

APPELLATE CIVIL

Before Falshaw and Kapur, JJ.

BISHAN NARAIN, AND ANOTHER,—Appellants,

versus

OM PARKASH AND OTHERS,—Respondents.

Regular First Appeal III of 1951

*Civil Procedure Code (V of 1908), section 2 (II) and Order 22, Rule 3—Hindu Women's Right to Property Act (XVIII of 1937), section 3—Whether the sons and the widow of a deceased Hindu Coparcener are his legal representatives.*

S. S. constituted a joint Hindu family with his sons and grandsons. On the death of S. S. his sons and his widow applied for being brought on the record as his legal representatives. This application was opposed on the ground that the sons and the widow were not his legal representatives. This contention was upheld by the trial Court and the suit was dismissed as having abated. The sons and the widow appealed to High Court.

*Held*, that on the death of a Hindu his sons who take by survivorship and his widow who takes under Statute, are his legal representatives and the suit does not abate if they apply to be brought on the record as his legal representatives.

Case-law reviewed.

*Jamburao Satappa Kochari v. Annappa Ramchandrappa Kabbur and other (1), Amar Chandra Kundu v. Sebak Chand*

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(1) I. L. R. (1941) 65 Bom. 177

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*Chowdhary (1), Dinamoni Chaudhurani v. Elahadut Khan Bishan Narain, (2), Gyan Datt and others v. Sada Nand Lal and others (3), and another Alekh Chandra and others v. Krishana Chandru Gajapati Narayan Deo (4), and Rajendra Parsad and others v. Ganga Om Parkash Bux Singh (5), relied upon; Dwarka Das and others v. and others Krishan Kishore and Jai Gopal (6), dissented.*

*First appeal from the decree of Shri A. N. Bhanot, Sub-Judge 1st Class, Delhi, dated the 13th February 1951, dismissing the suit.*

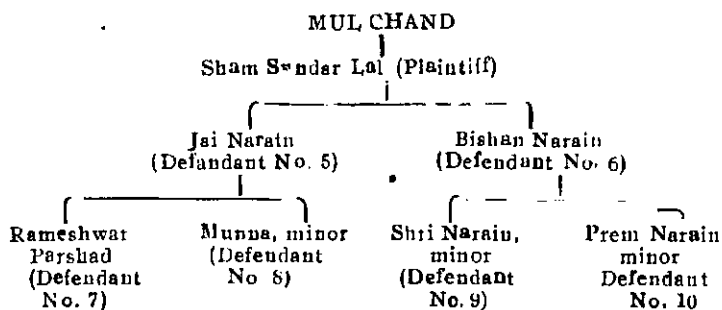
K. L. GOSAIN and K. S. THAPAR, for Appellants.

F. C. MITAL and J. L. BHATIA, for Respondents.

### JUDGMENT

KAPUR, J. This is a plaintiff's appeal against the decree of Mr Bhanot, Subordinate Judge 1st Class, Delhi, dated the 13th February 1951, dismissing the plaintiff's suit on the ground that it had abated. The pedigree-table given at page 3 of the paper book and which is as follows will be helpful in understanding the case :—

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Sham Sunder Lal and his descendants formed a joint Hindu family and they were running two businesses under the name and style of Radhe Mal-Mul

(1) I. L. R. (1907) 34 Cal. 642 (F. B.)

(2) (1895) 8 C. W. N. 843

(3) A. I. R. 1938 All. 163

(4) I. L. R. (1941) 20 Pat. 755

(5) A. I. R. 1945 Oudh 60

(6) I. L. R. (1921) 2 Lah. 114

Bishan Narain, Chand and Sham Sundar Lal-Jai Narain which were  
 and another joint Hindu family partnerships. There was an-  
 v. other partnership in which Sham Sundar Lal,  
 Om Parkash plaintiff, and his sons Jai Narain and Bishan Narain,  
 and others defendants Nos. 5 and 6, had a half share. Shyam  
 Kapur J. Lal, since deceased, and Chhote Lal, defendant No. 1,  
 and Om Parkash, defendant No. 2, owned the other  
 half share. The name of this firm was Sham Sundar  
 Lal-Shyam Lal and they were working in Delhi and  
 other places. In October 1940 Shyam Lal, son of  
 Dhaum Sen, died and Chhote Lal, who is his brother  
 and executor of the will, has been made defendant  
 No. 1.

