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not concerned to dispute it for the purposes of the present case. The defendants' father did not represent that the land in dispute was a recognised sub-division of a *bhāg* or share in the *warwa* which could be legally held whether, by the plaintiffs or any one else, and that is the question which is now in dispute. If the plaintiffs agreed to the compromise in Exhibit 44 under the belief that the land was a recognised sub-division, that belief was not caused by the defendants' father. In fact, there is no allegation, much less evidence, to show that the defendants' father caused the plaintiffs to act upon that belief.

For these reasons we confirm the decree of the lower Appellate Court with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

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March 9.

NARAYAN AND OTHERS (ORIGINAL APPLICANTS), APPELLANTS, v. VENKATACHARYA BALKRISHNACHARYA (ORIGINAL OPPONENT), RESPONDENT.*

Hindu Law—Mitākshara—Debts—Surety—Grandson's liability to pay debts contracted by the grandfather as a surety.

Under Hindu Law as laid down in the *Mitākshara* a grandson is not liable to pay a debt which his grandfather contracted as a surety unless the latter in accepting the liability of a surety received some consideration for it.

A party is not bound, generally speaking, by a pleader's admission in argument on what is a pure question of law amounting to no more than his view that the question is unarguable.

SECOND APPEAL from the decision of J. C. Gloster, District Judge of Belgaum, confirming the decree passed by D. S. Sapre, Subordinate Judge of Athni.

Application for the removal of attachment under a decree.

The opponents obtained a decree against the assets of one Ramchandra, the grandfather of the applicants. The decree was for the recovery of a debt due by Ramchandra as a mere surety for the payment of money. In execution of this decree

* Second Appeal No. 547 of 1903.

the opponents attached the property of Ramchandra in the hands of his grandsons (the applicants). This attachment the applicants prayed to remove, on the ground that the property was not liable to be attached and sold in execution of the decree as it had been obtained for the recovery of a debt due by their deceased grandfather Ramchandra as a mere surety.

The Subordinate Judge found that the property in dispute which was joint family property in the hands of grandsons was liable for the payment of the debt of their grandfather due by him as surety for the payment of money. His reasons were as follows :—

“At the outset I may observe that most of the commentators on Hindu Law are against the view that grandsons are liable to pay the debts of their grandfather due by him as a mere surety for the payment of money (*see* Mandlik's *Vyavahar Mayukha*, pp. 107, 108). But it may be observed that the liability imposed by the texts of Hindu Law on the son or grandson to pay the debt of his father or grandfather is a personal liability, irrespective of the existence of assets (*see* I. L. R., 19 All. 29). In the present case there are admittedly certain joint family assets in existence, and I therefore venture to think that mere texts of Hindu Law are of no material use here; most of the writers on Hindu Law deny the grandson's liability for interest on a debt due by his grandfather. But this liability has been clearly established by a recent decision of the Allahabad High Court (*see* I. L. R., 19 All. 26). Several of the writers on Hindu Law also deny the son's liability for interest due on a debt contracted by his father as surety, but I do not think that this liability can be questioned now (*see* I. L. R., 23 Bom. 454). It appears to have been firmly established by recent judicial decision that the son is liable to pay every debt of his father that is not tainted with immorality or illegality. The same principle applies to the case of the grandson (*see* I. L. R., 19 All. 31). The debt in suit is admittedly not tainted with illegality or immorality, and I think that it is such as grandsons would be liable to pay to the extent of the joint family assets in heir hands. At p. 459 of I. L. R., 23 Bom., Mr. Justice Ranade cites it as the opinion of the commentator, Kulluka, that in the case of a surety for the payment of money his heirs even may be compelled to discharge the debt. Mr. Justice Ranade appears to have cited this opinion of Kulluka with approval, and I think it should be accepted. There can be no doubt that the term 'heirs' includes grandsons, and so the above opinion of Kulluka is applicable to this case.”

On appeal the District Judge confirmed this decree.

The applicants appealed to the High Court.

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G. K. Parekh, for the appellants :—A grandson is not liable to pay the debts of his grandfather incurred as a surety : see Mandlik's *Vyavhar Mayukha*, pp. 107 and 108.

