), *Somasundaram Chettiar v. Kanoo Chettiar* (9), *Dayal v. Baldeo Prasad* (10) and *Benaras Bank v. Krishna Das* (11) distinguished.

*Regular First Appeal from the decree of the Court of Shri Sham Lal, Senior Sub-Judge, Kangra, at Dharamsala, dated the 23rd February, 1951, granting the plaintiffs a decree for Rs. 9,160 against the defendants with costs and further ordering that the defendants are not personally liable but are only liable to the extent of the property of the Firm Mehar Chand-Bhana Ram which may be found in their hands.*

D. R. MANCHANDA, for Appellants.

NEMO, for Respondents.

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- (1) A.I.R. 1938 Lah. 693
  - (2) I.L.R. 17 Lah. 311
  - (3) I.L.R. 17 Lah. 395
  - (4) I.L.R. 22 Mad. 166
  - (5) I.L.R. 29 All. 166
  - (6) I.L.R. 29 All. 176
  - (7) A.I.R. 1927 Lah. 385
  - (8) A.I.R. 1933 Lah. 494
  - (9) A.I.R. 1929 Mad. 573
  - (10) A.I.R. 1928 All. 491
  - (11) A.I.R. 1932 Patna 206

## JUDGMENT

Kapur, J.—This appeal is brought by the plaintiffs against a decree of Mr. Sham Lal, Senior Sub-Judge, Dharamsala, decreeing the plaintiffs' suit against the defendants and holding that their liability is not personal but is only to the extent of the property of the firm in their hands. Both parties belonged to Bannu. On the 1st December, 1946, a pronote was executed by Messrs Mehr Chand Bhana Ram through Bhagwan Singh Gandh in favour of Babu Bishan Singh-Santokh Singh Gulati for a sum of Rs. 8,000 with interest at eight annas per cent per mensem. When Bhagwan Singh was coming to India from Bannu he was killed on the way and therefore the defendants in the present case are Naranjan Singh brother and Mohindar Singh and Kartar Singh minor sons of Bhagwan Singh through their uncle Naranjan Singh. Mr. Manchanda has told us that of them Mohindar Singh has now become a major and Kartar Singh is still a minor.

Kapur, J.

In the plaint it was alleged that Messrs Mehr Chand Bhana Ram, General Merchants, were carrying on business at Bannu. Its proprietor and *karinda* was Bhagwan Singh, the father of defendants 2 and 3 and real brother of defendant 1, and that the money was borrowed for the purpose of running the shop and for the benefit of joint-Hindu family. It was prayed that a decree be passed in favour of the plaintiffs against the defendants. A written statement was filed by Naranjan Singh wherein he denied that Bhagwan Singh was a *karta* or had any authority to bind the other members of the family, but he appeared in Court and admitted that the document had been executed by Bhagwan Singh, and the Judge had held that Bhagwan Singh was acting as the

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The sole point before us is as to the personal liability of the members of the Joint-Hindu Family, in circumstances such as these. Of the three respondents those who were minors at the time when the document was executed or when the suit was brought cannot be held to be personally liable for the debts of the firm, and there is no authority which the researches of counsel have helped him in bringing out, nor do we know of any such authority where minor members of a family have been held liable for a debt incurred by a father even though it may be for a Joint-Family business.

Counsel then submits that Naranjan Singh is, in any case, personally liable because he was taking part in the partnership business. In support he relies upon the statements of certain witnesses, the first one amongst whom is Autar Singh, P.W. 5, who is a son of the plaintiff Bishan Singh. He states that Naranjan Singh, Bhagwan Singh and Dalip Singh were living together and they formed a Joint-Hindu Family and their dealings were joint and Naranjan Singh and Bhagwan Singh were working in the shop and Dalip Singh was a student and he himself was a manager of their shop, i.e., of the shop of Bhagwan Singh and his brothers. The plaintiff Bishan Singh himself as P. W. 6, has stated that Bhagwan Singh was the elder brother of Naranjan Singh and Dalip Singh. They had joint dealings. They lived together and carried on business jointly. On these facts counsel contends that the liability of Naranjan Singh is personal, apart from his liability as a member of the Joint-Hindu Family, and he relies upon certain judgments of the Madras, Allahabad and Patna High Courts. The law as to the liability of members of a Joint-Family in a trading firm

has been stated in Mulla's Partnership Act at page 314 in the following words—

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“Further, the managing member of the family can pledge the credit or property of the family for the ordinary purposes of that business; but the other co-parceners are liable to the extent of their interest in the family property only, unless the contract relied on, though purporting to have been entered into by the manager only, is in reality one to which the other co-parceners are actual contracting parties or one which they have subsequently ratified”.

