BOMBAY HIGH COURT

Soniram Raghushet

Vs.

Dwarkabai Shridharshet

First Appeal No. 108 of 1948

(Bhagwati and Chainani, JJ.)

24.01.1951

JUDGMENT

Bhagwati , J.

1. The parties to the suit were represented in the following genealogical tree:-

A joint Hindu family consisted of five sons of one Ragho who died in 1918. These five sons were Soniram (deft. 1), Beniram, who died on 26-02-1944, leaving him surviving his widow Sitabai (deft. 4) and his minor son Nimba (deft. 3), Shankar who died on 31-07-1939, leaving him surviving his widow Bhagirthibai (deft. 7), Shridhar who died on 15-05-1941, leaving him surviving his widow Dwarkabai (pltf.) and Waman (deft. 2). These five sons of Ragho were entitled to the joint family properties left by Ragho as members of the joint and undivided Hindu family. On 18-09-1942, the three brothers Soniram, Beniram and Waman effected a partition of the joint family properties amongst themselves making due provision for the maintenance and residence of deft. 7 and the pltf. In the partition they reserved certain properties for the maintenance and residence of deft. 7 and the pltf. being the widows of their deceased brothers Shankar and Shridhar.

The properties belonging to the joint family consisted of agricultural lands as well as other properties moveable and immoveable and this partition was effected by the three brothers of all these properties. In making this partition the three brothers assumed that they had the consent of the two widows of their deceased brothers and they proceeded thereafter to enjoy the properties which fell to their respective shares as exclusive owners thereof. On 12-04-1946, the pltf. filed the present suit against Defendant 1, 6 and 5 representing Soniram's branch of the family, Defendant 4 and 3 representing Beniram's branch of the family and Waman, deft. 2 for recovering her one-fifth share in the plaint properties by actual partition and division and to have possession thereof, for mesne profits and costs. She impleaded Bhagirthibai as deft. 7 in the suit as she also was entitled to an equal one-fifth share along with her in the joint family properties.

The properties in which this one-fifth share was claimed by the pltf. consisted of agricultural lands as well as other properties both immoveable and moveable belonging to the joint family. The Defendant representing the three branches of the family of Soniram, Beniram and Waman contested the pltf's. claim, though deft. 7 who occupied the same position as the pltf. supported her in her claim, asking in her turn for a one-fifth share in the properties belonging to the joint family. The defences which were taken up by the contesting Defendant were in the main (1) that the partition which was effected between the three brothers on 18-09-1942, was effected with the consent of deft. 7 and the pltf. that due provision was made therein for maintenance and residence of deft. 7 and the pltf. and that, therefore, the claim for partition as in the plaint mentioned was not tenable, and (2) that in any event by virtue of the proviso to Section 2, Bombay Act XVII [17] of 1942 the pltf. and deft. 7 were not entitled to any share in the agricultural lands belonging to the joint family because on 18-09-1942, i.e. before the Act had been passed the transfers of these agricultural lands had been effected by and between the three brothers. The trial Judge held that the partition of 18-09-1942 was not effected with the consent of deft. 7 and the pltf. and deft. 7 were thus entitled to one-fifth share each in the joint family properties. He further held that the proviso to Section 2 of Bombay Act XVII [17] of 1942 did not save the partition in regard to the agricultural lands belonging to the joint family and that the pltf. and deft. 7 were entitled to a one-fifth share in these non-agricultural lands also. Defendant 1 to 5 appealed to the H. C.

Bhagwati, J.

2. [His Lordship set out the facts and rejected the first contention of the Defendant The judgment then proceeded:] The next contention urged by him was that in any event the partition in regard to the agricultural lands was saved by the proviso to Section 2, Bombay Act XVII [17] of 1942. We have already adverted to the circumstances under which the Bombay Act XVII [17] of 1942 came to be passed. The Hindu Women's Right to Property Act, 1937, and the Hindu Women's Right to Property (Amendment) Act, 1938, purported to give better rights to women to property in general. But the F. C. held that the said Acts did not operate to give them better rights in respect of agricultural lands. Several transactions had already taken place in the Province of Bombay on the basis that women had acquired better rights under the said Acts in the case of agricultural lands as well as other kinds of properties and these transactions were invalidated by reason of the judgment of the F. C. Necessity, therefore, arose to validate those transactions as well as to give women in future those better rights. For that purpose as well as for other purposes it was deemed expedient to extend the said Act to agricultural lands with retrospective effect but with certain savings. Therefore the Bombay Legislature passed Bombay Act XVII [17] of 1942. The preamble to that Act showed that the main purpose of the Act was to validate the transactions which had been effected on the basis that women had acquired better rights in respect of agricultural lands also, and that was really the background of the passing of the Act. It was with that end in view that under Section 2 of the Act the term "property" so far as the Province of Bombay was concerned, was declared to include and was deemed always to have

