PRIVY COUNCIL

Bal Krishna

Vs.

Ram Krishna
P.C.A.Nos.119 and 120 of 1928

(Lords Macmillan, CJ. Salvesen, Sir J. George Lowndes and Sir Dinshah Mulla JJ.)

19.03.1931

JUDGMENT

SIR GEORGE LOWNDES J.

1.The suit out of which these consolidated appeals arise was instituted in the Court of the Subordinate Judge of Banda on 4th May 1925, by one Lal Man, praying for a partition of joint family properties.

2. The family of which he claimed to be an undivided member consisted originally of himself and his three brothers, Kanhaiya Lal, Hazari Lal and Gulzari Lal, Lal Man being the eldest of the four and the karta of the family. They were admittedly governed by the Mitakshara law. The properties of which partition was claimed consisted mainly of the assets of a family money lending business, and certain houses and land.

3. Kanhaiya Lal died some time prior to 1907, and Hazari Lal in 1908, but their stocks were adequately represented by their sons. Gulzari Lal died childless in 1920. Lal Man was the last survivor of the brothers and claimed by his plaint to be entitled to a one-third share of the family properties. He had no male issue but only sons of a daughter, who would, of course, be outside the joint family. Lal Man died pending the trial before the Subordinate Judge, and his grandsons were brought on the record as his heirs and continued the proceedings, which they would no doubt be entitled to do on the theory that he was separate at the time of his death. It will be convenient in this judgment to refer to Lal Man and his grandsons as the plaintiffs.

4. The defendants to the suit were the male descendants of Kanhaiya Lal and Hazari Lal. Their main defences were (1) that Lal Man had separated from the rest of the family in 1907, and (2) that he had received his share in full. This story which has

been for the most part accepted by both the Courts in India, was that Lal Man, being anxious to provide for his daughter's family, separated in 1907 from his brothers and nephews and made over sums of money and certain items of immovable property to his grandsons, these being taken as the equivalent of his one fourth share of the joint estate. These dispositions were evidenced by entries in the family books by which Lal Man declared himself to be the owner of a one-fourth share of the properties, and that he was making these gifts to his daughter's family out of that share.

5. A considerable body of evidence, both oral and documentary, including the entries above referred to, was recorded at the trial, and the Subordinate Judge delivered his judgment on 3rd April 1925. He held that Lal Man had become separate from the other members of the family in 1907, when his share was a fourth only; that the other members of the family remained joint; that Lal Man had upon separation in effect taken all that he wanted out of the family property, and had relinquished whatever remained of his full fourth to the other co-sharers, and that he consequently had no right to partition. The Subordinate Judge accordingly dismissed the suit with costs.

6. The plaintiff appealed to the High Court, and their appeal was heard by the Chief Justice, Sir Grimwood Mears, and Dalai, J. They after a careful examination of the evidence, agreed with the finding of the Subordinate Judge as to the separation in 1907, but differed from him on the question of relinquishment, holding that the moneys and property which Lal Man had taken and dealt with in and after 1907 as on account of his share were not accepted by him in full satisfaction of such share, and that there was no proof that he had at any time relinquished his right to the balance. They therefore set aside the decree of the Subordinate Judge and passed a preliminary decree for partition on the footing that Lal Man had at the date of the suit a one-fourth share in the family properties, but that it must be debited with what he had already received on account, and they remitted the suit to the trial Court to work out the partition on the lines indicated.

7. From the decree of the High Court both the plaintiffs and the defendants have appealed to His Majesty in Council, their appeals being consolidated.

8. In the defendants' appeal which was first heard it was contended that the decree of the Subordinate Judge dismissing the suit was right and that the High Court erred in holding that there had been no relinquishment by Lal Man of the balance of his share.

9. On this question their Lordships have not thought it necessary to hear counsel for the plaintiffs, as they have no doubt that the High Court was right. There is nothing in

their opinion, to show that what Lal Man made over to his daughter's family was taken by him in full discharge of his share, or that he relinquished in favor of the other coparceners such balance as might be found due to him when a formal division should be made. Their Lordships think that the plaintiffs are clearly entitled to have an account taken to ascertain his fourth share, and to receive the balance, if any, which may be found still due on account of it.

10. On the plaintiffs' appeal it was contended, first that there had been no separation in 1907, or at any time before suit, and that consequently on the death of Gulzari Lal in 1920, Lal Man became entitled to a one-third share of all the family properties as claimed in the plaint, and secondly that if there was in fact a separation in 1907, as the defendants alleged the legal result was a disruption of the whole family under which Gulzari Lal also became entitled to a separated fourth share, and that this, on his death, passed by the Mitakshara law to Lal Man as his sole heir, the brother excluding the nephews.

11. It is now settled law that a separation may be effected by a clear and unequivocal intimation on the part of one member of a joint Hindu family to his cosharers of his desire to sever himself from the joint family. This was laid down in *Suraj Narain v. Iklal Narain* The question was further examined in *Girja Bai v. Sadashiu Dhundiraj* and the principle was reaffirmed and the last-mentioned case was followed in Kawal Nain v, Budh Singh where Lord Haldane says :

> " The status of the plaintiff as separate in estate is brought about by his assertion of his rights to separate."

