Madras High Court
Vinjanampati Peda Venkanna And ... vs Vadlamannati Sreenivasa ... on 28 August, 1917
Equivalent citations: 43 Ind Cas 225, (1917) 33 MLJ 519
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JUDGMENT Wallis, C.J.

1. The question in this Second Appeal is whether a son can be made liable, during his father's life-time, as held by the District Judge, on a promissory note executed by his father after partition in renewal of a note executed by the father before partition. One of the contentions raised by Mr. Parthasarathy for the appellant is that since the recent decision of the Judicial Committee in Sahu Ram Chandra v. Bhup Singh (1917) L.R. 441 I.A. 126 payment of the father's debts cannot be enforced by suit against the sons during the father's life-time. This is a most important question because, if the contention is right, the recent decision involves the overruling of what has long been treated in this and other High Courts as a settled rule of every day application, and it is therefore incumbent upon us to satisfy ourselves that this result is really involved in the recent decision.

2. Now there are two distinct and closely connected things, one, the father's power to bind the sons' shares by alienations during his life-time for debts not incurred for necessary purposes and not tainted with immorality, and the other, the creditor's remedies by suit in respect of such debts against the sons' shares; and this distinction is observed in the well-known passage of Lord Hobhouse's judgment in Mussamut Nanomi Babufasin v. Modun Mohun (1985) L.R. 13 I.A. 1 : I.L.R. 13 C. 21, which is quoted in the recent decision. That decision relates to the first question, viz., whether the father's power of alienation to satisfy the class of debts already mentioned could only be exercised where the debt was antecedent or extended to alienations for present debts as well, and does not of itself affect the other question as to the extent of the creditor's remedies by suit against the sons shares. It is said however that the reasoning of the judgment is inconsistent with the Indian rulings as to the creditors' remedies against the son during the father's life-time, and the passage on which most reliance is placed is as follows: "While the father, however, remains in life, the attempt to affect the sons' and grandsons' shares in the property in respect merely of their pious obligation to pay off their father's debts, and not in respect of the debt having been truly incurred for the interest of the estate itself, which they with their father jointly own, must fail; and the simplest of all reasons may be assigned for this, namely, that before the father's death he may pay off the debt, or after his death there may be ample personal estate belonging to the father himself out of which the debt may be discharged. In short, responsibility to meet the father's debts is one thing, and the validity of a mortgage over the joint estate is quite another thing." Now it may be said that the reasoning in this passage applies equally whether the debt for which the alienation is made by the father is an antecedent debt or a present debt and that it involves a departure from the decisions in Girdharee Lall v. Kantoo hall (1874) L.R. 1 I.A. 321. Suraj Bunsi Koer v. Sheo Proshad Singh (1879)L.R. 6,I.A. 88 : I.L.R. 5 C. 148, Mussamat Nanomi Babufasin v. Modun Mohun (1985) L.R. 13 I.A. 1 : I.L.R. 13 C. 21 and other decisions of their Lordships in which the father's right to alienate for antecedent debts was rested on the pious obligations of the sons to pay them. Their Lordships, however, considered that the rule as to alienations for an antecedent debt was too firmly established to be disturbed, and treated it as an exception from a general and sound principle not to be extended and to be very carefully guarded. They proceeded to say that much, if not all, the law upon the

subject had arisen from the necessity of protecting the rights of third persons, say the purchasers of the property who have taken their title for onerous consideration and in good faith, and quoted with approval a passage from the judgment of Sir John Stanley, C.J. which thus interpreted the observations in Suraj Bunsi Koer v. Sheo Proshad Singh (1879) L.R 6 I.A. 88, page 101. They then set out the well-known passage from Lord Hobhouse's judgment in Mussammat Nanomi Babuasin v. Modun Mohun (1885) L.R.13 I.A. 1 which contains the express statement that the sons cannot set up their rights against the remedies of the creditors for debts not tainted with immorality and observed that it lent no countenance to the idea that the joint family estate could be effectively sold or charged except where the sale or charge has been made in order to discharge an obligation not only antecedently incurred, but Incurred wholly apart from the ownership of the joint estate or the security afforded or supposed to be available by such joint estate. It is important to note that their Lordships, perhaps advisedly, did not say here that the joint family estate can not be sold by the Court in satisfaction of an antecedent debt, or comment on the very general words as to the extent of the creditor's remedies to which so much importance has been attached by all the Courts in India. They then observed that they had set forth the limits to the exception because they formed a guide to the settlement of the conflict of authority in India on the subject of antecedent debt; and after mentioning the cases in which the conflict arose they again adopted as the true rule the statement of Sir John Stanley as to alienation by the father for an antecedent debt.