included agricultural lands. The result of the substantive enactment, therefore, was that all the transactions that had already taken place in the Province of Bombay on the basis that women had acquired better rights in respect of agricultural lands also were thereby validated with retrospective effect. The Legislature then had to consider the situation which would arise by reason of certain persons having been in possession of property having been entitled thereto under the law as it was laid down by the F. C. judgment or those persons having made transfers of such property before Bombay Act xvii [17] of 1942 was enacted. As a corollary to the F. C. judgment such possession would be unlawful or without any vestige of title and the transfers also would be void, the transferor having no right, title and interest in the property so transferred by him. This possession and these transfers had got to be saved from the operation of Section 2 of the Act and the proviso was, therefore, enacted that :

> "Where any person who, but for this Act, would have been entitled to any property has been in possession or has made a transfer thereof, his possession till the commencement of this Act shall be deemed to be as lawful, and the transfer made by him shall be deemed to be as valid, as if this Act had not been passed."

The possession of such persons and the transfers made by them were thus declared to be valid and they were not to be affected by the enactment of Section 2 of the Act. The person who had been thus in possession would not be liable to any rendition of accounts or for the mesne profits in regard to the possession which he thitherto enjoyed. The transferees under the various transfers which might have been made before the commencement of the Act were entitled to the properties which they had thus acquired and those transfers were not to be set aside. The transferees were not to be deprived of the properties which they had acquired by such transfers.

2. Relying upon this proviso to Section 2 of the Act it was urged by Mr. V. S. Desai for the Appellants . that prior to 13-10-1942, when Bombay Act xvii [17] of 1942 came into operation a partition had already been effected between the three branches of the family on 18-09-1942, that that partition was a transfer within the meaning of the proviso to Section 2 of the Act and was therefore saved so far as agricultural lands were concerned. It lies, therefore, to be determined whether the partition thus effected comes within the description of a transfer within the meaning of the proviso to Section 2 of the Act. There is no definition of "transfer" to be had in either the Hindu Women's Right to Property Act, 1937, or the Hindu Women's Right to Property (Amendment) Act, 1938, or the Bombay Hindu Women's Right to Property (Extension to Agricultural Land) Act, 1942. This being a transfer of immoveable property, even though it may be agricultural land, the definition of "transfer" which applies is to be found in Section 5, T. P. Act. In Section 5 of that Act transfer of property is defined to mean an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons. Even though in Section 6 of that Act the definition of "transfer of property" is qualified by using the expression "In the following sections," we may safely take it to be the definition of "transfer of property" for the purposes of

determining what is a transfer within the meaning of the term as used in the proviso to Section 2 of Bombay Act xvii [17] of 1942.

3. The T. P. Act does not deal with partition as such. It only deals with certain categories of transfers of property, viz., sales, mtges., leases, exchanges and gifts, and the Act provides for the various modes in which such transfers of property can be made. Whether a partition of immoveable property is a transfer of property within the definition contained in Section 5 of the Act came to be considered in various H. Cs. and the result of those decisions has been summarized as under by Sir DinShah Mulla at p. 49 of his commentary on the T. P. Act:

> "A partition has been said to be a surrender of a portion of a joint right in exchange for a similar right of a co-sharer. From this analogy it has been concluded in some cases that a partition amounts to a transfer of property. In some other cases, however, it has been held that a partition is not an exchange and is not a transfer of property."

