

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mussumat Cheetha, and after her death her Daughter Mussumat Jussoondah v. Baboo Miheen Lall, and after his death his Son Ajodhia Pershad, from the late Sudder Dewanny Adawlut, Agra; delivered on the 17th July, 1867.*

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Present:

LORD ROMILLY.

SIR JAMES W. COLVILLE.

SIR EDWARD VAUGHAN WILLIAMS.

SIR RICHARD TORIN KINDERSLEY.

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SIR LAWRENCE PEEL.

THE Plaintiff, whom the present Appellant represents, commenced her suit in December, 1852, to recover possession of certain villages, to which she claimed title as widow and heiress of one Damodur Doss, who died in 1841. The Respondents, who are the nephews of Damodur Doss, or at least one of them, had been in possession of the property for upwards of eleven years before the institution of the suit. These villages being situate in a province governed by the law of the Benares School, it was necessary for the Plaintiff, in order to make out her title to eject the Respondents, to establish that the property claimed was the separate estate of Damodur Doss. And it being admitted that this property was originally the ancestral estate, or part of the ancestral estate, of a joint and undivided Hindoo family, she had to make a case sufficient to rebut the well established presumptions of the Hindoo law, that a family once joint retains that status, unless it is shown to have become divided; and that the ancestral property of such a family remains joint, unless it is shown, by partition or otherwise, to have become separate.

The family originally consisted of three brothers, Shama Doss, Damodur Doss, and Koonj Kishore

Doss. It is admitted on all hands, that Shama Doss separated himself from his brothers, and took his share of the ancestral estate as separate property. It is, however, clear upon the evidence (and if the fact be not admitted, it is hardly disputed on the part of the Appellant) that the two other brothers continued joint after the separation of Shama Doss; and further, that for many purposes, Damodur Doss and the Respondents, being his nephews and the sons of Koonj Kishore Doss, were members of a joint family at the time of Damodur's death.

In what way, then, did the Plaintiff in the suit seek to relieve herself of the heavy burden of proof, which the law in these circumstances cast upon her? She has neither alleged nor proved that a formal partition ever took place between Damodur Doss and his brother. Nor has she alleged or proved that any conveyance of his proprietary right was ever executed by the latter to the former. But she relies on certain settlements of revenues and other proceedings before the Collectors, the effect of which was, that these villages—which at one time were all recorded in the name of Koonj Kishore Doss, at another were recorded partly in his name and partly in that of Damodur Doss—came ultimately to be all recorded in the name of Damodur Doss, as if he were the sole zemindar thereof, or, at least, the sole lumberdar, or person liable for the due payment of the revenue assessed thereon. And from these proceedings she would have it inferred, that Koonj Kishore Doss had duly parted with or relinquished his proprietary interest in the villages, and allowed them to become the separate estate of his brother. Mr. Leith has candidly admitted that this inference cannot legitimately be drawn from the mere fact that the villages were recorded in the sole name of Damodur Doss. He does not dispute the correctness of the proposition laid down by the Sudr Court, that “as the law stands, the mere record of one name does not establish the exclusive proprietary right of the individual so recorded.” But he contends that particular statements and expressions to be found in their proceedings, which he says must be taken to have been made and used with the knowledge and assent of Koonj Kishore, or of his son the

Respondent, are sufficient to raise the inference in question, and to make out the title of the Plaintiff.

To this argument their Lordships cannot assent. Both the Plaint and the Decree of the Principal Sudr Ameen refer the alleged relinquishment of proprietary right to the date of the fifth settlement, which took place in 1818, and in the lifetime of Koonj Kishore Doss. But it is obvious on the face of the proceedings at p. 98 of the Record, that on that occasion the villages were treated as the joint property of the two brothers, though the settlement was, with the consent and at the request of Koonj Kishore, made with Damodur alone; whilst, on the other hand, a claim put forward by Shama Doss was treated as an adverse claim of proprietorship; for the enforcement of which he was referred to a civil suit. Koonj Kishore's petition (see p. 100), which signified his consent, neither relinquished nor disclaimed his interest in the villages; it prayed only that Damodur's application *to be regarded* as proprietor be granted; the Petitioner being perfectly satisfied with the arrangement. No other or subsequent act, imputing a transfer of proprietary right by Koonj Kishore, is either suggested or proved; and he died before the sixth settlement, which took place in 1840.

