

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Pandit Suraj Narain and another v. Pandit Ikbal Narain and others, from the Court of the Judicial Commissioner of Oudh (P. C. Appeal No. 13 of 1912; Oudh Appeal No. 1 of 1910), delivered the 10th December 1912.*

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD MOULTON.

SIR JOHN EDGE.

MR. AMEER ALLI.

[DELIVERED BY MR. AMEER ALLI.]

The point for determination involved in this Appeal turns on the question whether the Plaintiffs, who were admittedly members of a joint Hindu family governed by the Mitakshara law, separated as they allege in October 1901, or whether they continued joint in property, if not in food and worship, as the Defendants contend up to the institution of the suit in 1905.

The parties are Kashmiri Brahmins settled in Oudh and, with the exception of the Defendant Ratan Lal, are descended from one Pandit Bishan Narain who died over 40 years ago. He left four sons, of whom Pandit Suraj Narain the first Plaintiff is the only one now surviving. On Bishan Narain's death his eldest son Raj Narain became the *Karta* of the joint family. On his death in 1890, Ram Narain, the next in order of seniority, assumed charge of the family estate. He died in October 1900, leaving a daughter who is married to the Defendant Ratan

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Lal. Her son Raj Indar Narain appears to have been adopted by Ram Narain, and although his name frequently appears in the course of the present litigation he is no party to the action. On the death of Ram Narain, the Defendant Bakht Narain, who has died since the institution of this suit, applied in November 1900 for mutation of names in the Collector's Register in respect of the joint family property. On the 8th of December 1900, Suraj Narain filed a Petition objecting to the mutation being effected in Bakht Narain's name alone, and praying that his name along with the Plaintiffs' and Raj Indar Narain's might be entered in equal shares.

Some action appears to have been taken by the Revenue authorities on the application of Bakht Narain, but before any definite order was made, the parties came to a settlement which was embodied in a deed of compromise. This document bears date the 27th of February 1901, and after reciting the facts connected with Suraj Narain's application, proceeds to state as follows :—

“ Hence, in submitting this application we pray that  
 “ mutation of names be effected in favour of Pandit Bakht  
 “ Narain alone as the head of a joint family, and the status  
 “ of the family has continued joint from the death of  
 “ Pandit Ram Narain up to this day and shall remain  
 “ so as long as any dispute does not arise among the  
 “ heirs.”

Bakht Narain's name was accordingly entered with regard to the entire joint estate, and matters apparently remained *in statu quo* for the next two years. In consequence of some quarrel with his elder brother, Suraj Narain, on the 5th of May 1903, applied to the Revenue authorities to have his and Raj Indar Narain's names entered jointly in respect of two-thirds of the family properties.

The differences between the brothers seem to have been mainly connected with the question

of shares the two branches of the family would take upon a partition. As Bakht Narain had three sons and Suraj Narain had only two, the latter evidently apprehended that if the division were to be made *per capita* his branch would obtain a smaller share. The compromise of February 1901 which provided for a reference to the Advocate-General was really intended to remove this fear on the part of Suraj Narain.

On the 31st August 1903 the Assistant Collector made an order in favour of Suraj Narain. This order was reversed on appeal by the Deputy-Commissioner on the 30th of October 1903. The Deputy Commissioner embodies in his judgment the actual contentions advanced before him by the parties, which afford a strong indication of the views they then took of the position of the family. Their Lordships will refer to this document when dealing with the arguments at the Bar on this Appeal.

After the Deputy Commissioner's order, Suraj Narain returned to the service of the Amethi Estate and remained there up to the end of 1904. In June 1905 he, in conjunction with his surviving son, brought the present suit against Bakht Narain and his sons for a partition of the family properties. The various proceedings in the suit of Bakht Narain against Ratan Lal, in which Suraj Narain attempted to be joined as a Plaintiff, have no direct bearing on the question their Lordships have to consider.

In the present action the Plaintiffs, Suraj Narain and his son, claimed to recover mesne profits from Bakht Narain and his branch of the family, on the ground that they had separated from the joint family in October 1901. Their contention was accepted by the Subordinate Judge who made a decree in their favour on that basis. The Judicial Commissioners have on appeal reversed his decision; and the present

Appeal to His Majesty in Council is from their judgment. The learned Judges have carefully and elaborately examined the evidence on the question of the alleged separation in October 1901; and as their Lordships agree with the main conclusions of the Court below, they do not consider it necessary to deal with the matter in detail.

