1895.

REFERENCE UNDER STAMP ACT, 1879, SEC. 46.

in it at the agreed value of Rs. 1,50,000. In other words, it is a sale of such property at that price.

The circumstance that the transaction is a part of a larger transaction as provided by the agreement, between the banks, of the 3rd February, 1893, and that the Rs. 1,50,000 is a part of the larger consideration for that agreement, cannot affect the character of this particular instrument. The parties have fixed the price at Rs. 1,50,000, which by agreement between them is to be paid to the vendor's creditors. The remarks of the Judges of the Appeal Court in *The Great Western Railway Company* v. *The Commissioners of Inland Revenue*[1] are applicable to the present case as showing that it is substantially a purchase and sale of the property. The stamp will be determined on the Rs. 1,50,000 stated in the intrument to be the consideration for the conveyance.

Order accordingly.

(1) (1894) 1 Q. B., 512.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Parsons.

HARI VÁSUDEV KÁMAT, PLAINTIFF, v. MAHÁDU DÁD GAVDA, DEFENDANT.*

1895. *March* 21.

Hindu law—Joint family—Bond given in name of one member of joint family for loan made out of joint family funds—Suit on bond—Right of such member to sue alone—Other members not necessary parties—Parties—Practice—Procedure.

A loan was made to the defendant out of joint family funds, and a bond for the amount was given in the name of one of the members of the joint family. He sued the defendant on the bond.

Held that the other members of the joint family were not necessary parties.

THIS was a reference by Ráo Sáheb Vishvanáth Vaikunth Vágle, Subordinate Judge, Vengurla, in the Ratnágiri District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The plaintiff sued to recover from the defendant Rs. 34-12-0 due in respect of a money-bond passed by him to the plaintiff alone on the 30th July, 1890. The following is a translation of the bond:—

"Debt-bond. (I) Mahádu Dád Gavda Dicholkar, residing at the sea-port town of Vengurla, give (this) debt-bond in writing as follows:—This day I took from you

* Civil Reference, No. 3 of 1895.

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HARI VA'SU-DEV KA'MAT v. MAHA'DU DA'D GAVDA.

for my use Rs. 20 (twenty) in cash of the Queen's currency. I received this amount from you in cash. Interest thereon is agreed to be paid at the rate of 3 (three) pies per month per rupee. After paying, in one year from this day, the said principal sum of rupees twenty, together with interest thereon, I will take back this debt-bond released. Should I fail to pay the amount in the fixed time, and should there remain any balance, I will pay you whatever balance, including interest, may have remained due to you, together with interest thereon calculated at the aforesaid rate. I will plead no excuse whatever. To this effect I have duly given this debt-bond in writing of my free will."

The defendant admitted the bond, but pleaded non-joinder of parties. He alleged that the plaintiff had two undivided brothers, Vishnu and Govind; that all the three brothers were present when the loan was made and the bond executed; that Govind paid him the money, but took the bond in Hari's name, and that the money was advanced from the joint family funds. He contended that the plaintiff's brothers were necessary parties.

At the hearing it was admitted that the loan had been made out of the joint family funds, and that the bond was obtained in the plaintiff's name.

The Subordinate Judge referred the following questions:—

(1) Whether the plaintiff's brothers were necessary parties?

(2) Whether the plaintiff was entitled to recover the sum due on the money-bond sued upon."

The opinion of the Subordinate Judge was that the plaintiff's brothers were not necessary parties to the suit, and that the plaintiff alone was entitled to recover the debt.

Vásudeo G. Bhandárkar (amicus curiæ), for the plaintiff:—The bond was passed to the plaintiff in his individual capacity; he can, therefore, maintain the present suit. His brothers are not necessary parties—*Jagábhai Lallubhai* v. *Rastamji Nasarwánji*[1]; *Yeknáth Rámchandra* v. *Wámun Brahmadev*[2].

Mánekshâh J. Taleyárkhán (amicus curiæ), for the defendant:—It is admitted that the loan was advanced to the defendant from the joint family funds; therefore, the plaintiff alone cannot sue. His brothers are as much interested in the recovery of money as he himself is, and as they are not joined as parties, the suit must fail.

(1) I. L. R., 9 Bom., 311. (2) I. L. R., 10 Bom., 241.

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HARI VA'SUDEV KAMAT v. MAHA'DU DA'D GAVDA.

[PARSONS, J., referred to *Bungsee Singh* v. *Soodist Lall*(1).]

SARGENT, C. J.:—The opinion of the Subordinate Judge that the plaintiff could sue alone on the bond is correct. Costs to be costs in the case.

Order accordingly.

(1) I. L. R., 7 Calc, 739.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Parsons.

1895. *March* 21.

BA'BA'SA'B VALAD LODSA'B, CURATOR AND MANAGER OF THE PROPERTY OF DECEASED DA'DA'SA'B KANTY, PLAINTIFF, *v.* NARSA'PPA BIN IRA'PPA'NNA, DEFENDANT.*.

Succession Certificate Act (*VII of* 1889), *Sec.* 4—*Curator*—*Act XIX of* 1841.

A curator appointed under the Curator's Act (XIX of 1841) is not a person claiming to be entitled to the effects of the deceased person whose estate he is appointed to manage, and is not required to take out a certificate under section 4 of the Succession Certificate Act (VII of 1889) before he can obtain a decree.

THIS was a reference by Ráo Bahádur G. V. Limaye, First Class Subordinate Judge of Dhárwár, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The plaintiff was appointed curator of the estate of one Dádámiya valad Hatelsáheb under Act XIX of 1841, and as such he sued to recover rupees ninety due on a bond passed to the deceased by the defendant on the 27th August, 1891.

The defendant contended *(inter alia)* that the plaintiff could not sue without a certificate under the Succession Certificate Act (VII of 1889).

The Subordinate Judge thereupon submitted the following question:—

"Is the curator entitled to sue without production of a succession certificate under Act VII of 1889?"

The opinion of the Subordinate Judge was in the negative.

* Civil Reference, No. 4 of 1895.