3. There is no reference to the subject of the creditor's right by suit to bring the son's interest to sale for an antecedent debt, or to the Indian decisions affirming that right; and the question is whether these decisions which proceed upon the authority of their Lordships' earlier decisions should now be overruled because, it is said the reasoning in the recent judgment is in favour of allowing the sons to resist a sale of their shares. As to this, Lord Halsbury's well-known observations in Quinn v. Leathem (1901) A.C. 495, 506, that a case is only an authority for what it decides, and not for every proposition that may seem to follow logically from, it appears to me to apply with special force.... That the Indian Courts have interpreted the earlier decisions ending with Mussamat Nanomi Babufasin v. Modun Mohun (1885) L.R.13 I.A. 1, in which last case it is stated that the sons cannot set up their rights against his creditors' remedies for their debts if not tainted with immorality, as authorising suits for such debts against the son as well as father may be seen, as regards Calcutta, from the Full Bench decision in Luchmun Dass v. Giridhur Chowdhry (1880) I.L.R. 5 C.855 and the judgment of Mookerjee and Holmwood, JJ., in Kishun Pershad Chowdhry v. Tipan Pershad Singh (1907) I.L.R. 34 Cal. 735 where the other decisions are dealt with. The point was expressly decided in Jagabhai Lalubhai v. Vijbhu-Kandas Jagjivandas (1896) I.L.R. 11 Bom. 37, after the decision in Mussamat Nanomi Babuasin v. Madun Mohun (1885) L.R. 13 I.A. I and that decision is followed in Umed Hathising v. Goman Bhaiji (1895)I.L.R.20 Bom. 385. In Allahabad there is an express decision of a Full Bench in Karan Singh v. Bhup Singh (1904) I.L.R. 27 All. 16 and.this decision to which Sir John Stanley, C.J., was a party was referred to by him in his judgment in Chandra Deo Singh v. Mata Prdsad (1909) I.L.R. 31 All. 176 which is repeatedly referred to with approval by their Lordships in the recent case.

4. As regards our own Court, the case is, if anything stronger, because it has expressly based the creditor's right to bring to sale the sons' shares for an antecedent debt on the father's right to sell the sons' shares for such a debt, a right which is expressly recognized. In the leading case in Ponnappa

Pillai v. Pappuvayyangar (1881) I.L.R. 4 Mad. 1, which overruled the earlier decisions of this Court in deference to Girdhari Lal v. Kantop Lal (1874)I.L.R 1 I.A. 821 and, Suraj Bunsi Koer y.Sheo Prasad Singh (1879) L.R 6 I.A. 88 : I.L.R. 5 C. 148. Sir Charles Turner, C.J., in a judgment approved by the Privy Council in Muttayan Chettiar v. Sangili Vira Pandia Chinnatambiar (1882) L.R. 9 I.A. 128 : I.L.R. 6 M. 1 observed at page 64 that when it is decided that for the discharge of debts other than debts incurred for immoral purposes, a father can make a valid alienation of ancestral property so as to bind his son's interest, it is a corollary that the interest of the sons as well as of the father may be attached and sold in execution for such a debt. Again in the Full Bench decision" in Ramasami Nadan v. Ulaganatha Goundan (1898) I.L.R. 22 Mad 49 : 8 M.L.J. 312 which has been treated till now as finally settling the question in this Presidency, Shephard, O.C.J., observed at page 61 " since 1874, the decisions of the Judicial Committee are consistent in holding that as the sons' liability may be enforced through the medium of a sale of the ancestral property executed by the father, so it may be enforced by a sale in execution of a decree against the father and that in neither case can the son recover the property except by proving that the debts were of a kind for which he would not be liable." Benson, J., also proceeded on the authority of the Privy Council decisions. Subramania Aiyar, J., went somewhat further, and held in an elaborate judgment that under Hindu Law, a son was liable for his father's debts even in the latter's lifetime, a conclusion which is perhaps handly reconcilable with the recent decision of their Lordships. This Court has adhered to' the view of Turner, C.J., and has held in a series of cases that, as the effect of partition is to put an end to the father's right to sell the son's share for an antecedent debt, it also puts an end to the creditor's right to bring the son's share to sale during his life-time, at any rate where the partition has not been effected to defeat and delay creditors. Krishnasami Konan v. Ramasami Ayyar (1899) I.L.R. 22 M. 519 : 9 M.L.J. 127, Rathna Naidu v. Aiyanchariar (1908) 18 M.L.J. 599, and Kameswaramma v. Venkatasubba Row (1914) I.L.R. 38 M. 1120 at 1120 : 27 M.L.J. 112.

