

## PATNA HIGH COURT

Lalchand Thakur

Vs

Sheogobind Thakur

(Chatterji, J.)

06.02.1929

### JUDGMENT

#### **Chatterji, J.**

1. These appeals arise out of two suits for recovery of the plaintiffs' share of the money representing the income of a certain property attached in a proceeding under Section 146, Criminal P.C. An area of 22 bighas and odd was given in usufructuary mortgage to defendant 1, by the proprietors of the village Rajapur. There arose disputes between the landlord and the tenants with regard to the possession of the land in which the mortgagee defendant 1 was also a party. The mortgagee and the landlord claimed the lands as zirat while the tenants set up a right of tenancy therein. This dispute led to the proceedings under Section 145 and in December 1905 the Magistrate attached the lands. Neither the landlord nor the tenants nor the mortgagee brought any suit in respect of the attachment. But on 27th April 1920, on an application filed by the mortgagee and the landlord the lands were released in favour of the maliks. Then the tenants filed two suits for declaration of their title in which defendant 1 Lal Mohar Thakur was impleaded as the mortgagee besides the maliks. The defendants 2 to 5 members of the family of Lal Mohar Thakur were also made parties in those suits.

2. Ultimately the suits were decreed on compromise as against the maliks and ex parte against defendant 1 after expunging defendants 2 to 5 from the record. Later the suits which have given rise to the present appeals were instituted by the tenants to recover the sums of money due to their share. The suits were contested by defendants 2 to 5 but not by Lal Mohar Thakur. Both the suits have been decreed on the finding that Lal Mohar Thakur effectively represented the defendants 2 to 5 in the previous proceedings and consequently they are bound by the result of the former cases.

3. In appeal it is urged on behalf of defendants 2 to 5 who are the appellants before us, that they were not effectively represented in the previous litigation inasmuch as they had also been made parties. The question whether particular members of a family are represented effectively in a suit or not depends on the facts and circumstances relating to each case. There is a finding of fact in the present case that Lal Mohar Thakur was the karta of the family consisting of himself and defendants 2 to 5. There is also a finding that Lal Mohar in the previous cases never acted against the interest and to the prejudice of the family and that defendants 2 to 5 had suffered no prejudice

in the previous litigation.

4. It has been laid down by their Lordships of the Privy Council in *Sheo Shankar Ram v. Jaddo Kunwar*<sup>1</sup> that there are occasions, including foreclosure actions, when the manager of a joint Hindu family so effectively represents all the other members of the family, that the family as a whole is bound. It is quite clear from the facts of this case and the findings of the Courts upon them that this is a case where those principles ought to be applied. There was not the slightest ground for suggesting that the managers of joint family did not act in every way in the interests of the family itself.

5. After expressing themselves in this way they held that the manager effectively represented the other members in that action, although the manager was not a party in that case on the direct allegation that he was a party in such a capacity. This case has been followed in this court in *Ramjit Prasad Tewari v. Ramjatan Panday*<sup>2</sup> Our attention, however, is drawn to *Girwar Narain Mahto v. Mt. Makbunessa*<sup>3</sup> in which it has been held that it must be clearly stated in the record of the case that the suit is by or against the managing member. In view of the observations of their Lordships of the Privy Council just now referred to and followed in this very High Court in the case of *Ramjit Prasad Tewari* [1917] 1 Pat. L.W. 197, I do not think that it can be laid down as a general proposition that the managing member must be mentioned as a party in that capacity.

6. All that is required is to see whether he effectively represents the family having regard to all the circumstances of the case. The powers of the manager in a Hindu joint family are well known: he represents the family in all business transactions; he can enter into contract regarding matters relating to the family; give discharges for debts due to the family and pay debts due to the family, Therefore there can be no doubt that he' can effectively represent the other members of the family though he is not mentioned as such. In this connexion I may refer to the observations of Banerji, J., in *Hori Lal v. Nimman Kunwar*<sup>4</sup>

I do not think that it is essential that the manager, when he brings his suit, should state in distinct terms that he is suing as manager, or that the plaintiff in a suit against the family should describe the defendant as the manager of the family. All that is essential is that the manager is in fact suing or is being sued as such in respect of a family debt,

7. I am in full agreement with the observations made above. Even if Lal Mohar Thakur was not mentioned therein as manager that does not affect the present case.

8. The chief point on which reliance is placed on behalf of the appellant is that other persons had been made parties in the original suits but they were ultimately expunged but if persons who are not at all necessary in a litigation are joined and afterwards expunged that would not affect the position on the findings of fact arrived at by the lower appellate Court. It is Clear that Lal Mohar was sued in the previous cases in his capacity as a karta of the joint family. He no doubt remained ex parte but that does not necessarily mean that he was careless of the interests of the family: see *Meyappan*

<sup>1</sup> A.I.R. 1914 P.C. 136

<sup>3</sup>[1916] 1 Pat. L.J. 468

<sup>2</sup>[1917] 1 Pat. L.W. 197

<sup>4</sup>[1912] 34 All. 549

*Servai v. Meyappan Ambalam*<sup>5</sup>, In the present case it has been found by the learned Subordinate Judge in appeal that he was not at all careless or negligent and the court has entered into the

merits of the previous cases and considered that there was absolutely no prejudice.

9. Considering all the evidence and circumstances of the case I am led to the conclusion that Lal Mohar Thakur had effectively represented all the members of the family, to wit, defendants 2 to 5 in the previous litigation. It will follow therefore that they are bound by the result of the previous decision.

10. The appeals must therefore fail and are dismissed but without costs.

11. There are cross-appeals which are not pressed and these are dismissed without costs.

**Adami, J.**

12. I agree.

5 AIR 1924 Mad 571