On the 23rd July 1941 Sham Sundar Lal brought a suit for dissolution of partnership and rendition of accounts. The defendants in this case were the legal representatives of Shyam Lal, Chhote Lal, himself, Om Parkash and his sons and also Jai Narain and Bishan Narain, sons of Sham Sundar Lal, and the minor sons of Jai Narain and Bishan Narain. The proceedings in the case were delayed for about ten years because of the various proceedings which were taken by the parties. On the 30th April 1950 Sham Sundar Lal, plaintiff, died. An application for his legal representatives being brought on the record was made by his widow Mehtab Devi and his son Bishan Narain under Order XXII, rule 3, and Order I, rule 10, Civil Procedure Code. This is at page 111 of the paper book. By their reply, dated the 4th October 1950, this application was opposed and the plea taken by the defendants was that the applicants were not the legal representatives of the deceased and that the suit had abated. The learned Subordinate Judge held that the application had been made within time but the suit had abated because the applicants were not the legal representatives of Sham Sundar Lal for the purpose of the suit. He relied on a Bench judgment of the Lahore High Court, *Dwarka Das and others v. Krishan Kishore and Jai Gopal* (1),

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(1) I. L. R. (1921) 2 Lah. 114

where it was held that surviving coparceners in a joint Hindu family are not legal representatives. As the learned Judge held that the suit had abated, he dismissed the suit. The legal representatives have come up in appeal to this Court.

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In section 2 (11) of the Code of Civil Procedure 'legal representative' means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

The Lahore judgment which has been relied upon by the learned Subordinate Judge is based on a Bench judgment of the Bombay High Court, *Chunilal v. Bai Mani* (1), which itself has been differed from in another Division Bench of that Court, *Ganesh Shakharam Saraf and others v. Narayan Shivram Mulaye* (2), and was overruled in *Jamburao Satappa Kochari v. Annappa Ramchandrapa Kabbur and others* (3), to which I shall refer later on. Scott Smith, J., with whom Chevis, J. agreed and who in the Lahore case, gave the leading judgment, relied besides the Bombay judgment, on the statement of the law as contained in Mayne's Hindu Law that there is no such thing as succession, properly so called, in an undivided Hindu family, and held only this much that for that reason Dwarka Das, the brother, and Puran Devi, the mother, could not be brought on the record as the legal representatives of the deceased Jagan Nath. Beyond this no reasons are given why these two persons could not be made the legal representatives of Jagan Nath, deceased.

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(1) I. L. R. (1918) 42 Bom. 504

(2) I. L. R. (1931) 55 Bom. 709

(3) I. L. R. (1941) 65 Bom. 177

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In the Bombay case *Chunilal v. Bai Mani* (1), the plaintiff obtained a decree for injunction against two defendants who were members of a Joint Hindu family with three other co-parceners. After the death of both the defendants the plaintiff sought to execute the decree against the three surviving co-parceners, and it was held that they were not bound by the decree, for on no construction of the term 'legal representatives' could members of a joint Hindu family be brought within its definition as contained in section 2 (11) of the Civil Procedure Code. This case was first considered in *Ganesh Sakharam Saraf and others v. Narayan Shivram Mulaye* (2), There a decree for injunction was obtained against the father as a manager and representative of a joint family estate. After his death his son was brought on the record as legal representative under section 50 read with section 53 of the Code of Civil Procedure, and it was held that that decree could be executed against him. Referring to I.L.R. 42 Bom. 504 Patkar, J., said at page 716 :—

“ It is difficult to accept the view taken in *Chunilal-Harilal v. Bai Mani* (1), that under section 50 of the Civil Procedure Code, a son who is joint is not a legal representative of his father. In one sense a co-parcener leaves no estate in the coparcenary property on his death, and so a surviving coparcener, even though a son, is not strictly his legal representative, and it cannot be said that the estate of the judgment-debtor has devolved on the death of the judgment-debtor on his joint son who is sought to be proceeded against in execution. If the father represented the estate of the joint family during his life-

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(1) I. L. R. (1918) 42 Bom. 504

(2) I. L. R. (1931) 55 Bom. 709

time, it is difficult to hold that the son though joint with him cannot represent the estate of the joint family which was represented by his deceased father, and is not a person who in law represents the estate of a deceased person."

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The learned Judge went on to say that if a son who is joint with the father is held not to be a legal representative of the father, a decree other than a decree for debt, e.g., a decree for possession or a mortgage decree, obtained against the father, would be infructuous, and a fresh suit would have to be brought after the death of the father against the son who was joint with the father, and it is doubtful if a fresh suit could be maintainable because of the provisions of section 47 of the Civil Procedure Code. Reference was made to several other cases. The other learned Judge, Broomfield, J., also was of the same opinion.

