

APPELLATE CIVIL.

(60)

Before Mr. Justice Melvill and Mr. Justice West.

GADGEPPA DESAI AMINOR (ORIGINAL DEFENDANT), APPELLANT, v.
 APAJI JIVANRAO (ORIGINAL PLAINTIFF) RESPONDENT.*

1879
 March 20.

Liability of an adopted son or of the estate in his hands for a loan raised by his mother for the benefit of the estate—Legal obligation.

H, a widow who, in default of issue to her husband, was in possession of his *deshgati inam*, borrowed money from the plaintiff on an ordinary bond for the purpose of paying the Government assessment thereon. She subsequently adopted a son (the defendant), and died. The plaintiff sued the son to recover the money from him personally, and also sought to make the *deshgati inam* liable.—Held that the plaintiff could not recover his debt either from the defendant personally or from the *deshgati inam* in his possession. His only remedy was against H's property (if any) in the hands of the defendant.

THIS was a second appeal from the decision of M. H. Scott, Senior Assistant Judge at Kaladgi, in the District of Belgaum, amending the decree of the Subordinate Judge Bijapur.

The appeal was heard in the first instance by Kemball and Pinhey, JJ., on the 6th March 1879.

The principal question argued was whether the *deshgati inam* was liable for the loan obtained by the respondent's adoptive mother for the benefit of the *inam*.

G. N. Nudkarni appeared for the appellant.

Shantaram Narayan, for the respondent, referred to *Bai Kesur v. Bai Ganga*, (1) and submitted that though the High Court held the alienation to be invalid in that case, they ordered the ward to repay the amount of the purchase-money paid to the guardian before setting aside the sale, and directing the alienated property to be made over to the ward. He argued that the principle there laid down was applicable to the present case by analogy, and ought to be followed.

The following are the judgments of the Court:—

KEMBALL, J.—There is now, apparently, no dispute as to the right of the plaintiff to the money which he has claimed, and the real question is, how is the decree, which the lower Courts have given him, to be satisfied.

* Second Appeal, No. 12 of 1879.

(1) 8 Bom. H. C. Rep. 31.

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The facts are shortly these. One Hanmava, a widow, who, in default of issue to her husband, was in possession and enjoyment of *deshgati inam*, borrowed a sum of money from the plaintiff, and executed to him an ordinary bond promising to repay the loan with interest. Subsequently, Hanmava adopted a son, the minor defendant, and shortly after died. This suit was then brought to recover the amount of the loan from the defendant personally, and from the said *deshgati inam*.

Both the lower Courts found, as a fact, that Hanmava borrowed the money for the purpose of paying the *judi* leviable by Government on the estate, the District Court further finding that it was necessary to borrow the money for that purpose, and both held that defendant was not personally liable. The Subordinate Judge, however, decreed that defendant should pay the claim from "Hanmava's property"; and on its being objected, on behalf of the defendant in appeal, among other things, that it should have been determined what property was liable the District Court held that the decree should be satisfied from the said *inam*.

It is, no doubt true that the *inam* was not specifically charged with the loan; but looking at the finding of fact, which is conclusive on the parties here, that the money was borrowed for the purpose of preserving the estate and at a time when Hanmava was in absolute enjoyment of it, and having regard to the circumstance that the minor defendant is the person really benefited by the loan, I fail to see the justice of giving the plaintiff a decree, such as that of the subordinate Judge, which must obviously be futile, and of relieving the defendant of a burden which, on principles of equity, he ought to bear. The plaintiff has not appealed against the decrees absolving the defendant from personal liability. It being, however, right and equitable, in my view, that defendant should pay the debt, I consider that the District Court's decree should be confirmed with costs throughout on appellant.

PINHEY, J.—I am of opinion that the decree of the District Court should be reversed, and that of the Subordinate Court restored.

The suit is brought on the bond (No. 3) which was executed by Hanmava, deceased, personally, and for her own purposes alone,

for Rs. 400. Both Courts below have found that Rs. 560 are now due on that bond for principal and interest. The bond is a simple money bond, and it appears to me that all that plaintiff is entitled to thereon is a money decree for Rs. 560, recoverable against the property of Hanmava and against Gadgeppa as the representative of Hanmava, and to the extent of any property which he may have derived from Hanmava.

In execution of such a decree it would not, of course, be possible to recover the amount thereof from any property which Gadgeppa takes, not as the adopted son of Hanmava, but as the heir of his adoptive father Dodapa.

In execution the bond, Hanmava did not profess to act as the administratrix of the estate; nor is any specific property pledged as security for the debt. Therefore, in my opinion, plaintiff can be intitled on this bond only to a money decree in the terms above described. I cannot see my way in this case to charging the *vatan* property of Gadgeppa, which he derived from his adoptive father Dodapa, with any liability for the amount due on the bond which Gadgeppa's adoptive mother Hanmava executed in her personal, and not in her administrative, capacity which she executed, according to the terms of the bond, for her own wants and not for the preservation of her son's estate, and which she executed without inserting in it any clause professing to bind her son's estate, or declaring any portion of that estate liable for the amount of the bond.

It would, of course, have been otherwise if Hanmava had professed to execute the bond as administratrix of the property of her adopted son, or if by the terms of the bond she had professed to mortgage the estate of her son, or any portion of the estate, as a security for the debt. If she had so acted, it would then have been necessary to determine whether she was competent to bind her son's estate, or charge it with the amount borrowed from the plaintiff. But no such question arises, or (I think) ought to be considered in the present suit.

In consequence of the above difference of opinion the case was referred to Melvill and West, J.J., under section 575, of the Civil Procedure Code.

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The parties were represented by the same pleaders as before.

MELVILL, J.—We should have been glad if we could have adopted Mr. Justice Kemball's view: for the money having been lent to Hanmava for the preservation of the estate, it is hard that the plaintiff should lose his money, because Hanmava subsequently adopted the defendant. But we can find no authority for holding that the defendant can be made liable, or that the estate in his hands can be made liable, because the estate had been benefited by the loan. The plaintiff might have secured himself by taking a mortgage on the property. Instead of doing this, he trusted to Hanmava's personal security: looking beyond it, no doubt, to the liability of the estate in her hands, but knowing that it was in her power to divest herself of the estate either by selling it for necessary purposes, or by adopting a son. It may be that, if Hanmava had been compelled to repay the loan, she might have recovered the amount from the defendant; but we are unable to hold that the defendant can be made liable at the suit of the plaintiff. As was observed by the Judicial Committee in *Ram Tukut Singh v. Biseswar Lall Satao*: (1) "It is not in every case, in which a man has been benefited by the money of mother, that an obligation to repay that money arises. The question is not to be determined by nice considerations of what may be fair or proper according to the highest morality. To support such a suit there must be an obligation, express or implied, to repay." In the present case the defendant may be morally bound to reimburse the plaintiff; but we cannot hold that the obligation is a legal one.

The decree of the District Court must be reversed, and it is decreed that the plaintiff do recover out of Hanmava's property, if any, in the hands of the defendant the sum of Rs. 560, and simple interest thereon at the rate of 12 per cent. per annum from the date of suit until satisfaction. The defendant to bear the costs in the Court of first instance. The plaintiff to pay the costs in appeal and second appeal.

Decree reversed.

(1) L. R. 2 Ind. Ap. 143.