K. H. Kelkar, for the respondent :—The appellant is not entitled to raise this question here as his pleader has abandoned it in the District Court. It is admitted that the self-acquired property of the grandfather is liable for such a debt. If so, the character of the property was a matter in issue in the case ; and the pleader having abandoned the point as to liability it cannot be raised here : see *Raja Bommadevara Venkata v. Raja Bommadevara Bhashyakarlu*.⁽¹⁾

Further, we submit that a grandson is, according to the authorities, liable when he is in possession of assets. Both the *Mitākshara* and the *Mayukha* recognize the liability of a grandson when the surety was for a consideration. This must be read with the general rule of Hindu Law which associates the liability with the possession of assets : see Manu, chapter VIII, pl. 160 ; Sir William Macnaghten's *Precedents of Hindu Law*, p. 285 ; Vishnu (Jolly), chapter VI, pl. 29. The *Mitākshara* in discussing the liability of sons, etc., has in view the liability of the sons, etc., *independently of the possession of the assets*. He who takes the property must pay the debts is a rule affirmed by the *Mitākshara*. The appellants here are liable for the debts because they possess the assets of the deceased : see also *Tukarambhat v. Gangaram*⁽²⁾ ; *Lachman Das v. Khunnu Lal*⁽³⁾ ; Colebrooke's Digest, chapter IV, p. 159 ; Brihaspati, chapter XI, pl. 39 *et seq.*

G. K. Parekh, in reply :—There was no abandonment of any point in the lower Court. Even if abandoned a *vakil* does not bind his client by giving in on any question purely of law. Assets mean self-acquired property of the father. Ancestral property in the hands of the father going into the possession of the sons is not liable for the payment of the father's debt contracted for immoral purposes. Security debt is a debt of the same kind. Consideration means consideration obtained from the person on whose

(1) (1902) 29 I. A. 76.

(2) (1898) 23 Bom. 454.

(3) (1896) 19 All. 26 at p. 31.

behalf he becomes surety. Where there is no conflict among commentators, the *Smritis* cannot be referred to in order to show that the commentators' versions are not in accordance with them : see *Suraj Bansi Koer v. Sheo Proshad Singh*.⁽¹⁾

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CHANDAVARKAR, J.:—The question in this second appeal is simple of solution, though it has given rise to a somewhat lengthy argument at the Bar. A money decree was passed on the 15th of September, 1902, in favour of the respondent against such estate of the deceased Ramchandra Narayan as might be in the possession of his grandsons who are the appellants before us. That decree is now sought to be executed against the ancestral estate which has come into the hands of the appellants who formed as to it members of an undivided family with their grandfather Ramchandra. The appellants resist the execution on the ground that the decretal debt is one for which they are not liable under the Hindu law, as it was a debt contracted by their grandfather as a surety. We think this contention must be allowed. The law as laid down in the *Mitakshara*, by which the parties are governed, is that a grandson is not liable to pay a debt which his grandfather contracted as a surety unless the latter in accepting the liability of a surety received some consideration for it. It was not the case of the respondent in the Courts below that the suretyship here belonged to the class falling within the exception. The decree itself which is now sought to be executed proceeds on the basis that the debt was in respect of the suretyship accepted by Ramchandra; had it been one for which Ramchandra had received consideration the respondent would have, as he should have, pleaded that in the first Court and led evidence. He has done neither, and we cannot allow the contention. The next question is—whether, the only property which the appellants hold being the joint family property of their deceased grandfather and themselves, that property is answerable for the decretal debt in the hands of the appellants. We think it is not. Joint family property is liable in the hands of sons and grandsons only for debts which they are bound by Hindu law to pay.

It was contended before us by Mr. Kelkar for the respondent that it was not open to the appellants to raise the point as to

(1) (1878-79) 6 I. A. 88.

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their liability, because they had abandoned it in the lower Appellate Court. The point was no doubt abandoned by their pleader in that Court, as appears from its judgment, where it is said :—"Mr. Ajrekar for appellants does not now dispute the general liability of grandsons for such a debt as that on which the original suit was based, and it is therefore unnecessary to consider further the numerous authorities cited by the respondent's pleader in support of the conclusion arrived at by the Subordinate Judge."

We understand that to mean no more than that the pleader on his view of the law thought that the point was unarguable. A party is not bound, generally speaking, by a pleader's admission in argument on what is a pure question of law amounting to no more than his view that the question is unarguable. The decision of the Privy Council in *Raja Bomma-devara Venkata v. Raja Bommadevara Bhashyakarlu*,⁽¹⁾ cited by Mr. Kelkar, turned on a different state of facts. The pleader for a party there waived the point of limitation on which evidence was being led and which turned on a question of fact. After such waiver the party could not raise the point as the waiver amounted to an admission of a fact.

We must reverse the order and reject the *darkhast*. Each party to bear his own costs throughout.

Decree reversed.

(1) (1902) 29 I. A. 76.

CRIMINAL APPELLATE.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

EMPEROR v. KONDIBA DHONDIBA POWAR AND OTHERS.*

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 March 18.

Criminal Procedure Code (Act V of 1898), sections 303, 304—Judge—Jury—Misunderstanding the law—Verdict mistaken or ambiguous—Powers of the Judge to question the jury.

Section 304 of the Criminal Procedure Code (Act V of 1898) obviously contemplates cases where the verdict delivered is not in accordance with what was really intended by the jury. It has no application where there is no

* Criminal Appeals Nos. 29, 30 and 77 of 1904.