In the Full Bench case, *Jamburao Satappa Kochari v. Annappa Ramchandrappa Kabbur and others* (1), Ram Chandra, defendants' father, had executed in favour of Jamburao a promissory note for Rs 5,000 and the plaintiff brought a suit on the basis of the pronote alleging in the plaint that Ram Chandra was dead and that the defendants, his sons, were his legal representatives. The Assistant Judge took the view that the sons were not liable after the death of the father as his legal representatives, and an appeal was taken to the High Court and the matter was referred to a Full Bench and Beaumont, C.J., at p. 182 observed as follows :—

"The learned Assistant Judge seems to have thought that that section provides that the son shall be deemed to be the legal representative and, therefore, implies that he is not in fact the legal representative. But

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that is not, I think, the correct construction of the section. The fiction introduced is not in treating the son as the legal representative, but in treating the property which has passed to the son as a surviving co-parcener as being property of the deceased come to the hands of the son."

Referring to *Chunilal v. Bai Mani* (1), the learned Chief Justice said :—

"I must confess that I have felt great difficulty in understanding what the learned Judges in *Chunilal-Harilal v. Bai Mani* (1), really intended to decide, but most of their rather obscure reasoning is directed to the construction of section 53, with which we are not concerned at the present moment. No doubt Mr Justice Beaman says (p.509) : 'On no construction of the words 'legal representative' can members of a joint Hindu family be brought within the definition now contained in our Statute'. Mr Justice Heaton says, that the sons do not fall within the meaning of the definition of 'legal representative'. No doubt, a survivor of a co-parcenary does not, in respect of the property which survives to him, represent the estate of the deceased co-parcener, but it does not follow from that that where the survivor is a son of a deceased co-parcener, he may not be the legal representative of the estate of the deceased. It is almost inevitable that in every case the father must leave some property which belongs to him separately, even if it be only his wearing apparel. As indicated above, if there is no estate descended to the son, that can be pleaded as a defence to the suit. In so far as *Chunilal-Harilal*

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(1) I. L. R. (1918) 42 Bom. 504

v. *Bai Mani* (1), (supra) conflicts with this view, I think it is not good law. It was adversely criticized in *Ganesh Sakharan v. Narayan Shivram* (2).”

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The learned Chief Justice added :—

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“In my judgment, the son of a Hindu, where there has been no appointment of an executor or administrator, in law (that is the personal law, in this case Hindu law) represents the estate of his father and is, therefore, the legal representative within the meaning of section 2 (11).”

Mr Justice Patkar in *Ganesh Sukharam's case* (2), relied on some judgments of the Calcutta High Court, firstly on *Amar Chandra Kundu v. Sebak Chand Chowdhury* (3). There a decree for money was passed against a member of a joint family governed by the law of Mitakshara. This decree was sought to be executed after his death against his son who took ancestral property by survivorship as legal representative. It was held that the son was the legal representative and might as such be brought on the record. At p. 653, Mitra, J., said :—

“Indeed, too narrow a construction of the expression ‘legal representative’ may lead to undesirable consequences. It appears not only in the part of the Code dealing with execution of decrees, but it is also used in the part of the Code dealing with representation of parties before decree on death, marriage, etc. The wider construction based on the principle of representation other than in the capacity of heir, executor or administrator has always been

(1) I. L. R. (1918) 42 Bom. 504

(2) I. L. R. (1931) 55 Bom. 709

(3) I. L. R. (1907) 34 Cal. 642 (F. B.)



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adopted. Such a construction is almost inevitable in suits for land or suits on mortgages. If the substitution of a reversioner as 'legal representative' were not allowed, the plaintiff would be bound to bring a fresh suit on the death of the original defendant.

Both, therefore, on the principle that the son is an heir as regards self-acquired property and that he is the person to whom the '*universitas juris* of the deceased passes according to Hindu Law, he being the representative of the family and the custodian of the family property in succession to the deceased according to the Mitakshara system which retains the relics of the patriarchal system, I am of opinion that the son may, on the death of the father, be placed on the record of a suit as his legal representative after decree, irrespective of the nature of the property sought to be attached by the decree-holder."

The last paragraph of the passage which I have quoted from Mitra, J.'s judgment seems to be of particular importance.

In *Dinamoni Chaudhurani v. Elahadut Khan* (1), Brett, J., observed at p. 852 :—

"The term 'legal representative' has been used in section 234 to meet the circumstances of a certain event, viz., the passing of the property the subject of the litigation on the death of the deceased judgment-debtor to her successor and to include such successor either to her estate or to the property in suit."

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(1) (1895) 8 C. W. N. 843

Agreeing with the judgment of Brett, J., Woodroffe, Bisban Narain and another J., said at page 856 :—

“The section has, however, been applied to cases where the succession is otherwise than by heirship to the last holder of an estate as also to cases where the estate accrues to the present holder by survivorship. In these cases where a decree is passed against a judgment-debtor not in his or her personal capacity but in a representative capacity the decree may be executed against the person who, though not an heir of the judgment-debtor the last holder of the estate, is entitled thereto after her death whether as reversioner or surviving co-parcener.”

