

Jafferali Bhaloo Lakha and others - - - - - *Appellants*

*v.*

The Standard Bank of South Africa, Limited - - - - - *Respondents*

FROM

HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 7TH NOVEMBER, 1927.

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*Present at the Hearing :*

THE LORD CHANCELLOR.

LORD BUCKMASTER.

LORD CARSON.

LORD DARLING.

LORD WARRINGTON OF CLYFFE.

[*Delivered by* THE LORD CHANCELLOR.]

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This is an appeal by three of the defendants in this suit from a judgment of the Court of Appeal for Eastern Africa, affirming the judgment of Mr. Justice Tomlinson of His Majesty's Court at Zanzibar in favour of the present respondents, who were plaintiffs in the suit.

The facts may be quite shortly stated. One Bhaloo Lakha, who was a member of the Khoja community, carried on business as a clove merchant at Zanzibar under the style of Lakha Velani & Co. In the year 1908 he acquired as his separate property the house in which the business was carried on. In the year 1913 he executed a deed of gift of all that he possessed in favour of his six sons. Later on in the same year he made a will in which he declared that he had no property or estate of any description, and appointed his eldest son, Mahomedali, to be the guardian of his minor children. He died on the 6th October, 1916, leaving living all his six sons, of whom two, the first and second appellants, were then minors under the age of 18, and also leaving surviving him his widow, the third appellant. The business was, in fact, carried

on under the management of three of the adult sons. On the 3rd September, 1919, an equitable mortgage of the house and other property was executed in favour of the respondents, the Standard Bank of South Africa, Ltd.; but it was afterwards realised that an equitable mortgage was not effective, and, on the demand of the Bank, a mortgage deed dated 26th February, 1921, was executed in the name of the firm by Hussein Bhaloo Lakha, one of the three sons who were managing the business. By that deed the firm purported to mortgage to the Bank the house in question, with other property. Afterwards the business got into difficulties, and in the year 1922 this suit was commenced by the Bank against the firm, the official assignee of one son who was insolvent, and the other five sons, together with the widow. The claim was to enforce the mortgage, and a decree to that effect was made by the Court in Zanzibar, and was affirmed by the Court of Appeal for Eastern Africa. The two sons, who were minors at the date of the death of Bhaloo Lakha, and his widow, bring this appeal.

On these facts three questions in effect arise. The first question is whether the two sons who are appellants, became before or on their father's death partners in the business. It has been found by both Courts that they did so become partners. In that connection the deed of gift has been referred to, and the question has been raised whether that deed was valid or not. That question has now become immaterial, for it is plain that, whether the deed of gift was valid or not, the business and the business assets of Bhaloo Lakha were, or on his death became, vested in his six sons, subject to the widow's right of maintenance; and the real question is whether after his death there was a valid arrangement under which the business was carried on for the benefit of the six sons, but under the management of the three managing partners. On that point it is of vital importance that, immediately after the death of Bhaloo Lakha, a request was signed to the Bank to open an account in the name of the firm, and that request contained a statement by Mahomedali, the guardian of the two minors, that all the six sons were partners in the business. If the guardian had power to bind the minor sons, then that request is decisive; and it appears to their Lordships that, both on the law as stated in Mr. Tyabbji's book, and on the terms of the will appointing him guardian, Mahomedali had that power. He had to decide how the business and the business assets, in which the minors were interested, could best be dealt with for their benefit; in other words, he had to say whether the business should be wound up or whether it should for a time be carried on. He decided in favour of the latter view; and the profits of the business were divided among all the six sons. The effect was that, in accordance with Section 247 of the Contract Decree, which is applicable in Zanzibar, the two sons who were minors were admitted to the benefit of the partnership; and as the result of that admission, while they could not before they came of age be made personally liable for the obligations of the firm yet their shares in the

partnership property were liable to the obligations of the firm. The document signed by the appellants on the 12th June, 1922, in no way affected that liability.

Then arises a second question : Was this house part of the partnership assets ? It has been found by both Courts that it was part of the business assets and of the partnership assets, and that concurrent finding of the two Courts cannot now be disturbed. Where partners are jointly entitled to property, and the question arises whether that property has been thrown into the assets of a partnership, that is a pure question of fact. In the present case that question of fact has been decided, and, as far as can be seen, correctly decided, in favour of the respondents.

A third question has been raised, namely, whether one of the partners (Hussein) had power to mortgage the property to the Bank, so as to bind the firm. That question is really not material to the appellants ; for even if the mortgage was ineffective, the house, being part of the business assets, would be available for the general body of creditors, and no share in it would come to the appellants. But it appears to their Lordships that upon the terms of Article 251 of the Decree the managing partner had power to execute the mortgage.

The result is that the appeal fails as regards the two sons who are appellants. As to the widow's claim to maintenance, the answer is given in the judgment of Mr. Justice Tomlinson, when he says :—

“ With regard to the widow, as I understand it, she is entitled by Khoja custom to maintenance out of the estate. She has, however, no specific interest in any particular item of the family property, and her rights are subject to the general dealings with the estate by those in charge.”

The result is that this appeal fails, and their Lordships will humbly advise His Majesty accordingly ; but, as the appellants have come here *in forma pauperis*, there will be no order as to costs.

In the Privy Council.

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JAFFERALI BHALOO LAKHA AND OTHERS

vs.

THE STANDARD BANK OF SOUTH AFRICA,  
LTD.

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DELIVERED BY THE LORD CHANCELLOR.

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