These two different points of view have been urged before us by the learned advocates for the Appellants . as well as the contesting Respondents Mr. V. S. Desai the learned counsel for the Appellants . has urged that the partition amounts to a transfer of property. Mr. S. G. Patwardhan on behalf of Respondent 1 and Mr. Padhye on behalf of Respondent 2 have urged that a partition is not a transfer of property. Reliance was placed on behalf of the Appellants . on two decisions of our Ct. here one reported in *Waman v. Ganpat*[1], and the other reported in *Jivram Jagjivandas v. Kantilal*[2], In both these cases the question came to be considered with reference to the provisions of Section 53, T. P. Act, which deals with fraudulent transfers of property, and it was held that a partition amounts to a transfer of property for the purposes of Section 53 of the Act. In *Waman v. Ganpat*[3], the D. B. consisting of Barlee and Sen JJ. held that a partition of joint family immoveable property between coparceners of the family operates as a transfer within the meaning of the term as defined in Section 5, T. P. Act, 1882, and if fraudulent, falls within Section 53 of the Act. Section 53 of the Act as aforesaid deals with fraudulent transfers of property and would not come into operation unless and until there was a transfer of property and the term "transfer of property" has been defined for the purposes of the sections including Section 53 by Section 5 in terms set out hereinabove. Unless and until there was a transfer of property within the meaning of that definition contained in Section 5, there would be no occasion of considering whether it was a fraudulent transfer of property within the meaning of Section 53, T. P. Act. The learned Judges in this case discussed the question whether a partition in a Hindu family by which the joint family property was divided by metes and bounds can operate as a transfer within the meaning of Section 53, T. P. Act, at p. 929 of the judgment. They referred to the definition of "transfer of property" contained in Section 5 of the Act. They observed that there was no ruling of this Ct. specifically on this point. They considered the observations of Mookerjee J. in *Atrabannessa Bibi v. Safatullah Mia*[4], viz., the object of a suit for partition is to alter the form of enjoyment of joint property by the co-owners, or, as has sometimes been said, partition signifies the surrender of a portion of a joint right in exchange for a similar right from

the co-sharer. They referred also to a Madras case reported in *Rasa Goundan v. Arunachala Goundan*[5] adopting the argument in *Atrabannessa Bibi v. Safatullah Mia*[6], set out above. They approved of the line of reasoning on which the view of the Calcutta H. C. was based and observed that for the purposes of Section 53, T. P. Act, 'partition,' where the immoveable property has been partitioned among the co-owners by metes and bounds, must be held to be "transfer." They recorded their own opinion also by stating that that view did not appear to be an unreasonable or far-fetched interpretation, and that partition could in fact be adequately described as a mixture of the surrender and the conveyance of rights in property. This was the ratio adopted in this judgment of our appeal Ct. in *Waman v. Ganpat*[7], To a similar effect is the decision of our appellate Ct. reported in *Jivram Jagjivandas v. Kantilal*[8], where the D. B. consisting of Bavdekar and Jahagirdar JJ. observed (p. 106) :

> "Now, members of a coparcenary family under the Mitakshara law are entitled, at any time they so choose, to put an end to the joint status among themselves, and a partition does not become fraudulent merely because it is effected even pending a creditor's suit. It is, however, a transfer, and in case it is shown that the partition, for example, was unfair to the creditor inasmuch as where the debt was due only

[1]37 B. L. R. 925
[2]52 Bom. L. R. 104 .
[3]37 Bom. L. R. 925
[4]43 Cal. 504
[5]44 M. L. J. 513
[6]43 Cal. 504
[7]37 Bom. L. R. 925 : AIR 1936 Bom 10
[8]52 Bom. L. R. 104

> from one member it assigned to that member property which was of less value than his proper share in the joint family property, then the transfer could be said to be in fraud of that particular creditor."

Here also the partition by metes and bounds arrived at between the members of a coparcenary under the Mitakshara law was treated as a transfer and the allotment of certain properties out of the joint family properties to a particular coparcener was treated by them as a transfer, and if the conditions of Section 53 were satisfied, a fraudulent transfer in fraud of that particular creditor. Our attention was also drawn to the passage from *Atrabannessa Bibi v. Safatullah Mia*[9], which was relied upon by the learned Judges of our appellate Ct. in *Waman v. Ganpat*[10],. That was a case of a benamidar maintaining a suit for partition of joint and immoveable property, but in the course of his judgment the learned Judges, Mookerjee and Newbould JJ., observed at p. 509 the following :

> "The object of a suit for partition is to alter the form of enjoyment of joint property by the co-owners; or, as has sometimes been said, partition signifies the surrender of a portion of a joint right in exchange for a similar right from the co-sharer. Partition is thus the division made between several persons, of joint lands which belong to them as co-proprietors, so that each becomes the sole owner of the part which is allotted to him; the essence of partition is that the property is transformed into estates in severalty and one of such estates is assigned to each of the former occupants for his sole use and as his sole

property."