The principle applicable to cases of separation from the joint undivided family has been clearly enunciated by this Board in *Rewin Persad v. Mussumat Radha Beeby* (4 Moore, I. A. 137, and the well-known case of *Appovier* 11 Moore, I. A. 75). What may amount to a separation or what conduct on the part of some of the members may lead to disruption of the joint undivided family and convert a joint tenancy into a tenancy in common must depend on the facts of each case. A definite and unambiguous indication by one member of intention to separate himself and to enjoy his share in severalty may amount to separation. But to have that effect the intention must be unequivocal and clearly expressed. In the present case that element appears to their Lordships to be wholly wanting. By the compromise of February the parties had agreed to retain the status of jointness which had existed till then "until any dispute arose among the heirs." Suraj Narain alleges that he separated a few months later; there is, however, no writing in support of his allegation, nothing to show that at that time he gave expression to an unambiguous intention on his part to cut himself off from the joint undivided family. The oral evidence on which the allegation has mainly rested, as the learned Judges in the Court below point out, is either inconclusive or unreliable. On the other hand, his conduct, borne out by documents, is clearly against his contention. After the com-

promise of February 1901, the mutation proceedings instituted by Bakht Narain in November 1900 were continued, and on the 2nd of January 1902 the Revenue Officer directed that the statements of the two brothers should be recorded "to ascertain in whose name the entry should be made." And on the 8th of February the officer in question made the following order:—

"As the statements of Pandit Bakht Narain and Suraj Narain have been received and they unanimously show their willingness for the entry of the name of Bakht Narain and declare his possession also, and as no one has filed any objection, it is therefore ordered that, after expunging the name of Ram Narain, deceased, the name of Bakht Narain be entered and the file be submitted to the officer in charge of Pargana for sanction."

The conduct of Suraj Narain on this occasion was certainly not consistent with his allegation that he had severed his connection with the joint family, of which Bakht Narain was the acknowledged "head," in October 1901.

In his application of the 5th May 1903, among other matters, he speaks of a separation in "mess and worship," but there is no mention of a division of rights in property. Had his present statement been true, some reference would unquestionably have been made to it in this document. Separation from commensality, as was observed in the case of *Rewun Persad v. Radha Beeby*, does not as a necessary consequence effect a division of the joint undivided property. A separation in mess and worship may be due to various causes, and yet the family may continue joint in estate. In the present case there is evidence to show it arose from a difference in the religious opinions of the two brothers.

But the conduct of Suraj Narain after the order of the Deputy Commissioner on the 30th October 1903, and the statements of his pleader before that officer, leave no doubt in their Lordships' mind that his present allegation is

unfounded. The passage in the Deputy Commissioner's Judgment which gives the substance of these statements is important. After reciting some of the facts connected with the dispute before him, the Judgment proceeds thus :

“ Ultimately on the 29th February 1901 [*sic.*], by virtue of a compromise, the name of Bakht Narain was entered as *manager and head* of a joint Hindu family. By a clause at the end of this agreement Bakht Narain was to remain so recorded so long as there should be no dispute among the *warisan*. There is now a discussion as to the meaning of the word *warisan*.

“ Mr. Jackson for Appellant argues that it clearly refers to the *heirs* of the executant of the compromise. Mr. Champat Rai for the Respondent maintains that it refers to the executants themselves; and as they are now in disagreement he wishes to have his client's name recorded in the Government registers.

“ Here it is necessary to say that there is a third party, Raj Indar Narain, said to be the adopted son of Ram Narain.

“ Bakht Narain now denies the validity of the adoption.”

And the order is, “ I think that Suraj Narain and Raj Indar Narain ” (the applicants in that case) “ should go to the Civil Court and get their shares clearly defined.”

The statement of Mr. Champat Rai appears to their Lordships to involve a clear admission that the joint status had continued till then; and that as the parties were, to use his words as recorded by the Deputy Commissioner, “ now in disagreement,” he wished to have his client's name recorded in the Government Registers.

After the dismissal of his application, as already observed, Suraj Narain went away to Amethi without making an attempt to go to the Civil Court. Although Suraj Narain made various attempts to come in as a Plaintiff in the suit Bakht Narain had brought against Ratan Lal, it may be taken as well established that after the Deputy Commissioner's order matters

remained *in statu quo* until the present action was instituted. Their Lordships are of opinion that the allegation regarding a separation in October 1901 of rights in property fails, and that the view of the learned Judges in the Court below is well founded, that the Plaintiffs are not entitled to claim mesne profits on that basis.

But it is urged that as the Plaintiffs did not, after the disputes arose between the two brothers, receive any profits from the joint estate, they are entitled to mesne profits on the ground of exclusion. The evidence is clear and distinct on this point, and shows that Bakht Narain was all along offering Suraj Narain an allowance of Rs. 200 a month which he refused to accept as being inadequate. This certainly does not, in their Lordships' judgment, amount to exclusion from the joint estate.

On the whole their Lordships are of opinion that this Appeal fails and ought to be dismissed with costs and their Lordships will humbly advise His Majesty accordingly.

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In the Privy Council.

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PANDIT SURAJ NARAIN AND  
ANOTHER

vs.

PANDIT IKBAL NARAIN AND OTHERS.

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DELIVERED BY MR. AMJER ALL.

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