Privy Council Appeal No. 7 of 1941

Patna Appeal No. 5 of 1940

Sreemati Bhagbati Dei and another – – – – *Appellants*

v.

Muralidhar Sahu – – – – – – – – *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 3RD FEBRUARY, 1943

Present at the Hearing:

LORD ATKIN
LORD RUSSELL OF KILLOWEN
LORD PORTER
SIR GEORGE RANKIN

[*Delivered by* LORD ATKIN]

This is an appeal from the decision of the High Court, Patna, affirming a decision of the District Judge, Cuttack, allowing an application by a relative of the minor son of the first appellant and the second appellant for the appointment of a guardian of the property of the minor son of the first appellant.

The position arose in this way: Up to 1919 there was a joint Hindu family consisting of the branches of three brothers Bhaban, Gouranga's son Muralidhar, the applicant in this case, and Khetrabasi. They had some considerable zamindari properties, and they also carried on a moneylending business.

In the year 1918 Muralidhar, who was the nephew of the other two members of the family, applied for and obtained, a partition. It is significant that the partition proceedings continued between all three members of the family as late as the year 1926. It is said, however, on the present application that Bhaban and Khetrabasi, the two brothers, within a few months, in 1919, agreed again to unite; and from that time, it is said, they became a joint undivided family. It is said that in those circumstances if in fact they were a joint family there is no jurisdiction to appoint a guardian of the property of the minor son of one of the members of the family. Therefore three questions arise in this case: First, was there a uniting of the family in 1919? Secondly, if there was, can a guardian be appointed of the property of that minor? Thirdly, if there was no uniting then was the applicant right in asking for and obtaining an order for the appointment of a guardian of the property of the minor son, other than the mother herself?

On the first point, the learned District Judge did not pass an opinion, but he held that the property had passed to the minor son by inheritance even if there had been a uniting and that he had jurisdiction, therefore, to consider the question of a guardian and he appointed not the applicant who had originally asked to be appointed guardian of the property, but an independent lawyer as manager of the property. The property is one of very considerable extent. Its value has been estimated by different people at something between four and fourteen lac of rupees.

On appeal the learned Judges went very carefully into the evidence of the uniting of these two brothers and in a judgment in which they reviewed the whole of the evidence, which is largely documentary, they came to the conclusion that it was not proved that there had been in the year 1919, or at all, any such uniting as has been alleged.

It is unnecessary to add that it requires very cogent evidence to satisfy the burden of establishing that by agreement between the parties they have succeeded in so altering their status as to bring themselves within all the rights and obligations that follow from the creation of a joint undivided Hindu family, and the learned Judges, considering the whole of the evidence, have come to the conclusion that the respondents to the application did not make out their case of a united family.

There is no necessity, as it appears to their Lordships, to consider all the evidence once more. It is sufficient to say that their Lordships are completely satisfied with the review of the evidence made by the learned Judges and accept and agree with their decision. In particular, perhaps it may be pointed out that this partition between the two brothers and the son of the third brother continued for about six or seven years after the alleged uniting, and it seems very improbable, to say the least of it, that the brothers, once they were united, would allow the partition proceedings to go on so as to separate between themselves their own property which, upon the footing now put forward, had become joint. That is only one of the many circumstances in the case. Undoubtedly if the uniting was not proved there was jurisdiction to appoint a guardian of the property of the infant.

The principal matter to be considered in these cases is the welfare of the infant, but no doubt the mother has a strong claim to be appointed the guardian both of the person and of the property, and her claims ought not to be disregarded except on good grounds.

The Judges of the High Court, as their Lordships think, very properly appointed the mother to be the guardian of the person of the infant, therein reversing the decision of the District Judge, but otherwise upheld his decision as to the appointment of a guardian of the property. When the circumstances are considered, when it is remembered that this is a very large property, that it apparently comprises not only zamindari properties but also a moneylending business, that the lady herself is a purdahnasheen lady, who is illiterate and can neither read nor write, and when one has to add the fact that she has been a party to proceedings which sought to say that the infant had no private property of his own but had only property jointly with the second appellant, there seems to be every reason for the Court exercising its discretion as it did. Their Lordships think it probably would be sufficient to say that where the Courts have exercised their discretion in a particular way in a matter which is peculiarly within the knowledge and experience of the Judges in India it would take a very strong case indeed for their Lordships to reverse a discretion which has been so exercised. For these reasons their Lordships are of opinion that this appeal must be dismissed, and they will humbly so advise His Majesty.

As the respondents have not appeared at their Lordships' Bar there will be no order respecting costs. The second question which was decided before the District Judge, on the view taken by the High Court and accepted by their Lordships, does not arise. The question as to what is the position when there has been a uniting, whether or not the shares of the respective members pass by survivorship or by inheritance, is very important, but it becomes irrelevant in the view that their Lordships have taken.

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In the Privy Council

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DELIVERED BY LORD ATKIN

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