4. These observations do really show that even though there may be no acquisition of property as such by reason of a partition, the property having devolved upon the co-owners of the co-sharers by inheritance or having been held as joint family property by them by processes known to Hindu law, the effect of partition is that the property which was thitherto enjoyed by all the members of the joint family as co-owners or co-sharers is after the partition, so far as the shares allotted to the respective members of the joint family are concerned enjoyed by them for their sole use and as their sole property. The co-owner ship and the joint enjoyment no doubt come to an end and in its place and stead is substituted the sole enjoyment and the sole ownership of the property which falls to the share of each member of the joint family. But as a necessary corollary of this, there is an extinction of the right which the other co-owners or co-sharers of the property had of enjoying that property in common with the co-owner or co-sharer to whose share that particular property is allowed as a result of the partition. That extinction of the right is brought about by what may be described as the process of the exchange of similar rights between the various co-owners and co-sharers of the joint family property or by a renunciation of the right by the other co-owners or co-sharers in favour of the co-owner or co-sharer to whom the property is allotted as a result of the partition, or by a conveyance of these rights of enjoyment of the property in common by the other co-owners and co-sharers in favour of the co-owner or co-sharer to whom that property is allotted as a result of the partition. Whatever be the process which may be said to bring about this result of the co-owner or co-sharer to whom the property is allotted by the partition getting the property for his sole use, the result is that the person who gets the property on partition is constituted the sole owner of that property and he acquires in that

[9](43 Cal. 504 : AIR 1916 Cal 645)

[10]37 Bom. L. R. 925 : AIR 1936 Bom 10

particular property not only his own share, right, title and interest therein which he erstwhile enjoyed but also the shares, right, title and interest of the other co-owners or co-sharers of his in that property. This certainly would be a transfer of property within the meaning of Section 5, T. P. Act. A partition need not necessarily be in writing. At p. 89 in the commentary on the T. P. Act Sir DinShah Mulla has observed :

> "Where no writing is required by the Act the transfer may be made orally. Thus a partition of joint family property may be made orally, and so also a surrender of a lease.....In *Imperial Bank of India v. Bengal National Bank. Ltd*[11]*.,* Rankin C. J., said that partition, release and surrender are all forms of transfer but that so far as the T. P. Act is concerned they come under no restriction."

These observations of Rankin C. J. quoted by Sir DinShah Mulla from *Imperial Bank of India v. Bengal National Bank, Ltd*[12]*.,* go to support the reasoning which we have adopted above. The case in *Rasa Goundan v. Arunachala Goundan*[13]*,* adopted this reasoning which was contained in the observations of the learned Judges of the Calcutta H. C. in *Atrabannessa Bibi v. Safatullah Mia*[14]*,* and the same reasoning was also adopted by the D. B. of our H. C. in *Waman v. Ganpat*[15]*,*

We are in perfect accord with that reasoning and we are of the opinion that a partition by metes and bounds between the members of a joint Hindu family amounts to a transfer within the meaning of the definition thereof contained in Section 5, T. P. Act.

5. Our attention was, however, drawn to certain cases which lay down a contrary proposition and which are also summarized in the passage from Sir DinShah Mulla's commentary on the Transfer of Property Act at p. 49 quoted above. The first case which was relied upon for this purpose was *Gyannessa v. Mobarakannessa*[16], That was a case where some of the co-owners possessing an undivided share in several properties took by arrangement a specific property in lieu of their shares in all the properties, and the question that came to be considered by the learned Judges of the Calcutta H. C. there was whether the transaction was an exchange within the meaning of Section 118, T. P. Act or amounted to a partition which was not required by law to be effected by an instrument in writing. The learned Judges discussed the position on the construction of the document. They observed that in deciding a question such as that was raised, they must avoid getting involved in the intricacies of the law of England relating to real property. They came to the conclusion that the transaction was not an exchange within the meaning of Section 118, T. P. Act, but that the exchange was intended to and did effect a partition and a partition was not required by law to be effected by an instrument in writing and therefore there was no objection in regard to the admissibility of the document for want of registration. This case is, therefore, no authority for the proposition that a partition is not a transfer of property. If at all this case lays down anything, it lays down that a partition does not come within the category of the transfers of property which are provided for in the Transfer of Property Act and that, therefore, there is no provision of the Transfer of Property Act which prohibits a partition being effected without an instrument in writing. The observations at p. 213, para. 2, really support this conclusion :

