

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Monmohini Dasi v. Itchamoyi Dasi, from
the High Court of Judicature at Fort
William in Bengal; delivered Tuesday,
April 20th, 1875.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THE Respondent in this case was Plaintiff in the suit, and was the widow and representative of one Nobodeep Chunder Shaha. It is an admitted fact in the case, that Nobodeep Chunder Shaha and his uterine brother, Poolin Chunder Shaha had, being joint in estate, opened a shop and carried on business at a place called Nawabgunge, which appears to be in the district of Dinagepore. Poolin Chunder Shaha died in the lifetime of his brother Nobodeep, leaving two sons, Gooroodoss Shaha and Bepin Behary Shaha, who of course became entitled to his estate, including his share in this business. Nobodeep Chunder Shaha died in the year 1863, and a few months afterwards Gooroodoss Shaha also died, leaving the Appellant, his widow and representative, she being then an infant. Bepin Behary Shaha survived his brother. He afterwards died and his share passed to a cousin, who was made a Defendant in the Court below, but who does not make any claim in this suit, nor in fact is concerned except as a *pro formá* Defendant with the litigation. In 1869, the Plaintiff having been excluded from the partnership, brought her

suit against Jogeswar Shaha as father and guardian of Monmohini Dasi, the present Appellant, and also against Jogeswar Shaha in his own capacity, describing him as gomashtha, and against another person, Nilcomul Shaha, also a gomashtha, they having all taken part in the exclusion. Monmohini whether a minor or not when the plaint was filed became of age before the 23rd of September 1863 when she put in a written statement. The two other Defendants also put in written statements, and all three raised the same defence. They first alleged that the suit was not the Plaintiff's but was brought in her name by another party, but that issue was afterwards conclusively found against them. They also set up a case that Nobodeep shortly before his death had made a gift of his estate to Gooroodoss, that accordingly the right of the widow was reduced to a right to receive maintenance, and that her exclusion dated from the death of her husband. They further alleged that the two gomashtas were not gomashtas, but were partners having an eight annas share in the business.

It is now conceded that all the issues thus raised have been correctly found in favour of the Plaintiff, and therefore it is unnecessary to advert to the nature of the defence, except for the purpose of showing its inequitable character, which cannot but materially affect the credit to be given to the Defendants personally respecting the matters still in dispute in the cause. Jogeswar Shaha, the father of Monmohini, who has, unfortunately as their Lordships think, contrived to slip out of the liability with which some of the judgments affected him, was probably the author of this defence; but Monmohini having when of full age adopted it and gone through all the Courts in endeavouring to establish it, must be taken to be, as between her and the Res-

ponent, responsible for all that has been put forward on her behalf.

Of the issues settled in the suit the first, and now the only material one, was this: "What is the extent of Plaintiff's right in the disputed movable and immovable properties; and what is the amount of the goods, cash, and outstanding balances? And is it true that the Defendants have dispossessed the Plaintiff." The last part may be disregarded because that has been conclusively found in favour of the Plaintiff. Now the plaint had carefully set forth the different classes of property claimed by the Plaintiff and the alleged amount and value of them. As to the first three classes there is now no dispute. They consisted of what may be called the real property of the partnership, one moiety of which has been awarded to the Plaintiff. The contest now turns upon No. 4, being half the estimated value of the goods in the shop, No. 5, being half the assumed value of the outstanding balances, and No. 6, being "half of the ready money alleged to have been in the (tabvil)." The last item was 2,750 rupees, the half value of outstanding balances 15,000 rupees, and the half estimated value of the goods specified in the schedule to the plaint, 22,712 rupees. The judge of first instance in dealing with the issues which related to the title of the Plaintiff found them all in her favour. In dealing with the first part of the issue, namely, the extent of the Plaintiff's right in the disputed property and the amount of the goods, cash, and outstanding balances, he had before him evidence no doubt of a slight character on the part of the Plaintiff, but still *prima facie* some proof of the amounts claimed. He found upon the evidence of the Plaintiff's own witnesses that the item No. 4, the value of the goods in the shop, ought to be slightly reduced,