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At page 858 the learned Judge further said :—

“From this review of the authorities it will appear that judicial decisions have extended the sense of the term ‘legal representative’ beyond that of its ordinary meaning of ‘administrator, executor, and heir’ and though such extension has been attended with doubt and has in some cases been the subject of conflicting decision it appears to me to be too late now to endeavour, however, convenient it might be, to secure for the terms that which is perhaps its strict and legitimate sense.”

In Madras in *Meyyappan Servai v. Meyyappan Ambalam* (1), the view taken in *Chunilal v. Bai Mani* (2), as to the scope of sections 52 and 53 of the Code of Civil Procedure has not been approved of.

In Allahabad also the accepted view is that the definition of ‘legal representative’ in section 2 (11) of the Code of Civil Procedure covers the case of a co-parcener.

(1) 46 M. L. J. 471

(2) I. L. R. (1918) 42 Bom. 504

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In *Gyan Datt and others v. Sada Nand Lal and others* (1), Ganga Nath, J., held that the definition of a 'legal representative' in section 2 (11) of the Code of Civil Procedure is wide enough to cover the case of a co-parcener who gets property by survivorship.

The Patna High Court has also taken the same view. In *Alekh Chandra and others v. Krishna Chandra Gajapati Narayan Deo* (2), it was held that where a manager of a joint Hindu family dies the other members of the family may be regarded as his legal representatives. Reliance was placed by Fazl Ali, J., who gave the judgment in the case, on the Allahabad case which I have referred to above and on *Nagappu Nadar v. Karuppan Nadar* (3). In this Madras case it was held that where a managing member of a joint Hindu family who brings a suit dies, the next managing member is the person on whom would devolve the representative character and he can, therefore, come in as the legal representative.

The same view has been taken in a later judgment of the Oudh Chief Court in *Rajendra Prasad and others v. Ganga Bux Singh* (4), where it was held that in the case of a joint Hindu family if the right to sue survives at all, it survives in consequence of the fact that the estate of the deceased is represented by the survivors and under Order XXII co-parceners can be substituted as legal representatives.

A widow under the Hindu Law has been given rights under section 3 of the Hindu Women's Right to Property Act, 1937, and it was held in *Veeramreddi Subbarami Reddi v. Veeramreddi Sankaramma* (5), that on the death of a Hindu co-parcener suing his sons for partition his right to sue survives to his widow and she can be added as a legal representative of her deceased husband.

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- (1) A. I. R. 1938 All. 163  
 (2) I. L. R. (1941) 20 Pat. 755  
 (3) A. I. R. 1925 Mad. 455  
 (4) A. I. R. 1945 Oudh 60  
 (5) (1949) 2 M. L. J. 821

In a later judgment of the Lahore High Court decided by Tek Chand, J., *Prem Das v. Brij Mohan Lal and others* (1), it was held that surviving members of a joint Hindu family are legal representatives within the meaning of section 2 (11) of the Code of Civil Procedure for the purpose of execution of a decree obtained against a deceased.

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A review of these authorities shows that on the death of a Hindu his sons who take by survivorship and his widow who takes under the statute are legal representatives. If the sons or other co-parceners are held not to be legal representatives within the definition of that term in the Code of Civil Procedure, it will mean that when a suit is brought by a father or other members of a joint Hindu family or a suit is brought against him, on his death the proceedings will terminate and a fresh suit will have to be brought and if the suit is terminated in a decree this will be impossible because of the provisions of section 47 of the Code of Civil Procedure. Even where the suit has not been decreed, it will mean that some point will have to be litigated by the other co-parceners or against them every time the death of a co-parcener takes place which would be against the observations of Lord Phillimore in *Lingangowda v. Basangowda* (2). I am, therefore, of the opinion that the view taken by the learned Subordinate Judge was erroneous and that on the death of Sham Sundar Lal the application made by his legal representatives, i.e. the widow and his son Bishan Narain, should have been allowed. As to what the consequences of this application on the merits of the suit would be or whether any other question would arise or would not arise I am not deciding in this appeal, nor do they arise at this stage.

I would, therefore, allow this appeal, set aside the decree and the order of the learned Subordinate Judge

(1) A. I. R. 1941 Lah 447

(2) (1927) 54 I. A. 122 at p. 125

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and remand the case for trial in accordance with law. As the appeal has succeeded on a preliminary point, I order that the court-fee be refunded. The parties have been directed to appear in the trial Court on the 3rd January 1952. As the learned Subordinate Judge preferred to follow a Division Bench of the Lahore High Court, with which we are not agreeing, the parties will bear their own costs in this Court and in the Court below.

Falshaw J.

FALSHAW, J. I agree.