[11]58 Cal. 136 ,
[12]58 Cal. 136 at p. 145: AIR 1931 Cal 223
[13]44 M.L.J. 513: AIR 1923 Mad 577
[14]43 Cal. 504
[15]37 Bom. L.R. 925 : AIR 1936 Bom10
[16]25 Cal. 210 : (2 C.W.N. 91)

> "Treating, therefore, the transaction as a partition, although it may have been effected in a way which involved, as between the co-owners, a transfer of the ownership of parts of the undivided property amounting to an exchange, I hold that it does not come under Section 118, and that it was not necessary to complete it by a registered instrument."

The Ct. there looked at the substance of the transaction which was a partition of the property between the co-owners thereof. Even though the terms of that partition involved as between the co-owners a transfer of the ownership of parts of the undivided property amounting to an exchange, they dealt with the matter as one of substance and held that it did not come under Section 118 and that it was not necessary to complete it by a registered instrument. It may be observed that even here it was recognised that a partition may be effected in a way which involves as between the co-owners transfer of property or parts of property amounting to an exchange. This really goes to support the reasoning which we have adopted above that when particular parts of the joint family property are allotted to the co-owners or co-sharers for their

sole use and as their sole property, there may be an exchange as between the co-owners and the co-sharers of the property in regard to the rights of joint enjoyment which were thitherto enjoyed by them in regard to the parts of the property which are thus allotted to particular co-owners or co-sharers. This case reported in *Gyannessa v. Mobarakannessa*[17], therefore does not help the Respondents

6. Our attention was further drawn to the case reported in *Pokhar Singh v. Dulari Kunwar*[18], and the observations of Mukherji J. there at p. 727. In that case a widow and her four daughters entered into a. family arrangement under which the widow surrendered her estate and by the process of acceleration the four daughters got the property for themselves and agreed to divide the properties which thus came to them in definite shares as if the same belonged to them absolutely. In the course of the judgment, Mukherji J. observed that if a partition of property may be regarded as a transfer within the meaning of Section 5, T. P. Act, the transaction may also be regarded as transfer by all the four sisters. He then referred to the definition of "transfer" in Section 5, T. P. Act, set out above and observed that the definition excluded the idea of partition as falling within it. We fail to understand the reasoning behind this conclusion reached by the learned Judge, for, as we have already observed before, a partition by metes and bounds does involve a conveyance by co-owners or co-sharers of their right, title and interest and the right of enjoyment in common which they had in the portions of the joint family property allotted to a particular co-owner or co-sharer in favour of the latter and vice versa. We are therefore not impressed by the observations in *Pokhar Singh v. Dulari Kunwar*[19],

7. The authorities which could be really relied upon by the Respondents in favour of their contention were the two cases reported in *Suhashini Poddar v. Sreenath*[20], and *Khirode Sundari v. Chuni Lal*[21], They were decisions of the D. Bs. of the Calcutta H. C. which considered the observations of Mookerjee J. in *Atrabannessa Bibi v. Safatullah Mia*[21], and distinguished them. The observations of Rankin C. J. in *Imperial Bank of India v. Bengal National Bank Ltd*[22]., were not brought to the notice of the

[17](25 Cal. 210 : 2 C. W. N. 91) [19]52 ALL 716 . [21]49 C. W. N. 779 [21]43 Cal. 504
[18]52 ALL. 716 [20]49 C. W. N. 769 : AIR 1946 Cal129 [22]58 Cal. 136 : AIR 1931 Cal 223

learned Judges in the course of the arguments advanced before them. But on a review of the various cases which were cited before them including *Atrabannessa Bibi v. Safatullah Mia*[23], they came to the conclusion that a partition between members of a Dayabhaga family did not amount to an assignment in respect of the interest of the others. In *Suhashini Poddar v. Sreenath*[24], the judgment proceeded on a consideration of the observations of Mookerjee J. in *Atrabannessa Bibi v. Safatullah Mia*[25], Certain other cases were also considered and the conclusion was reached as above. In *Khirode Sundari v. Chuni Lal*[26], the same question again came to be considered and in this case besides *Atrabannessa Bibi v. Safatullah Mia*[27], the learned Judges had cited before them the decision of the Madras H. C. in *Rasa Goundan v. Arunachala Goundan*[28], and the decision of our Ct. in *Waman v. Ganpat*[29], The observations of Mookerjee J. in *Atrabannessa Bibi v. Safatullah Mia*[30], were thus explained away by the learned Judges (p. 783):

