

## **PRIVY COUNCIL**

Syed Kasam

Vs.

Jorawar Singh

P. C. A. No. 119 of 1920

(Viscount Cave, Lord Shaw and Sir John Edge. JJ)

6.4.1922

### **JUDGMENT**

#### **Viscount Cave J.**

1. This is an appeal by the defendant in the suit against the decree of the Court of the Judicial Commissioner of the Central Provinces, reversing a decree of the Additional District Judge, East Berar, Amraoti, and giving judgment for the plaintiffs.
2. Nain Singh and the plaintiffs, who were the issue of his brother Khannu Singh, formed at one time a joint Hindu family, resident in Berar and subject to the law of the Mitakshara as there interpreted. Before the date of the deed next mentioned, Nain Singh and the plaintiffs had become separate in mess and residence, but not in estate.
3. By registered sale-deed dated the 29th September, 1902, Nain Singh sold his half share of the ancestral property of the family (with some moveable property) to Syed Kasam for 20,000 rupees, of which 15,000 rupees were admitted by the vendor to have been received in advance, and the remaining 5,000 rupees were paid to him in the presence of the registering officer. No partition was then effected, but the purchaser was allowed to hold and cultivate certain parts of the property corresponding in value to a half share. On the 4th December, 1905, all the members of the family signed a karinama appointing one Ghasi Ram as arbitrator to partition the property and agreeing to accept whatever partition he might make. The arbitrator divided the property into two lists, one (representing a moiety in value) containing the property to be allotted to Nain Singh, and the other (representing the remaining moiety in value) containing the property to be allotted to the plaintiffs. The latter list was apparently divided into three sublists, one for each of the plaintiffs. These lists were handed to Nain Singh. The formal division was not at once carried out, as Nain Singh

died on the 26th March, 1906 ; but after his death the lists appear to have been acted upon by all the persons interested, as the purchaser was put into possession of the property allotted by the arbitrator to Nain Singh, and the plaintiffs from time to time dealt with various parts of the lands contained in their lists.

4. On the 23rd July, 1914, the plaintiffs brought the present suit against Syed Kasam, claiming possession of the lands of which he had been so put into possession on the ground that the family had continued joint in estate down to the death of Nain Singh, and that on the death of Nain Singh's widow (which occurred on the 10th July, 1910) the property had passed to them. They also alleged that the half share had been sold by Nain Singh to the defendant "for a bogus consideration of 20,000 rupees" - an expression which has no legal signification, but which apparently meant that the consideration of 20,000 rupees had not in fact been paid.

5. The suit was heard by the additional District Judge, East Berar, who dismissed it, holding that there had been an effective agreement for partition, and that the 20,000 rupees had been paid. On appeal, the Additional Judicial Commissioner held that there had been no partition, and that although 5,000 rupees, part of the purchase money, had been paid before the registering officer, the balance of 15,000 rupees had not been paid, or if paid, had been at once returned. He declined to admit the plea that the kararnama effected a severance of the joint tenancy on the ground that this had not been specifically pleaded. He therefore set aside the decree of the Lower Court and directed the defendant to put the plaintiffs in possession of the property in suit on payment by the plaintiffs of 5,000 rupees. Against this decree the present appeal was brought. The original appellant, Syed Kasam, has died pending the appeal, and is represented by the present appellants.

6. Two points are taken on behalf of the appellants. First, it is said that the law of the Mitakshara is to be interpreted in Berar in the same manner as in Bombay, and that according to that law as so interpreted Nain Singh had power to sell his undivided share in the joint family property without the consent of his co-owners; and their Lordships do not doubt that this statement is correct. But to this point it was answered by the Judicial Commissioner that the sale by Nain Singh in 1902 only gave to the purchaser an equity to enforce a partition, and that such equity was displaced by the fact that the purchase money was not fully paid. In view of their Lordships' opinion on the second question, to be hereafter stated, and of the fact that the evidence, on the question of the payment of 15,000 rupees, was not fully brought to their notice, they do not think it necessary to deal with this point ; nor do they express any opinion on

the question whether, even if it was proved that part only of the purchase money was paid, the form of decree adopted by the Judicial Commissioner was appropriate to the case.

7. But, secondly, it is argued on behalf of the appellants that the transactions which took place in the year 1905 effected a severance of the joint estate, and accordingly the plaintiffs have no right to such; and in their Lordships' opinion this argument should prevail.

8. It is settled law that in the case of a joint Hindu family subject to the law of the Mitakshara, a severance of estate is effected by an unequivocal declaration on the part of one of the joint holders of his intention to hold his share separately, even though no actual division takes place and the commencement of a suit for partition has been held to be sufficient to effect a severance in interest even before decree [see *Appovier v. Rama SubbaAiyar*<sup>1</sup> *Joy NarainGiri v. GrishChunderMyti*<sup>2</sup> *GirjaBai v. Sadashiv*<sup>3</sup> *Kawal Nain v. Budh Singh*,<sup>4</sup>

9. In the present case it was proved by the evidence of one of the plaintiffs (Jorawar Singh) and of Ghasi Ram that Nain Singh claimed his half share of the ancestral property, and that after discussion all the joint holders signed the agreement of the 4th December, 1905, appointing Ghasi Ram to partition the property and agreeing to accept whatever partition he might make; and this claim and agreement were quite sufficient to effect a severance in interest and to prevent the share of Nain Singh from passing by survivorship. It is true that the agreement was not specifically pleaded by the defendant, Syed Kasam; but he pleaded that Nain Singh was separate in estate, and relied in his written statement on the division of the property which resulted from the agreement, and their Lordships do not think that the agreement leading up to that division can be put out of account. The subsequent division of the property between the co-owners was accepted by all parties and is not said to have been unfair; and there appears to be no reason why it should be disturbed. In these circumstances the sale to Syed Kasam could not be set aside at the instance of the joint owners, but only (if at all) at that of the vendor or his representatives; and any proceedings for that purpose were statute barred before the commencement of the suit. This is sufficient to dispose of the plaintiffs' claim.

10. For these reasons their Lordships will humbly advise His Majesty that this appeal should be allowed, that the decree of the Judicial Commissioner should be set aside and the decree of the District Judge restored, and that the respondents should pay the

costs in both the Courts below and the costs of the present appeal.

Appeal allowed.

Cases Referred.

1. (1866) 11 MIA 75 : 8 WRPC 1 : 2 Sar 218 : 1 Suther, 657 (PC);

2. (1877) 4 Cal 434 : 5 IA 228 : 3 Sar 871 (PC);

3. AIR 1916 PC 104: 43 Cal 1031 : 43 IA 151 : 14 ALJ 822 : 20 CWN 1085 : 20  
MLT 78 : 12 NLB 113 : 24 CLJ 207 : 18 Bom LR 621 : 4 LW 114 : 31 MLJ 455 :  
(1916) 2 MWN 65 (PC) ;

4. AIR 1917 PC 39: 39 All 496 : 44 IA 159 : 15 ALJ 581 : 21 CWN 986 : 2 PLW 57 :  
19 Bom LR 642 : 26 CLJ 101 : 33 MLJ 42 : (1917) MWN 514 : 6 LW 330 (PC).