

## APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Nanabhai Haridas.

NAROTAM, PLAINTIFF, v. NANKA AND OTHERS, DEFENDANTS.\*

1882  
March 28.

*Hindu law—Husband and wife—Liability of wife—Contract—Liability—Stridhan.*

A Hindu married woman who contracts jointly with her husband is liable to the extent of her *stridhan* only, and not personally.

UNDER section 617 of the Code of Civil Procedure, Rao Saheb Madhuvachhram, Subordinate Judge of Anklesvar, submitted the following case for the opinion of the High Court :—

“ One Narotam Lalabhai, of Anklesvar, instituted a suit, within the Small Cause Court jurisdiction of this Court, against a Dhed by name Nanka Madhav, his wife Bai Dahi, and two others on a simple money bond alleged to have been passed by them on Jeth Sudi 12th Samvat 1935, corresponding with the 1st of June, 1879. None of the defendants have put in appearance, and the case has been tried *ex parte*. The issues fixed for decision are—

“ 1. Is execution of the bond sued upon proved ?

“ 2. Is the defendant Bai Dahi liable for the claim under the Hindu law ?

“ From the evidence adduced by the plaintiff it appears that, about six years ago, the defendant Nanka wanted to marry a son of his, and was in need of money. He went to the plaintiff, and asked for a loan. The latter accommodated him with the amount required, and a *khat* was written. In this *khat* or bond the obligors were the defendants Nanka, his wife Bai Dahi, and two sureties. In 1879 the debt was renewed, and the bond, on which the action has been based, was written. Two witnesses, Gopal Gowan and Nathabhai Rasikdas, examined by the plaintiff, prove beyond a doubt that the defendants executed the bond sued upon in favour of the plaintiff.

“ The question then arises—‘ is the defendant Bai Dahi liable for the claim ?’ At the time the debt was contracted she lived with her husband Nanka, and the plaintiff himself admits that even now the husband and wife live together. Under these

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circumstances whether coverture affords a protection against responsibility is the point that demands consideration. So far as I am aware, the practice in the Mofussil has been to hold that a married woman, under the provisions of the Hindu law, is not answerable for a debt contracted by her jointly with her husband. This interpretation is supported by a ruling of the late Sadar Adalat (*Pitamber Jetha and Bai Oojam v. Harivallabhdas Runchordas* (1)) and by the decision of the High Court in *Parsotam Javerchand v. Moti Bhikha and his wife Bai Ganga* (decided on the 23rd of March, 1865, on a reference made by the Judge of the Court of Small Causes at Ahmedabad). Both these cases are directly to the point; but their authority seems to have been weakened by some of the observations made by Mr. Justice Nanabhai in *Bhailal v. Jhaver Raiji and another* (2), wherein a wife who had voluntarily separated from her husband without any circumstances justifying her separation was held liable for a debt contracted by her, although without her husband's consent. In 2 Macn., p. 278, case 2, it is said: 'It is a general principle in law that a wife is incompetent to contract a debt, or to execute any obligation; but if a debt be contracted by a woman of any of the superior tribes, such as a Brahminee or Kshatria, for the support of the family it must be liquidated by the husband.' In enumerating persons incompetent to contract, the sage Manu says: 'A contract made by a person intoxicated, or insane, or grievously disordered, or *wholly dependent*, by an infant or a decrepit old man, or in the name of another by a person without authority, is utterly null.'—Institutes of Manu, ch. viii, sh. 163. The expression '*wholly dependent*' refers to slaves and women. 'Day and night must women be held by their protectors in a state of dependence; but in lawful and innocent recreations, though rather addicted to them, they may be left at their own disposal. Their fathers protect them in childhood, their husbands protect them in youth, their sons protect them in age; a woman is never fit for independence.'—*Ibid.*, ch. 9, v. 2 and 3. Katayana is more explicit. According to him 'let no man lend anything to women, to slaves, or to children; whatever thing of value has been lent to them the lender cannot, *in*

(1) 7 Har. 202.

(2) I. L. R., 1. Bom. 121.

*general*, recover without the assent of their guardian or master.'—Coleb. Dig., Bk. I, ch. i, sec. 2, part viii. No doubt a married woman can acquire and hold property in her own right, and exercises an absolute control over some sorts of her *stridhan*. But this is only an exception, and because it is an exception her power of disposal is expressly declared by Hindu lawyers. Moreover, it is not every sort of *stridhan* which can be disposed of at her pleasure. Jagganath, commenting on the verse of Katayana above quoted, observes: 'Nothing should be lent to women, because they are unable to repay it, for it is recorded that they have no property exclusively their own.'—I. Coleb. Dig., Bk. I, ch. i, sec. 2, art. i, viii. 'Three persons—a wife, a son, and a slave—are declared by law to have, in general, no wealth exclusively their own: the wealth which they may earn is regularly acquired for the man to whom they belong.'—Manu, ch. viii, v. 416. The Madras High Court has, no doubt, held that every thing acquired by a married woman during coverture does not pass to her husband: *Ramsami v. Virasami*(1). But it is equally clear that the husband has some power over the *stridhan* of his wife, and may take it under certain circumstances: Mitakshara, ch. 11, sec. 11, arts. 32 and 33; and Vyavhara Mayukha, ch. iv, sec. x, art. 10. In *Dantuluri v. Malapudi* (2) the Judges (Holloway and Innes, JJ.) observe: 'Keeping in view the following passage from Colebrooke (obl., sec. 611) which was not quoted in the argument, "and she is subject to his control even in regard to her peculiar and separate property", a passage written by this greatest of all authorities with all the texts from Jimut Vahana and his own Digest before him, and looking also at the repeated texts of Hindu law as to the absolute dependence as to every act of the woman, and at the fact abundantly clear from the history of our own law, that so-called absolute property is quite consistent with restricted power of alienation, and that this is still more conspicuously the case with the Hindu law, we could not, without the greatest consideration, conclude that a woman can without the consent of her husband, during coverture, absolutely alienate even her own landed property'. Some texts apparently tend to show that a wife is

