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July 15.

*Special Appeal No. 167 of 1864.*

DALPATSING, adopted son and heir of RA'NI'  
MANKU'VARBA'I kom BHAKATSING RA'U'L. *Appellant.*  
NA'NA'BHA'I and others, grandsons of  
DHARAMDA'S SA'MBHUDA'S. .... *Respondents.*

*Hindú Law—Debts of Mother—Liability of Son—Minor—Manager—Creditor—Burden of Proof—Issues—Remand.*

*Held* that a Hindú mother, acting as manager of the estate of a minor, has no more authority to alienate or charge that estate than the managing member of an undivided Hindú family.

The High Court, considering that certain material issues should be determined, remanded the case to the District Court, in order that they might be decided, and a new decree passed.

THIS was a special appeal from the decision of C. Walter, District Judge of Khándesh, in Appeal Suit No. 120 of 1863.

The original suit was instituted in the court of the Munsif of Nandurbár, by Nánábhái and others, to recover from the defendant, Dalpatsing, Rs. 5,255-2-6, being Rs. 4,270 principal, and Rs. 985-1-6 interest, on a bond, dated the 11th of Ashvin Shudha, Samvat 1916 (A.D. 1860), executed to their firm by the defendant's adopted mother, Mankúvarbái, since deceased.

Dalpatsing's defence was, that he had separated from his mother ten years before the suit was filed; that he had not received assets, and was not, therefore, liable for her debts; and that the Collector of Khándesh had decided, on a representation made by him as to her incurring debts irregularly, that he, Dalpatsing, or the watan, would not be considered liable for the same.

The Munsif (A'páji Lakshman) laid down the following points for decision:—(1) whether the bond No. 3 is proved; and, if proved, (2) whether Dalpatsing is liable for the debt. And on these issues he found, that the bond No. 3 was proved to have been executed by the deceased Mankúvar to the de-

ceased Dharamdás; that the deceased Mankúvar was living separate from the defendant, Dalpatsing; that when Mankúvar died, her ornaments, to the value of Rs. 385, were taken possession of by Dalpatsing; but that, although she was a person of rank, it was not shown that she had left any other property; that there was no proof recorded in the suit to show on what account the debt sought to be recovered was incurred; that the inám in the possession of the defendant was a service inám, and not liable to the debts of the deceased Mankúvar, who had been declared by the Collector to be personally answerable for her own debts.

The opinion of the Hindú law officer was also to the effect that, as it was not proved why this debt was contracted, it should not be paid out of the proceeds of the inám lands. Under these circumstances, the Munsif decreed that Rs. 385 should be paid by the defendant, whose costs, as well as the remainder of the plaintiff's claim and costs, were directed to be recovered from the estate of the deceased Rání Mankúvar.

The plaintiffs then appealed to the District Judge on the following grounds:—(1) That Dalpatsing being the adopted son of Mankúvar, was according to Hindú law, liable, as a natural son would be, for her debts; (2) that Mankúvar incurred the debts for legal purposes, namely, for the recovery of the watan from confiscation &c.; (3) that, having inherited the watan from Mankúvar, Dalpatsing was liable for her debts.

The following judgment was recorded:—

“The issue for decision is, whether Dalpatsing is liable as a son, and to what extent? The respondent's vakíl urges no objection to the decree. My finding is, that Dalpatsing is liable personally, and not the watan; for I find, from the opinion recorded by the Hindú law officer, that, as adopted son, he is not liable only if the debt has been incurred for bad purposes. Now there are reasons for supposing Mankúvar's conduct not to have been correct. There is the proclamation of the Collector, who, in his position as Political Agent, warned people from trusting her; but I do not think this

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seriously affects the matter. If Dalpatsing, as adopted son, wished to escape the payment of Mankúvar's debt, it was incumbent on him to prove that it was incurred for bad purposes. The onus of proving this was on him; and he has not proved it.

“With regard to the watan, it is alleged, in appeal, that the deceased Mankúvar incurred the debt for legal purposes, namely, the restoration from confiscation, and the maintenance, of the watan; but this has not been proved. Had it been so, it might have been different; but, in the absence of such proof, the Court holds that Mankúvar, as widow of Bhakatsing, could only have a life-estate in the watan, which, therefore, after her death at all events, ceases to be liable for her debts.

“As a son, however, Dalpatsing is liable. The decree of the Munsif is, therefore, amended; and the Court decrees the plaintiff's claim and costs [should be satisfied], not only from property acquired by Dalpatsing from his adopted mother, but from his personal property in general.”

The case was heard before NEWTON and JANA'RDAN VA'ST-DEVJI, JJ.

*Dhirújál Mathurádás*, for the special appellant:—

The deceased Mankuvar had no authority to contract the debt in question, to the prejudice of the defendant, Dalpatsing, who was living separate from his adoptive mother. The *onus probandi*, with reference to the purposes for which the debt was contracted, should have been thrown on the creditor, according to Hindú law.

*Vishnu Moreshtar Kelkar* for the respondent.

NEWTON, J.:—The Court considers that material issues have not been expressly determined in this case, namely: (1) Whether the defendant, Dalpatsing, was a minor, or of age, at the time when the debt which is the subject of the suit was contracted. (2) If he was a minor, whether the deceased Mankúvar was that time acting as manager of his estate.

Even if it be supposed that Dalpatsing was a minor at the date specified, the District Judge will have erred in holding

that it was incumbent on him to prove that the debt was incurred for bad purposes. A Hindú mother, acting as manager of the estate of a minor, has clearly no more authority to alienate or charge that estate, than the managing member of an undivided Hindú family. And with respect to the power of the latter, Sir T. Strange has laid down, that it imports creditors to take notice, whether the family with which they are about to deal or contract, be divided or undivided, and if the latter, at their peril, to see that the transaction be one by which the co-heirs will be concluded." (a)

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This principle has been affirmed by the Court in Special Appeal No. 212 of 1862, *Trimbuk Anunt v. Gopalshet* (b), in accordance with which the *onus probandi* should in this case have been laid on the creditors, the plaintiffs.

The decree of the District Judge is, therefore, reversed, and the case remanded, in order that he may determine the issues above stated; and also the following, namely:—In case of Dalpatsing's minority, did the plaintiff, after reasonable inquiry, believe, in good faith, that the money borrowed by the deceased Mankúvar was *boná fide* borrowed, and intended by her to be expended upon some necessity, or for the benefit or use of the said minor. And we direct a new decree to be passed, and the costs to follow the final decision.

*Appeal allowed.*

(a) 1 H. L. 200.

(b) 1 Bom. H. C. R. 27. See also *Tandaváraya Mudali Valli v. Annál*, 1 Mad. H. C. Rep. 398; and, as illustrating another class of cases, *Bábóji Sakhoji v. Rámshet Pándushet*, *antè*, p. 23.—ED.