PRIVY COUNCIL

Mt. Anurago Kuer

Vs.

Darshan Raut

P.C.A.No.52 of 1935
(Lord Thankerton, Sir ShadiLal and Sir George Rankin JJ.)

20.12.1937

JUDGMENT

SIR SHADILAL J.

1. On 23rd August 1915, three persons, namely Mahesh, his son Rijhawan, and his nephew Inderdeo, granted a muquarrari (permanent lease at a fixed rent) of a plot of land measuring about 40 bighas, situated in Telhara in the district of Motihari, to one Ganesh Raut. The plaintiff, Mt. AnuragoKuer, who is the widow of one Sitaram, a brother of Mahesh's father, Kesheo, laid claim to a moiety of the land on the ground that it belonged to her husband, and that on his death it devolved upon her and her co-widow RajoKuer. The latter widow died in 1923, with the result that the plaintiff became the sole owner of her husband's estate. On 22nd August 1927, a day before the expiry of the prescribed period of limitation, she brought the present suit for the recovery of her husband's share of the land against the lessee, who died during the pendency of the suit and is now represented by his successors-in interest. The lessors also were impleaded as defendants, but they have not defended the suit. The Subordinate Judge at Motihari, who tried the case, allowed her claim; but on appeal by the lessee's representatives, the High Court of Judicature at Patna reversed the decree granted by the trial Judge and dismissed the suit. From the decree dismissing her suit, the plaintiff has brought this appeal, which has been heard ex parte.

To succeed in her appeal, the plaintiff must show (1) that her husband Sitaram was the proprietor of one-half of the land leased in August 1915, and (2) that his estate devolved upon the plaintiff. She however failed to establish these points, upon which her claim was founded ; and the suit brought by her has therefore been rightly dismissed. The Courts below are not agreed on the question whether Sitaram was joint

with, or separate from, his brother Kesho and his descendants in estate at the time of his death. It is a well settled rule of the Hindu law, as followed by the Mitakshara School, by which Sitaram and his brother were admittedly governed, that the partition of the joint estate consists in defining the shares of the co-parceners in the joint property, and that it is not necessary that there should be an actual division of the property by metes and bounds.

The definition of shares may be proved, inter alia, by an entry in the Record of Rights showing the share of each member of the family. Such an entry will be evidence of the severance of the joint status. In the light of this rule of Hindu law their Lordships have examined the evidence produced by the plaintiff. They observe that not only is there no document to prove that Sitaram was entered as owner of a moiety of the land leased to Ganesh Raut, but that there is nothing to show that he had any interest in the land in question at the time of his death. The property originally belonged to one BhawaniDuttMissar, who in January 1900 sold it to Rijhawan, a son of Mahesh, and Baldeo, a son of Mahesh's brother. The transferees were members of Kesho's family, and his descendants alone subsequently dealt with the property.

Now, the plaintiff's claim is founded upon her title by inheritance from her husband, and it is clear that if he had no interest in the property, he could not transmit it on his death to his widow. It is said that he died in 1908, but no mutation was effected in the revenue record that any estate descended from him either to the plaintiff or her co-widow. It was not until 1917 that an entry was made in the Khewat for the first time to the effect that the widows of Sitaram had one-half share in the property. But there was no occasion for making this change, as Sitaram had died nine years prior to the date of that entry, and the persons recorded as proprietors had granted a lease to Ganesh Raut in 1915. This change in the Khewat was inspired, as explained by the High Court, by a desire to create a proof of title in favour of the widows, and thereby to recover for the family one-half of the land from the permanent lessee. Their Lordships concur with the High Court that the plaintiff has failed to establish her title to the property. They will accordingly humbly advise His Majesty that this appeal should be dismissed.

Appeal dismissed.