5. In these circumstances, and as it appears to me that the creditor's right to bring the sons' shares to sale for an antecedent debt and the long line of decisions which support it were not considered by their Lordship in the recent case, I think it should not be treated as overruling them, and that, if we are to depart from what has been the settled law of this and other High Courts for so many years, it should be in deference to a clear expression of their Lordships' opinion with reference to this particular question and not any inference from the reasons given by Their Lordships in settling a conflict in the Indian Courts on another point.

6. While we overrule Mr. Parthasarathi's first contention, he is entitled, as appears from what I have already said, to succeed on the ground that the suit was filed by the creditor after partition, to say nothing of the further ground that the father had no authority from the son to renew the note after partition. The appeal is allowed, and the decree of the District Munsif restored with costs here and in the Lower Appellate Court.

Kumaraswami Sastri, J.

7. I have had the advantage of reading the judgment of my Lord and agree in holding that the Second Appeal should be allowed not on the broad question raised by Mr. Parthasarathy Aiyangar as to the non-liability of a son to pay his father's debts during the father's. life-time, a conclusion which

according to appellant's counsel is the logical result of the recent decision of their Lordships of the Privy Council in Sahu Ram Chandra v. Bhup Singh (1917) L.R. 44 I.A. 126 : 33 M.L.J. 14 but on the narrower one that a son is not after partition liable to be proceeded against in respect of a simple personal debt incurred by the father before partition whatever his rights may have been if they had continued joint.

8. It has been contended by Mr. Krishnaswami Aiyar that the pious, duty which lay on the son to discharge his father's debts is under Hindu law irrespective of the possession of any assets or joint family properties [and that consequently it is unaffected by any partition and attaches so long at least as there is any property which was once joint property in existence in the son's hands, the change in the character of the property created by the partition being unaffected by an obligation which arose irrespective of the possession of any assets.

9. Whatever may be the strict rule of Hindu Law as to the extent of the pious obligation it has been now well settled that it is circumscribed by the possession of assets or joint family property and that it does not attach to the son's self-acquisitions. So far as the creditor of the father is concerned all that he can do is to avail himself of any remedy that may be open to the father and" work it out either by suit or in execution proceedings and if the father has lost his power of dealing with the son's interests owing to a bona fide partition between them, the creditor can be in no better position. The effect of a bona fide partition is prima facie to secure to each of the parties absolute control over the properties that fall to his share unfettered by any liabilities which at the date are not charged upon them. The personal debts of each member are payable only out of his share and the transaction is one in the nature of a conyeyance by one party to the other of the property that falls to him. There is nothing in Hindu Law to prevent a father from taking certain properties absolutely or receiving certain benefits and releasing the son from the duty cast upon him by Hindu Law to pay his debts and so long as the transaction is bona fide a simple creditor can have no right to object to a transaction which both the father and son were competent to enter into.

10. In Krishnasami Konan v. Ramasami Ayyar (1899) I.L.R. 22 Mad. 519, it was held that after a bona fide partition between a father and son it was not open to the creditor at least during the father's life-time, to proceed in execution against the son's share in. respect of a decree; obtained against the father. In Rathna Naidu v. Aiyanachariar (1908) 18 M.L.J. 599 it was held following the above case that a Hindu father has no power to mortgage the share got by the son on partition even though the mortgage was in respect of a debt that was contracted before partition. In Kameswaramma v. Venkata Subba Row (1914) I.L.R. 38 M. 1120. Wallis, C.J., after reviewing the, authorities followed the decision in Krishnasami Konan v. Rramasami Ayyar (1899) I.L.R. 22 Mad. 519, and held that a creditor had no right to proceed against the son's properties. With reference to Ramachandra Padayachi v. Kondayya Chetti (1901) I.L.R. 24 M 555 : 11 M.L.J. 846 cited by the respondent's vakil it is distinguishable as the debt sued on arose of a joint family business carried on by the father and son before partition and the liability of the son rested not merely in his pious obligation to. pay a debt incurred without any family necessity or for the family benefit but on contract, every member being liable on the contract entered into in respect of a joint family trade at least to the extent of the joint family assets as the profits of the trade would in the ordinary course be shared by all the members.

