

## APPELLATE CIVIL

Before Kapur, J.

JAWALA PARSHAD,—Defendant-Appellant

versus

KISHORI LAL AND OTHERS,—Respondents

Regular Second Appeal No. 5 of 1953.

1954

*Hindu Law—Joint Family—Father changing over to a business different from the family business—Portion of the family property sold for adequate price for the purposes of the new business—Sale whether binding on the family.*

August, 9th

Held, that if a family is a trading family and the father changes over to a business different from which he was carrying on before and for the purposes of that business, which is the main-stay of the family, sells a portion of the family property for a price which is not inadequate, the sale should be upheld if it is intended for the purposes of carrying on that business.

*Bonthi Damodaram Chetty v. Bansilal Abeerchand and others (1), and Angneylal Narain Das and others v. Angney Lal Munni Lal (2), followed.*

*Regular Second Appeal from the decree of Shri Tirath Dass Sehgal, Senior Sub-Judge, with enhanced appellate powers, Karnal, dated the 23rd June, 1952, reversing that of Shri Ishar Singh, Sub-Judge, 1st Class, Karnal, dated the 20th November, 1951, and decreeing the claim in favour of the plaintiff and defendant No. 5 for possession of their share in the land in suit but dismissing their suit with respect to the share of Hari Ram, defendant No. 3, and defendant No. 4 and leaving the parties to bear their own costs.*

D. N. AGGARWAL, for Appellant.

SHAMAIR CHAND, DALJIT SINGH, and RAJINDAR NATH AGGARWAL, for Respondents.

## JUDGMENT

KAPUR, J.—This is a defendant's appeal against an appellate decree of the Senior Sub-Judge Mr. Tirath Das Sehgal reversing the decree of the trial Court and thus decreeing the plaintiff's suit.

Kapur, J.

(1) I.L.R. 51 Mad, 711,  
(2) A.I.R. 1951 All. 400.

Jawala  
Parshad  
v.  
Kishori Lal  
and others  
—  
Kapur, J.

The plaintiff and defendants 3 to 5 were members of a joint Hindu family and the father, defendant No. 3, who was also the *karta* of the family on the 14th January, 1940, sold the land in dispute for Rs. 600. In the sale deed the sale is stated to be for the purposes of carrying on the shop business. The father was at one time a commission agent and he is alleged to have started a grocer's business and it is for that that the money was required. The learned Senior Sub-Judge has written a judgment which, with very great respect I have to say, is unintelligible. Neither the facts nor the principles of law have been correctly stated.

If the family is a trading family and the father changes over to a business different from which he was carrying on before and for the purposes of that business, which is the mainstay of the family, sells a portion of the family property for a price which is not inadequate, the sale should in my opinion be upheld if it is intended for the purposes of carrying on that business. In *Bonthi Damodaram Chetty v. Bansilal Abeerchand* (1), it was held that if business was carried on by the grandfather and then discontinued and after his death the father started the business, an alienation made for such a business was binding on the joint family. In another case where the father was carrying on a business and after his death the guardian of the minor sold the property for the extension of that business, it was held to be binding on the family by the Allahabad High Court in *Angney Lal v. Angney Lal* (2).

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(1) I.L.R. 51 Mad. 711.

(2) A.I.R. 1951 All. 400

In the present case as I have said the family is a trading family and if the father for the maintenance of the family sold the property in order to carry on the business and that business is the only means of subsistence of the family the sale must be upheld.

Jawala  
Parshad  
v.  
Kishori Lal  
and others  
—  
Kapur, J.

As I am of the opinion that the sale is binding on the family, I would allow this appeal, set aside the decree of the appellate Court and restore that of the trial Court. The appellant will have his costs in this Court and the Courts below.

The cross objections are dismissed but no costs.

#### REVISIONAL CIVIL

*Before Bhandari, C.J.*

NAWAB SIR MUZAFFAR ALI KHAN QAZALBASH AND  
ANOTHER,—*Defendants-Petitioners*

*versus*

L. JAWANDA MAL AND OTHERS,—*Respondents*

Civil Revision No. 200-D of 1952.

Code of Civil Procedure (V of 1908)—Section 20—  
Expression "Cause of Action", meaning of—Assignment of  
a debt—whether can be regarded as a part of cause of action. August, 11th

1954

*Held*, that expression "cause of action" means the fact or facts which establish or give rise to right of action or the existence of which entitles a party to seek redress in a court of law. The facts which comprise the cause of action are those which must, if traversed, be proved by the plaintiff to enable him to obtain a judgment in his favour.

*Held further*, that the assignment of a debt is a part of the "cause of action" within the meaning of section 20(c) of the Civil Procedure Code and the assignee can sue on it in the Court having jurisdiction where the assignment took place.