12. The question being one of intention on the part of Lal Man in 1907 it is, in their Lordships' opinion a question of pure fact. It has been found concurrently by both Courts in India that he did so intend and that his intention was communicated to the other cosharers, and there is ample evidence upon which this conclusion could be based. For the plaintiffs it is contended that neither the Subordinate Judge nor the High Court have given sufficient weight to the admitted facts that Lal Man continued after 1907 to live jointly with his brother and nephews, or to act as karta of the family and that in numerous suits brought to enforce securities of the family business he was described as being joint with them. These matters were no doubt proper for the consideration of the Courts in India as the judges of fact and they have been taken into account by them. The separation of 1907 was only a separation in interest ; there was no separation in food or apparently in worship; there was no actual division of assets and the subsequent conduct of the parties may well be ascribed to Lal Man's position

in the family and his continuing interest in its properties and affairs. There is nothing however in this contention of the plaintiffs which would lead their Lordships to depart from the rule, which has been so constantly affirmed by the Board, of not interfering upon questions of fact where there are concurrent findings of the Indian Courts.

13. Upon the second branch of the plaintiff's case there are again concurrent findings of the lower Courts. The Subordinate Judge held that in 1907 Lal Man " alone separated and all the other members continued joint." The point seems to have been more elaborated in the High Court, but the judgment is even more emphatic:

> "The plaintiffs learned counsel pressed upon us another argument that if Lal Man separated in 1907 his two brothers and nephews should also be considered to have separated and so in 1920, when Gulzari Lal died, Lal Man, the next reversioner, would succeed to one-third of the properties owned by the family. The separation of Lal Man however did not automatically involve the separation of the three other branches of his family. There cannot be the slightest doubt that Hazari Lal, Gulzari Lal and Kesho Das remained joint. It was Lal Man and Lal Man alone who had separated his one-fourth share. If all of them had separated it is certain that the separate share of each one of them would have been worked out. The circumstances of the case are such that there is no burden cast on the defendants to prove a reunion among Hazari Lal, Gulzari Lal and Kesho Das after 1907."

14. It is clear to their Lordships that in the Indian Courts this question was argued as one of fact. Before the Board it has been put as one of law. The separation of one member of the family, it is said, necessarily causes the separation of all. This problem has been discussed in many cases, the argument usually turning upon a question of presumption. The general principle undoubtedly is that every Hindu family is presumed to be joint unless the contrary is proved. If it is established that one member has separated, does the presumption continue with reference to the others ? The decisions of this Board show that it does not : per Lord Darey in *Balabux Ladhuram v. Rukhmabai (at p. 137 of 30 IA)*, followed in Jatti v. Banwari Lal But it is equally clear on these decisions that the other members of the family may remain joint; it is again, their Lordships think, a question of their intention, which must no doubt be proved. So in *Ram Pershad Singh v. Lakhpati Koer* Sir Andrew Scoble, in delivering the judgment of the Board, says (pp. 9 10) :

> "It was contended on behalf of the appellants in the present suit, that although the decree in the suit of 1868 may have effected a separation quo ad Tundan

and Tukan. It left the plaintiffs united inter se, and that this might have been the legal effect of the decree is undeniable. But here, again the conduct of the parties must be looked at in order to arrive at what constitutes the true test of partition of property according to Hindu law, namely the intention of the members of the family to become separate owners."

15. But the matter is put beyond doubt in *Palani Ammal v. Muthuvenkatacharla* where Sir John Edge, says (p. 86) :

16. It is also now beyond doubt that a member of such a joint family can separate himself from the other members of the joint family and is on separation entitled to have his share in the property of the joint family ascertained and partitioned off for him and that the remaining coparceners without any special agreement amongst themselves, may continue to be coparceners and to enjoy as members of a joint family what remained after such a partition of the family property. That the remaining members continued to be joint may, if disputed be inferred from the way in which their family business was carried on after their previous coparcener had separated from them.

17. Their Lordships are therefore of opinion that the question whether on Lal Man's separation in 1907 the other members of the family remained joint was a question of fact and the Courts in India having come to concurrent findings that they did so remain their Lordships have no hesitation in accepting their conclusion.

18. The only outstanding question in the plaintiffs' appeal is as to the form of the decree passed by the High Court, It is urged that the defendants should be debited on the partition with all the expenditure made since 1907 solely on their account. Their Lordships are not in a position to deal with this contention, as there is nothing on the record to show whether any such expenditure has in fact been made, and if so for what purposes and to what extent. No question as to this was raised in the High Court, but their Lordships think that the matter may require further consideration, and that it will be safer to remit the appeal to the High Court for such further directions (if any) upon this point as the learned Judges after hearing the parties may deem necessary. Subject to this reservation, their Lordships' think that both those appeals should be dismissed, and they will humbly advise His Majesty accordingly. There will be no order as to costs.

Appeals dismissed.

Cases Referred.

[1913] 35 All 80=16 OC 129=18 IC 80=40 IA 40 (PC).

AIR 1916 PC 104=37 IC 321=43 IA 151=43 Cal 1031 (PC),

AIR 1917 PC 39=40 IC 286=44 IA 159=39 All 496 (PC),

[1903] 30 Cal 725=30 IA 130=8 sar 470 (PC)

AIR 1923 PC 136=74 IC 462=50 IA 192 (PC).

[1903] 30 Cal 231=30 IA 1=8 Sar 380 (PC),

AIR 1925 PC 49=87 IC IA 333=52 IA 83=48 Mad 254 (PC)