11. In the case of renewal by the father alone after partition of a note executed before partition the case is much stronger as I can see no equity in allowing a Hindu father to renew and keep alive a debt (increased by the addition of interest and principal at-each renewal) go as to throw upon the son the duty of paying it out of properties that fall to his share. The renewed note must in my opinion be treated as a new obligation incurred after partition. It has been argued that in the present case the creditor took the note without notice of the partition. I do not think this will make any difference so far as the son's rights are concerned. The pious duty creates no charge on the son's share prior to partition, the presumed agency of the father ceases on partition and as the creditor can only work out the father's rights at the date of the suit he can have no right if that right is lost owing to a bona fide partition.

12. Turning to the broader question raised I do not think that we can in effect overrule a series of decisions and disturb the settled state of the law mainly based on the previous decisions of; the Privy Council without some more definite pronouncement of their Lordships in a case in which the question is directly raised.

13. In Sahu Ram Chandra v. Bhup Singh (1917) L.R. 44 I.A. 126 : 33 M.L.J. 14 their Lordships of the Privy Council while upholding the father's power of, alienation either by an absolute sale or a mortgage of joint property in order to, satisfy an antecedent debt meet the contention that so long as there is a pious duty the distinction between antecedent and contemporaneous debts is immaterial with the following remarks: "While the, father, however, remains in life, the attempt to affect the sons' and grand-sons' shares in the property in respect merely of their pious obligation to pay off their father's debts, and not in respect of the debt having been truly incurred for the interest of the estate itself, which they with their father jointly own, must fail; and the simplest of all reasons may be assigned for this, namely that before the father's death he may pay off the debt, or after his death there may be ample personal estate belonging to the father himself out of which the debt may be discharged," It has been argued that this involves two propositions namely (1) that the pious obligation does not arise till the death of the father and (2) that it is only enforceable to the extent of the portion of the debt which cannot be met out of the share or assets of the father. Pushed to its logical conclusion the observations above cited do no doubt, while preserving. (1) to the father the right to deal with his son's shares by sale or mortgage so long as it is for the purpose of discharging an antecedent debt (2) to a mortgagee for an antecedent debt the right to proceed against the son's share and (3) to a purchaser to whom property is sold to satisfy an. antecedent debt the right over the entire property including the son's share, negative the right of a simple creditor or a transferee not for an anccedent debt to proceed against the son's share during the life time of the father or in other words subordinates the rights of the creditor of the father whose debt is not for the family benefit to the Mitakshara rights of the sons in respect of their undivided share and puts him qua such debts in the same position as if he was the creditor of any other member of a joint Mitakshara family. The result is to overrule a series of decisions referred by the Chief Justice in his Judgment of this and the other High Court's extending over several years and to restore the state of the law in this Presidency to what it was before the Full Bench decision in Ponnappa Pillai v. Pappuvayyangar (1881) I.L.R. 4 M. 1.

14. I do not think that we can do this without a further pronouncement by their Lordships as to the effect of their observations on the cases relating to the creditor's remedies during the lifetime of the father.

15. It has teen settled by a series of decisions commencing from Ponnappa Pillai v. Pappuvayyangar (1881) I.L.R. 4 M. 1 on the authority of the decisions of the Privy Council in Girdhare Lal v. Kantoo Lal (1874) L.R. 1 I.A. 321 and Mussamat Nanomi Babnasin v. Moduli Mohun (1885) L.R. 13 I.A. 1 that a creditor of the father whose debt has not been incurred for an illegal or immoral purpose can in execution of his decree against the father bring to sale the interest both of the father and his son in joint family property and that it is open to the creditor to join the father and his sons in a suit and obtain a decree declaring the liability of the interests of the sons in the joint property to satisfy the debt, the only defence open to the sons being that the debt was contracted for illegal or immoral purposes. The ratio decidendi was that as the father had power to dispose of his son's share to satisfy a debt neither illegal nor immoral the creditor had the right to sell in execution what the father could have done by alienations inter vivos. Nothing can be clear than the observation in Mussan at Namomi Babuasin v. Modun Mohun (1885) L.R. 13 I.A. 1 to the effect that the sons cannot set up their rights against the creditor's remedies for their father's debts if not tainted with immorality.