If, then, the Appellant's title rests, as it seems to do, upon the alleged transfer or relinquishment of right by Koonj Kishore in 1818, statements made and expressions used in the course of the settlement of 1840 are material only in so far as they reflect light upon the true nature of the transaction of 1818.

Nothing can really turn upon expressions in those public documents to the effect that Damodur Doss was sole zemindar and without partners because whenever property is, for whatever reasons, recorded in the sole name of one of several co-proprietors for fiscal purposes, it must obviously be part of the arrangement to make him who is to pay the Government revenue, and through whose hands the collections from the ryots must, for that purpose, pass, appear to be the sole owner. Yet it is admitted that one so recorded may be really what we should term a trustee for the other members of a joint family, and that the rights of the co-parceners *inter se* may not be affected by

the arrangement. The expressions, therefore, in the ikrarnamah importing that on the death of the lumberdar, or person settling for the revenue, his son or next heir, or even an appointee, shall be substituted for him, are all consistent with such an arrangement, the essence of which is that the person in question shall be made ostensibly and on the face of the revenue records the sole owner of the zemindari right. Any argument drawn from such expressions seems to their Lordships to be too weak to supply the failure of positive proof of the title set up by the Appellant.

The same answer may be made to the argument which Mr. Leith founded on the nature of the Respondent's, Mohun Lall's, application to the revenue authorities to be admitted as heir to his uncle on the death of the latter. On the face of the revenue records Damodur Doss was the sole registered proprietor. It was therefore only as his heir that the applicant could claim to be substituted as sole zemindar and ostensible owner in his place. A suggestion of joint interest was unnecessary, if, indeed, it would not have been improper, on that occasion. And it is to be observed that, inasmuch as it appeared before the collector by the quanoon-goe's reports that Damodur Doss had left a widow, the claim of his nephew as heir implied that the property was not the separate estate of the deceased, and that the succession to it was to be governed by the law which regulates the descent of the property of a joint and undivided Hindoo family.

Their Lordships have hitherto dealt, as the argument before them dealt, exclusively with the documentary evidence. Of the parol evidence it is sufficient to say that each party has produced that which, if believed, would go far to prove his or her case; that the statements of the witnesses for the Plaintiff are, in most respects, in direct conflict with those of the Defendant; and that it is only by its consistency with the documents and the admitted facts of the case that the truth of the testimony on either side can be tested.

One serious difficulty of the Plaintiff was to explain the long possession of the Respondent, Mohun Lall, and her failure to take proceedings for nearly two years after the alleged quarrel be-



tween them. The case made on her pleadings, and sworn to by her witnesses, is that he held possession as her agent, rendering, for a considerable period, accounts to her. But this story is unsupported by the production of any documents or other corroborative proof, and is, in their Lordships' opinion, a most unsatisfactory explanation of the Respondent's possession.

The proofs, therefore, adduced by the Plaintiff below seem to their Lordships insufficient to support the case made by her, and to rebut the strong presumptions of the Hindoo law which she had to meet. But against these proofs their Lordships have to set not only the inferences arising from Damodur Doss's petition when about to proceed on a pilgrimage to Gyah, the deposition of his mooktear, Sookhe Lall, in October, 1839, and the petitions presented on behalf of the Plaintiff, which are referred to in the judgments, but the almost conclusive evidence contained in the account books.

That these books were proved with the strictness which would be required in our Courts cannot be said; but they seem to have been received according to the course of the Indian Courts. No objection to their reception was made in the first instance; they were submitted by the Judge to the examination of mahajuns appointed for the purpose, who were questioned by him upon them. Nor does it appear that their genuineness or correctness was ever very formally or directly impugned, though some objection may have been taken to the proof of them.

The course of the argument here induces their Lordships to regret that these material documents were not strictly proved, but they were sent up to the Appellate Court as part of the record; and in these circumstances their Lordships think that, according to the course of these events, the Appellate Court was justified in considering them as part of the evidence in the cause; and that the conclusions which they drew from them were correct. But even if this part of the evidence were withdrawn, their Lordships would be of opinion that no sufficient ground has been shown for disturbing the judgment of the Sudr Court; and they will humbly recommend to Her Majesty that this Appeal be dismissed with costs.

