PRIVY COUNCIL

Rajanikanta Pal

Vs.

Jagamohan Pal

P. C. A. No. 122 of 1920, from Bengal Appeals Nos. 26 of 1918 and 1 of 1919
(Lords BuckmasterPhillimore, J. Sir John Edge and Sir Lawrence Jenkins.JJ.)

23.1.1923

JUDGMENT

Lord Buckmaster J.

1.The facts in this case have been carefully investigated both by the Subordinate Judge and by the High Court, with the result that many of the points originally in dispute are now deter mined, and the two that remain depend upon the true inference to be drawn from ascertained circumstances and not from the consideration of what those circumstances may be. Upon these two questions there is a difference of opinion between the Sub ordinate Judge who decided in favour of the appellants and the High Court, by whom his judgment in this respect was reversed. The nature of the points involved will be best understood after a statement of the relevant facts.

2. Lal Mohan Pal, who died on the 23rd February, 1891, originally carried on business with one PajuLal in the sale of yarns and cloths. This business ended in 1882, and therefrom Lal Mohan Lal started a similar business, the bead office being at Dacca, with branch places of business at Calcutta and elsewhere. He was, in this business, assisted by his three song, Madan Mohan Pal, Jaga Mohan Pal, and RadhaGobinda Pal. After the death of Lal Mohan Lal, this business was carried on by the three sons jointly as a joint family business, and Madan Mohan Pal assented that the original capital of the business was largely composed of monies, amounting to Rs. 16,000 and up wards, due to him for services rendered to the original firm. The third son, RadhaGobinda Pal, died on the 1st November 1902, having made a will, of which he appointed his brother, Jaga Mohan Pal, as the executor. He had no sons living at the date of his will or of his death, and only one wife KusumKumari, who survived him. He conferred upon his wife the power to adopt a son, and provided that if a son was

adopted and died within fifteen years unmarried or childless, his wife should adopt another son, and if he died in similar conditions she should adopt a third. He gave his wife the yearly profits of all his immoveable property, except certain monthly allowances in favour of his daughter, such profits to be received by her till the adopted son should attain twenty-one years, and thereafter one-half of the profit was to be received by his wife and one-half by the son. After the death of the wife all the immovable property was to go to the adopted son, with the provision that until such son had attained twenty-one the estate should remain in the hands of his executor. He gave all his movable property or karbar to Jaga Mohan Pal, and directed that after realising the debts of the karbar he should pay out of the balance Rs. 2,000 to his wife for performing meritorious acts, Rs. 500 to his spiritual preceptor, Rs. 2,000 to the idol IswarRadhaSyamsundarJiu, and Rs. 600 to his three sisters, and such sum as would accrue as profit on the investment of Rs. 2,500 for charitable purposes. He died in 1902 and probate of the will was granted to the executor. A dispute subsequently arose between Jaga Mohan Pal, the executor, and Madan Mohan Pal. the eldest son of Lal Mohan Lal. This dispute was due to the assertion by Madan Mohan Pal that he had originally contributed to the business Rs. 16,912 in his father's lifetime, and this he claimed as his share in the original joint capital of the business. This was finally settled by the defendant abandoning his claim, and both be and Jaga Mohan gave no their intention of opening separate businesses and the joint business was continued.

3. Following upon this, Madan Mohan Pal gave his third son, JaduNath Pal, in ad option to his brother Jaga Mohan Pal; and the fourth son, Preonath Pal as adopted son to the wife of RadhaGobinda Pal. JaduNath Pal died in December, 1906, and, following upon his death a breach occur red in the family so that Madan Mohan Pal took his meals separately, gave notice to the defendants dissolving the joint family business, and finally instituted the suit out of which this appeal has arisen claiming that he was entitled on partition to a two-thirds share of the joint proper, ties the movables and the business.

4. The property in respect of which this claim was made was separated under a variety of heads, but all that need now be considered ware those that were contained in Schedule 3 and Schedule 5 (kha). The first included immovable property that bad been acquired after Radha Go binda's death, and the second investments, Government paper and houses. In respect of these the Subordinate Judge gave the plaintiff only one-third and the High Court two-thirds, the present appeal being brought by the widow and Preonath, claiming that a one-third was all that he was entitled to obtain.