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and others  
———  
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In Mayne on Hindu Law in note (g<sup>1</sup>) at page 381, it is stated that the fact that a junior member works at the shop by itself is not such conduct as will cause him to be treated as one of the contracting parties, and reliance is placed upon certain judgments of the Lahore High Court, *Mam Raj v. Sher Singh* (1), and *Mutsaddi Lal v. Sakhir Chand* (2), where it was held that other co-parceners whether they be adults or minors are liable to the extent of their interest in the joint family property. They are not liable personally unless in the case of adult co-parceners, the contract sued upon, though purporting to have been entered into by the manager alone, is in reality one to which they can be treated as being contracting parties by reason of their conduct, or one which they have subsequently ratified. The same was held in *Shiv Charan Das v. Hari Ram* (3), another Division Bench Judgment. The passage in Mulla on Partnership at page 314 is supported

(1) A.I.R. 1938 Lah. 674

(2) I.L.R. 17 Lah. 311

(3) I.L.R. 17 Lah. 395

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by the judgments of three High Courts in *Chalamayya v. Varadayya* (1), *Bishambhar Nath v. Sheo Narain* (2), *Bishambhar Nath v. Fateh Lal* (3), and *Samalbai v. Someshvar* (4). This is also in consonance with the principles of Hindu Law by which the liability of a co-parcener for a debt incurred by the *karta* extends only to the joint Hindu family property; see Mulla's Hindu Law page 360.

Counsel, however, relies upon certain judgments which, he submits, support the contention which he has raised before us. He first of all relies upon a judgment of the Lahore High Court in *Ghulam Muhammad v. Sohna Mal* (5). That was a case in which there were two partners of a firm who were brothers, and it was held that they were equally entitled to participate in the management of the business and either of them could give a discharge and if a younger brother had given a discharge it was good and binding on the partnership. This is a case which really was decided in accordance with section 251 of the Contract Act which applies to contractual firms and not to joint family firms and in section 5 of the Partnership Act the difference in law relating to these two kinds of partnerships has been pointed out. It is there expressly provided that the members of a Hindu undivided family carrying on family business as such are not partners in such business.

The next case relied upon by counsel for the appellant is another Lahore case, *Bhagwan Singh and Co., v. Bakhshi Ram* (6), but in that case no question of personal liability was raised. All that

(1) I.L.R. 22 Mad. 166

(2) I.L.R. 29 All. 166

(3) I.L.R. 29 All. 176

(4) I.L.R. 5 Bom 38

(5) A.I.R. 1927 Lah. 385

(6) A.I.R. 1933 Lah. 494

was decided was that if there is a promissory note executed by a *karta* and the liability of members appears on the face of it, then it is not open to the other members of the family to plead that because their names were not on the promissory note they are not liable. In this case, as I have said, there was no question of personal liability raised and therefore, this case also does not help the appellants. But he strongly relies upon two judgments, one of the Madras High Court and the other of the Patna High Court. In the Madras High Court judgment in *Somasundram Chettiar v. Kanoo Chettiar* (1), the question was whether a junior member of a joint family partnership could be declared an insolvent or not. That is a different matter and whether this ruling will be good law after the enactment of section 5 of the Partnership Act or not still remains to be decided. And I may say the same thing about the other Allahabad case, *Debi Dayal v. Baldeo Prasad* (2), and the Patna case *Benares Bank v. Krishna Das* (3). The law, in my opinion, as far as this Court is concerned is what is laid down by the three Division Benches of the Lahore High Court, and I would, therefore, hold that the liability of the defendants is not personal and would, therefore, dismiss the appeal, but as there is no appearance on behalf of the respondents there will be no order as to costs in this Court.

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PASSEY, J.—I agree.

Passey, J,

(1) A.I.R. 1929 Mad. 573

(2) A.I.R. 1928 All. 491

(3) A.I.R. 1932 Pat 206