and he accordingly reduced it to 21,950 rupees. But he found that she had made out her claim both to the sum claimed by her as her share of the outstanding balances and to the sum claimed by her as half the cash in the shop. And the *prima facie* evidence which she had given in support of her claim though slight stood really uncontradicted. The only evidence that was then given on the part of the Defendants was that of a witness whose testimony was directed to establish the alleged deed of gift, as to which he was disbelieved by the judge, and also to prove a debt due from him to the shop. Therefore, there was really nothing brought forward on that occasion by the Defendants which could show that the evidence given by the Plaintiff, such as it was of the value of the goods in the shop and the amount of the cash in the shop, was erroneous. In that state of things the judge found, with the modification already mentioned, in favour of the Plaintiff. The Defendants appealed to the High Court against the decree generally, but on the hearing they abandoned their appeal as to all the issues relating to the Plaintiff's title, which was thus established by the original decree. With respect to the first issue in the cause, the learned judges of the High Court, in their judgment dated the 6th April 1871, said: "We think that the decree
" of the Lower Court, as it stands, must be modi-
" fied as regards items 4, 5, and 6; namely, 4,
" goods and stock-in-trade; 5, outstanding
" balances; and 6, amount in cash. This is, in
" fact, the only point urged in appeal, all other
" points being given up by Mr. Cowie. It is
" said that this is in fact a suit in the nature
" of a suit for dissolution of partnership, and
" therefore the decree should have been made
" either after the adjustment of the account or
" subject to the taking of an account. In

the High Court on the order of remand, and the only question therefore which remains for decision in respect of Nos: 4 and 6 is, whether the High Court was right in holding that there had been no evidence given sufficient to cut down the amounts for which the Defendant was *prima facie* liable.

Now the points that have been principally insisted upon are these. First, it is said that the judgments of the Lower Court and of the High Court proceed upon the improper assumption that the means of meeting the Plaintiff's claim by showing the true state of the accounts of the house of business were with the Defendants—in short, that the Defendants were in possession of the khata books. Upon the remand a considerable amount of the evidence given related to the question, what had become of the khata books? The case of the Defendants was, that immediately on the filing of the plaint there was an order for a receiver, that the receiver had taken possession of these khata books, and must be taken to be still in possession of them; and that therefore the judges were wrong in holding that it lay upon the Defendants to produce them. Now the judge who tried the cause in the first instance seems to have considered that the khata books were with the Defendants and that they ought to have produced them; the judge who tried the cause on remand was of a similar opinion, and the High Court, consisting of three judges, has confirmed that opinion. Therefore there are the concurrent judgments of six judges to that effect, and in their Lordships view of the evidence it seems to them that the presumption or finding is correct. The receiver was an officer of the Court, he was not in the interest of the Plaintiff. It is shown that he made a complaint against a person whom he represented to be the Plaintiff's manager,

and complained of the Plaintiff not giving him proper assistance or paying the proper expenses for keeping the property while it was in his custody in a proper state. The direct evidence does not amount to more than this: that no formal possession was taken by the receiver of the khata books, that no list of them was signed by him, that they, or some of them, may have been in a particular room in the shop, but that when he was discharged in the month of February 1870 and the Defendants resumed the possession of the shop, the khata books may still have been there. Therefore their Lordships think that the Defendants must be taken to have kept back the khata books, knowing that, if produced, they would not cut down the Plaintiff's claim, or establish any items of discharge in favour of the Defendants.

It has, however, been argued that a large sum of money, being a debt due from the shop, has by independent evidence been proved to have been paid to one Ameer Chand Baboo, and that the Defendants, in taking the account, are entitled to credit for that payment. No doubt some evidence was given of such a payment before the judge who tried the case on the remand, which evidence was also before the High Court on the final appeal, but both these Courts have held that the case was not established. Their Lordships think that if there is any case in which more than another it is wise and right to adhere to the rule they have laid down as to the concurrent findings of two Courts, it is one like this, in which the question relates to an item in a partnership account, the proof of which depends upon the testimony of native gomashtras supported by native books, which are not produced before their Lordships. It is easy to suppose that when the unrighteous defence set up by the Defendants had failed in all other

points, the case of a large payment of this kind might be fraudulently set up. That this was so in the present instance their Lordships do not positively affirm; but they do say that the two Courts having found that the payment was not established to their satisfaction, they do not feel justified in interfering with that finding.

Therefore, on the whole case, their Lordships are of opinion that no ground has been laid before them for reversing or qualifying the decision of the High Court as to the items Nos. 4 and 6; that the final provision which the High Court has made for the outstanding balances is clearly in accordance with justice, and for the interest of both parties; and their Lordships will therefore humbly advise Her Majesty to affirm the judgment of the High Court, and to dismiss this Appeal.