> "The gist of that observation is in the opening sentence, namely, 'The object of a suit for partition is to alter the form of enjoyment of joint property by the co-owners'," and no stress was laid on what was laid down therein as the true effect of a partition and particularly the observations :
> "The essence of partition is that the property is transformed into estates in severalty and one of such estates is assigned to each of the former occupants for his sole use and as his sole property."

We have already indicated above what is the true effect of this position of a co-owner or a co-sharer having allotted to him a particular part of the joint family properties for his sole use and as his sole property. The significance of these observations appears to have been lost upon the learned Judges who decided ***Khirode Sundari v. Chuni Lal, 49 C. W. N. 779.*** We may also observe that at p. 782 of the judgment the learned Judges started with the distinction which obtained between the Mitakshara school of Hindu law and the Dayabhaga school of Hindu law. They stated that under the Mitakshara law no individual member of the joint family could predicate of the joint property that he has a certain definite share therein and consequently partition under the Mitakshara law consists in ascertaining and defining the shares of the co-parceners; but that according to the Dayabhaga law, on the other hand, each member of the joint family has a certain definite share in the joint property of which he was the absolute owner, that the property was held in defined shares but the possession was the joint possession of the whole family, and that until partition each co-sharer, whatever his share might be, was entitled to joint possession and enjoyment of the whole of the joint property, and that partition, according to Dayabhaga law, therefore, consisted in separating the shares of the members of the joint family and allotting to them specific portions of the property. The stress was here laid on the question of the acquisition of proprietary rights or of a new property under an independent or new title derived from any other person and not on the question of the conveyance of the rights of common enjoyment as also the right, title and interest which the co-owners or co-sharers had in the particular part of the property which came to be allotted to the share of the particular co-owner or co-sharer. It may be that if the case of a partition between the members of a joint Hindu family governed by the Mitakshara

[23](43 cal. 504 : AIR 1916 Cal 645) [25](43 Cal. 504 : AIR 1916 Cal 645) [27](43 cal. 504 : AIR 1916 Cal 645)
[24](49 C. W. N 769 : AIR 1946 Cal 129) [26]49 C. W. N. 779 [28](44 M. L. J. 513 : AIR 1923 Mad577)
[29]37 Bom. L. R. 925
[30]43 Cal. 504

school of Hindu law had come before the learned Judges of the Calcutta H. C. they might not have reached the decision which they did in the case of a partition between the members of a joint Hindu family governed by the Dayabhaga school of Hindu law. In so far, however, as the learned Judges there differed from the ratio adopted by our Ct. in *Waman v. Ganpat*[31], we feel that the decision of the learned Judges of the Calcutta H. C. in *Khirode Sundari v. Chuni Lal*[32], in so far as it runs counter to the decision of our Ct. in *Waman v. Ganpat*[33], is incorrect and with great respect we beg to differ from the same.

8. We have under the circumstances come to the conclusion that the partition by metes and bounds effected between the three branches of the joint family here on 18-09-1942, was a transfer within the meaning of that term as used in the proviso to Section 2, Bombay Act XVII [17] of 1942 and was, therefore, saved in so far as the agricultural lands are concerned by the terms of that proviso. [His Lordship after dealing with points not material to this report concluded.] The result, therefore, is that the appeal will be allowed in part and the decree of the lower Ct. will be confirmed except in regard to the agricultural lands. The partition of the agricultural lands as recorded in the deed of partition dated 20-09-1942, will stand and the rest of the decree passed by the lower Ct. will be confirmed. The order as to mesne profits also will be confined only to such properties as are not agricultural lands. In view of the fact that the Appellants . have partly succeeded and partly failed, we think that the proper order for costs should be that each party should bear and pay its own costs of this appeal as also in the Ct. below.

Appeal allowed in part.

[31]37 Bom. L. R. 925

[32](49 C. W. N. 779)

[33](37 Bom. L. R. 925: AIR 1936 Bom 10)