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(3) Mad. H. C. Rep. 272.

(2) 2 Mad. H. C. Rep. 360.

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personally answerable for debts contracted by her jointly with her husband. Yajnavalkya declares: 'A debt acknowledged by her husband, or contracted by her jointly with her husband, or son, or contracted by the woman herself, must be paid by a wife or mother; no other debts shall a woman be compelled to pay.'—I Coleb. Dig., Bk. I, ch. v, cex. Katayana follows in the same strain. The texts of Yajnavalkya and Katayana are quoted by the author of the Vyavhara Mayukha, ch. v, sec. iv, para. 20. A careful perusal of them cannot fail to convince that they refer to the liability of the woman *after* the death of her husband. The order of those bound to pay the debts of a deceased person is mentioned in the 16 and the succeeding paras. of sec. iv, ch. v, of the Vyavhara Mayukha. Vijayaneshwar accordingly remarks that a debt contracted by a wife jointly with her husband must, *on failure of the husband*, be paid by the wife if she have no male issue.—Mitakshara, ch. 3, 13. Jagannath in commenting on a text of Katayana (I. Coleb. Dig., Bk. I., chs. v, ccix) quotes with approbation this passage of Vijyaneshwar, and says: 'Suppose a man whose son is an infant, and whose wife has contracted a debt jointly with her husband, but he dies, and his son inherits his property;—in that case by whom should the debt be paid? By the son *alone*.'

"Debts contracted by a married woman for domestic purposes are payable by her husband. The Hindu law in this particular is in unison with the English law. According to the latter, a wife has no independent existence. According to the Hindu law, also, the wife merges in the husband. 'Whatever be the qualities of the man with whom a woman is united by lawful marriage, such qualities even she assumes: like a river united with the sea.'—Manu, ch. 9, v. 22. For this reason no sacrifice is allowed to women apart from their husband. A wife is declared by the Vedas to be half of her husband's body.

"On a consideration of all these authorities I am inclined to the opinion that a Hindu wife is not liable, during her husband's lifetime, for a debt contracted by her jointly with her husband. She has, no doubt, power to bind her peculiar property to some extent; but, then, there must be a special agreement to bind such property. From the observations made by Mr. Justice Nanabhai

Haridas in *Nathubhai v. Jhaver*, above cited, I feel a doubt whether the view taken by me is correct, and, therefore, think it right to obtain the orders of their Lordships the Judges of the High Court before finally disposing of the same."

The parties on either side put in no appearance before the High Court.

*Per Curiam*.—The Court thinks that *Nathubhai Bhañlal v. Jhaver Raiji*(1) and *Govindji Khimji v. Lakhmidas Nathubhai*(2) are sufficient authorities for holding that a married woman who contracts jointly with her husband is liable to the extent of her *stridhan* only.

(1) I. L. R., 1 Bom. 121.

(2) I. L. R., 4 Bom. 318.

### APPELLATE CIVIL.

*Before Mr. Justice Melvill and Mr. Justice Nanabhai Haridas.*

RAMCHANDRA, PLAINTIFF, v. BHIKIBAI, DEFENDANT.\*

April 4.

*Res judicata*—Effect of rejection of plaint for non-appearance of plaintiff—Possessory suit in Mamlatdar's Court and in Civil Court—Bombay Act III of 1876, Section 13—Specific Relief Act I of 1877, Section 9—Civil Procedure Code (Act X of 1877), Section 13.

A plaintiff, whose plaint has been rejected for default of appearance in the Mamlatdar's Court under Bombay Act III of 1876, section 13, cannot bring another possessory suit on the same cause of action in the Civil Court under section 9 of the specific Relief Act I of 1877; for the rejection of a plaint under section 13 of Bombay Act III of 1876 by reason of the failure of the plaintiff to attend with his proofs on the day appointed, is a hearing and final decision of the suit within the meaning of section 13 of the Code of Civil Procedure (Act X of 1877), and upon the rejection of the plaint the question in the suit becomes *res judicata*.

This was a reference from Rao Saheb V. M. Bodas, Subordinate Judge of Yeola, under section 617 of the Code of Civil Procedure.

The plaintiff sued, under section 9 of the Specific Relief Act (I of 1877), to recover possession of some immoveable property, alleging that he was dispossessed of the same otherwise than in due course of law within six months of the date of suit.

The defendant answered that the suit could not be maintained, as an exactly similar suit by the plaintiff against her on the

\* Civil Reference, No. 15 of 1882.