

Privy Council Appeal No. 37 of 1912. Oudh Appeals Nos. 17 and 18 of 1909.

**Thakur Sheo Narain Singh, since deceased,
and others** - - - - - *Appellants.*

v.

Thakur Bishunath Singh and another - - *Respondents.*

AND

Same - - - - - *Appellants.*

v.

Same - - - - - *Respondents.*

Consolidated Appeals

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 10TH DECEMBER 1913.

Present at the Hearing:

LORD SHAW.

MR. AMEER ALI.

SIR JOHN EDGE.

[*Delivered by MR. AMEER ALI.*]

This is an Appeal from a Judgment and Decree of the Court of the Judicial Commissioner of Oudh, dated the 26th of July 1909, and arises out of a suit brought by the Plaintiffs-Appellants in the Court of the Subordinate Judge of Rae Bareilly against the Defendants-Respondents for an account of the joint money-lending business and other reliefs. Although a number of questions appear to have been discussed in the courts in India the only two argued on this Appeal depend on the construction of certain provisions of an Award made on the 5th of August 1895, which admittedly put an end to the joint status of the family, and on the applicability of the

principle of equitable set-off to the facts of this case in so far as one of the points for determination is concerned.

The Plaintiffs are the sons of one Gur Bakhsh Sing, who with his brothers, the Defendants-Respondents, formed a joint Hindu family. On his death disputes appear to have arisen between the nephews and uncles which were referred to the arbitration of one Syed Fida Husain, who made the Award referred to above. It is a very able document and appears to deal with the subjects of dispute in concise and perspicuous form. After reciting that "in every way the executants gave the Arbitrator complete power for decision, and engage themselves and their representatives to be bound by whatever decision would be passed by him," the document proceeds to state :—

"But on the 31st July 1895 each of the three parties in his statement recorded by me stated that after the execution of the agreement all the three brothers have divided among themselves all the moveables consisting of cash and kind, ornaments, clothes, and household goods, and that therefore there is no necessity for filing list thereof or giving any decision thereon; that the sum of Rs. 3,150 on account of deficiency in the price of ornaments and Rs. 2,500 which is the personal money of Thakur Bishunath Singh contributed to the joint business, total Rs. 5,650 is to be paid to him; that the manner in which this money is to be paid has to be decided; that they have understood the accounts among themselves and that now no co-sharer has any right to demand accounts from another; that only the grain kept for home consumption and for dealings with the tenants, the agricultural implements, cattle, horses, and elephants are still undivided."

The Plaintiffs seek in the present suit for an account of the debts and monies realised by the Defendants during their management of the joint money-lending business, and in list C. attached to the Plaint they specify particularly the debts in respect of which the claim for

account is directed. The important items in the list relate to a usufructuary mortgage dated the 16th of June 1883 executed by one Mohammed Askari in favour of Bishunath Singh as representing the joint family. The principal sum secured by the mortgage was Rs. 32,000; and it was provided that should the mortgagor fail to discharge the principal and interest within the period of 14 years, the term of the mortgage, the mortgage debt would become discharged at the end of that period by the receipt of the usufruct. Under this covenant the first Defendant was receiving the usufruct of the mortgaged property towards the liquidation of the principal and interest. At the time of the Award two years were still outstanding in respect of this mortgage.

There is no reference to the Award in the Plaintiff, but the Defendants contend that under the terms and intent of the Award the Plaintiffs are not entitled to the relief they seek. The first question for determination, therefore, is whether having regard to the declaration contained in the Award the Plaintiffs are or are not precluded from asking for an account of monies realised previous to the date of the Award.

The Subordinate Judge dismissed the Plaintiffs' claim in this respect on the ground that in his judgment it was barred by limitation. The Judicial Commissioners proceeding on the Award, have held that it seemed to them sufficiently clear from the provisions of the document the arbitrator did not intend to confer on any one of the brothers the right to demand from the others an account of the profits enjoyed to the date of the Award under Mohammed Askari's usufructuary mortgage. Their Lordships think that the conclusion at which the Appellate Court in India has arrived is correct.

The word "cash" in the passage quoted clearly refers in their opinion to all monies received by the parties before the statement was made to the Arbitrator, and in any event it appears to their Lordships that the stipulation in the Award that "now no co-sharer has any "right to demand accounts from another" covers this claim and excludes it.

The second question relates to a sum of Rs. 5,900 or thereabouts regarding which the Defendants claim a set-off against the amount decreed in favour of the Plaintiffs on other items.

The Arbitrator had found that two sums of Rs. 5,650 and Rs. 1,000 respectively were payable to the Defendant Bishunath, and had declared that it should be "paid out of the joint income." And he added that he would specify later on "the joint income."

Similarly, he had found that Rs. 5,150 was payable to Jadunath, Bishunath and Jadunath, each being liable to the other for a certain share of these debts, became entitled to receive from the Plaintiffs, the sons of Gur Bakhsh, Rs. 5,900. The Defendants contend that they are entitled to a set-off as regards this sum against the amount decreed to the Plaintiffs on account of "the joint income" of the parties. The Subordinate Judge refused to give effect to the Defendants' contention, and his view was upheld at one stage of the case by the Court of the Judicial Commissioner. At a subsequent stage when the case came back to the Appellate Court after the remand it had ordered for certain enquiries, the learned Judges who heard the Appeal modified the view previously expressed, and considered that having regard to the circumstances of the case, the Court would be justified in applying the principle of equitable

set-off to the Defendants' claim. Their Lordships concur generally with the reasons given by the learned Judges for coming to this conclusion.

In the result their Lordships think that this Appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

THAKUR SHEO NARAIN SINGH, SINCE
DECEASED, AND OTHERS

v.

THAKUR BISHUNATH SINGH AND
ANOTHER.

AND

SAME

v.

SAME.

DELIVERED BY MR. AMER ALI.

LONDON :

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1913.