16. While the decisions recognised alienations for antecedent debts on a different category and denied the power of the father to sell or mortgage joint family properties except for an antecedent debt and excluded the loan secured by a mortgage or the purchase money got from the vendee from the category of antecedent debts, the result of the ruling of the Privy Council in Nanomi Babuasin's (1885) L.R. 13 I.A. 1 case as understood by all the Courts was simply to alter the form of the creditor's remedy. He was entitled to treat the balance due on his mortgage after selling the father's share as a simple debt due by the father and so liable to be paid by the sons by reason of their pious duty. It was similarly open to him in cases of sales to sue the father as for failure of consideration in case the sons succeeded on getting their share excluded from liability and to proceed against the sons for the damages payable by their father who sold more than he was entitled to.

17. In the case of simple debts or suits on the personal covenant to pay by the father in mortgages the sons were held to have no defence to the suit unless they showed that the debt was illegal, or immoral, no question of antecedent debt arising on a suit to recover a simple debt. The following observations in Surjaprasad v. Golab Chand (1900) I.L.R. 27 C. 762 where the debt secured was on the one hand not antecedent and on the other not illegal or immoral indicate the position of the parties in such cases: "The plaintiff seeks to enforce the mortgage security in this case, and he is bound to show that the mortgage is binding upon the defendant. Having regard to the rulings both of the Privy Council and this Court, he could do so by showing that the debts for which the mortgage was given were "antecedent debts" that is to say, antecedent to the transaction in question, but we are unable to find upon the evidence such as it is that this was so. If then the mortgage is not binding upon the defendant, the question is whether the plaintiff is entitled to a decree declaring that the money covered by the bond may be realised out of the whole of the ancestral estate, the debt not being proved to have been incurred for immoral or illegal purposes, and it being antecedent to the suit. If the plaintiff had brought his suit within six years from the time when the bond fell due, there could be no doubt that he would be entitled to the relief which was declared as the proper relief to be

granted to a party in the position of the plaintiff in the case of Luchmun Dass v. Giridhur Chowdhry (1880) I.L.R. 5 C. 855 decided by a Full Bench of this Court and in the case of Khalilul Rahman v. Gobind Pershad (1892) I.L.R. 20 C. 388." These observations have to be borne in mind when we have to consider the remark of the Privy Council in Sahu Ram Chandra v. Bhup Singh (1917) L.B. 44 I.A 120, to the effect " that except under the mortgage all other remedies have long ago disappeared."

18. In Sahu Ram Chandra v. Bhup Sing (1917) L.B. 44 I.A 120 the question directly before their Lordships was whether a mortgage for an antecedent debt was binding on the sons and this question was answered in the affirmative and so far the decision confirmed the view taken in all the High Courts. The decision in Mussamut Nanomi Babuasin v. Modun Mohun (1885) L.R. 1 3 I.A. 1, which has been treated by Courts in India as the basis for allowing the creditor to sue the sons in their father's lifetime for their fathers debt on the ground that he was entitled to do by suit and execution proceedings' thereunder what the father could have done of his own volition though referred to by their Lordships as establishing the son's liability for mortgages or alienations created to pay off antecedent debts was not explained as being limited to such cases. So far as I can see the attention of their Lordships was not called to the remedies of a simple creditor as enunciated by the decisions of the various High Courts. The passages in the Hindu Texts and commentaries (which I shall refer to later on) which show that the pious obligation of the son was not purely a post mortem obligation but one which would under certain circumstances arise during the life of the father were not brought to the notice of their Lordships. The passage in their judgment to the effect that the case was free from complications because "except under the mortgage all other remedies have long ago disappeared, and the appellants rear it up and claim under it now, there being no right, in them to invoke the doctrine of the pious obligation to discharge the debt incurred by Bhup Singh, because that debt as such cannot be successfully sued for" indicates that their Lordships had in view the cases where a suit on the debt evidenced by a mortgage not illegal or immoral would lie against the sons even though the mortgage was not for an antecedent debt. Surjaprasad v. Golab Chand (1917) L.R. 44 I.A. 1 : 32 M.L.J. 183, and other cases). If there was no pious obligation at all during the father's life-time and the father was in the position of any other co-parcener it is difficult to see how any suit would lie against the sons except for debts incurred for necessary family purposes and it would be prefectly immaterial to the sons whether the debt is barred or not.

19. In Sripat Singh v. Tagore (1917) L.R. 44 I.A. 1 : 32 M.L.J. 183 where their Lordships had to consider the effect of a sale of, joint family properties in execution of the decree obtained on a simple debt incurred by the father alone observe: " The grounds for that action were these : The property in question was joint property, governed by the Mitakshara Law. By that law a judgment against the father of the family cannot be executed against the whole of the joint family property, if the debt in respect of which the judgment has been obtained was a debt incurred for illegal or immoral purposes. In every other event it is open to the execution creditor to sell the whole of the estate in satisfaction of the judgment obtained against the father alone." They also observe that the creditor had the undoubted right to bring the property to sale except where the sons show that the debt was illegal or immoral.