5. The real question for determination, therefore, is whether these properties were acquired under circumstances which made them part of the joint family estate in which the widow and the adopted son were entitled to a one-third, or whether they belonged to the business which, after the death of RadhaGobinda, was owned as to two-thirds by the plaintiff, and one-third by Radha Mohan. It is important to remember that the parties are governed by the Dayabaga law by virtue of which it was possible for the deceased brother to make a valid bequest of his share, but except to the extent to which that will affected the joint family it remained joint, with the result that, apart from the business, the immovables and all the property not actually included in the gift to Jago Mohan Pal was joint family property. The business was, of course, under the control of the two elder brothers and it appears that from the date of the death of the third brother, no alteration whatever was made in the way in which the accounts were kept. The payments in respect of obtaining the probate of the will, which though not great in extent are several in number, were all made out of the business accounts. The payment of the monies for the probate itself was made in the same manner; but the legacy of Rs. 2,000 to the widow, and the like legacy to her as Shebait of the idols, remained unpaid.

6. The income received from the real estate was all through shown under separate heads and nowhere distinguished as bet ween the business and the joint estate, and although it is said that the income from the latter was only Rs. 1,100 a year, yet none-the-less it was all treated in the same way.

7. It is quite true, as has been pointed out that, having regard to the nature of the items being carefully specified, both in respect of receipt and payment, it would have been possible to have prepared from the books a further account showing how the respective estates stood in relation to each other, and it is also said that the actual monies paid to the widow and the adopted son exceeded the amount of their interest in the joint estate of which they were members; while finally, and this is perhaps the strongest point of all, the method of blending the two sets of items was continued by Rajanikanta, even after the dispute had begun. These circumstances all deserve consideration, but their Lordships do not think that they have sufficient weight to displace the general presumption that arises when members of a joint family, who have control over the joint estate, blend that estate with property in which they have separate interest.

8. In a case before this Board, *SurajNarain v. RatunLal*[1] it was pointed out that the effect in such transaction was to cause the whole property to become joint and the only

real distinction that can be drawn between that case and the present is that their separate estate was brought into a joint family account instead of as in this case the joint family property being brought into the separate accounts. Their Lordships are unable to see that this distinction is sufficient to defeat the appellants' claim. The real question for determination is what is the true conclusion to be drawn when people united, as the present parties were by bonds of close relation ship and living as a joint family, draw for the joint family expanses out of a fund enriched by other contributions. They think that the result is accurately stated by the subordinate Judge, in the following words :-

> "If the members of a joint Hindu family confuse the incomes of their joint proper ties with their separate properties, their intention presumably is that the properties acquired with such mixed-up funds are for the benefit of the joint family. It should be noticed that not only these acquisitions and improvements made in this case with the amalgamated and confused funds, but the incomes arising from such acquisitions and improvements were again partly spent also for joint family expenses and purposes, and the balances were again mixed up and contused from year to year to acquire properties and make improvements."

9. Indeed, the fact urged on behalf of the respondents that the joint family expenses exceeded all the property which, according to their contentions, was properly joint in their Lordships' opinion tells against the respondents instead of in their favor. They think, therefore, that the decree of the High Court should be varied by providing that of the items 1 - 3 in Schedule 5 (kha) the plaintiff gets only one-third as also in Schedule 3, and that the provision in said decree for payment of interest on the sum Rs. 4,000 be omitted. The cross-appeal will be dismiss ed. The appellants are entitled to their costs of these appeals, but their Lordships will not vary the order as to costs in the High Court, and they will humbly advise His Majesty to this effect.

Decree varied accordingly.

Cases Referred.

1.(1917) 40 All 159 : 44 IA 201 : 21 CW N 1065 : 15 ALJ 684 : 19 Bom LR 737 : 22 MLT 121 : 26 CLJ 267 : 6 LW 509 : (1917) MWN 477 : 40 IC 988 : 4 OLJ 762