20. While I am not prepared to hold that the decision in Sahu Ramchandra v. Bhup Singh (1917) L.R.44 I.A. 126. must be taken to overrule by implication the whole current of authorities during the past 35 years and to restore the state of the law to what it was prior to the year 1881, I am of opinion that the decision makes it clear that it is the primary duty of the father to pay debts incurred by him not for any family necessity but for his own purposes and that the pious duty of the son only arises when the assets of the father are insufficient assuming that it arises at all during the life time of the father. In other words the pious duty is limited to the debts which the father is unable to satisfy out of his share or his self acquired properties. This limitation introduced by the Privy Council is, if I may say so with respect, entirely in accordance with Hindu Smrithis and safeguards the spiritual interest of the father and the temporal interests, of his sons. According to the notions of Smriti writers ' it is regarded as sinful to remain in debt and a debtor's salvation is deeply imperilled if he dies indebted. According to Vrihaspati a person who does not repay his debt "will be born in his creditor's house as a slave or servant or woman or a quadruped," According to other writers a person dying in debt goes to hell. A duty is therefore cast upon every person to discharge debts incurred by him. The liability of the son to come to the help of his father is only stated to arise when the father is owing to misfortune unable to pay his debts. Yagnavalkya says " if a father has gone abroad or died or been subdued by calamity his debts shall be paid by his sons and grandsons, on their denial the creditor must prove the debt by witnesses." Chapter 2 Sloka 51. Vignaneswara in the Mitakshara commenting on the sloka observes "if the father not having paid the debt due has died or has gone to a distant country or is overpowered by incurable disease et-cetera, then the debts contracted by him must be paid by his son or grandson even in the absence of the father's property. Thereon this is the order-on the father's default it is the son, on the son's default it is the grandson (who should pay). Therefore by a son born giving up his self-interest should the father be carefully released from debt so that he may not go to hell. In the Smriti Chandrika reference is made to the Sloka of Katyayana to the effect that " even though the father be living if he is afflicted by disease or has gone to sojourn away from his own country the debt contracted by the father should be paid by the sons after the 20th year" and so the text of Vrishaspathi that "even when the father is alive if he be afflicted with disease such as consumption, leprosy or if he be born a blind person then the sons should pay the debt when it has been proved." The law givers while casting on the son to pay the debts which the father was owing to misfortune unable to pay also enjoin the father not to get into debt as he thereby becomes "an enemy to his son." It is clear that whatever may be the pious duty of the son after the father's death the duty in the father's life-time is only to pay if the father is unable to do so.

21. To this extent I think Courts can safely safeguard the interests of the sons in respect of a liability based simply on their pious duty. Any further extension of the immunity of the son cannot, I think be made in the state of the authorities as they stand at present. Till the decision in Girdhari Lall v. Kanto Lal (1874) L.R. 1 I. A 321 the view taken by Courts in this Presidency was that the son was not during his father's lifetime liable under any circumstances to pay his father's personal debts. The contrary view has been taken since 1881 when the majority of the Judges in the Full Bench in Ponnappa Pillai v. Pappuvayyangar (1881) I.L.R 4 M. 1 followed what they thought to be the obvious result of the decision in Girdhari Lal's case. I think a clear pronouncement of their Lordships of the Privy Council reversing the whole current of decisions of all the High Courts and restoring the state of the law as it stood before the decision in Girdhari Lal's case is necessary before we can push certain observations of their Lordships in Sahu Ram's case to what it is contended is their logical

conclusion.

22. The power given to a creditor to work out the rights which a Hindu father has to require his son to pay his debts has its foundation not on any Hindu Law texts (attachment and sale in execution of decrees being un-known to the text writers) but on principles of modern jurisprudence. The question in these cases is (to quote the words of Sir James Colville in Lakshman Dada Naik v. Ramchandra Dada Naik (1880) L.R.7 I.A.181 at 195 : I.L.R.5 B 48 "not so much whether an admitted principle of Hindu Law shall be carried out to its apparently logical consequences, as to what are the limits of an exceptional doctrine established by modern jurisprudence. "

23. I agree that the appeal should be allowed with costs in this and the lower Courts.