

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Jeolal Mahton and another v. Loke Narayan Mahton and others, from the High Court of Judicature at Fort William, in Bengal ; delivered the 23rd January 1912.

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD ROBSON.

Sir JOHN EDGE.

Mr. AMEER ALI.

[DELIVERED BY LORD MACNAGHTEN.]

This case was heard *ex parte*. The suit was brought by one Loke Narayan Mahton and his three sons as members of a joint undivided Hindoo family under the Mitakshara Law, asking for a declaration that they were entitled to one-third share of the family property, and for an order for partition on that footing. The defence was that Jiamam Mahton, Loke Narayan's father, who was the son of Pokhan Mahton, was expelled from the family in 1874 in consequence of some scandalous conduct which brought upon him the displeasure of the Zamindar in whose service the family were employed—that on his expulsion there was a partition so far as he was concerned, and he then received his share of the family property which had been all acquired in the service of the Zamindar by Pokhan and his sons, and that thereupon Jiamam disappeared with his wife and his son, Loke Narain, who was a mere child at the time, and so his connection with the

family came to an end. It was also contended that the Plaintiffs' claim was barred by the Law of Limitation.

The suit was dismissed with costs in the Court of the Third Subordinate Judge of Patna. On appeal to the High Court at Calcutta this judgment was reversed and a decree was pronounced in favour of the Plaintiffs.

The evidence is very voluminous and very contradictory. The oral testimony on both sides seems to be even more than usually untrustworthy. After a most elaborate and careful review of the whole case, from which nothing of importance appears to be omitted, and to which nothing can be usefully added, the learned Judges of the High Court came to the conclusion that the case set up of Jiaran's expulsion in 1874 and the alleged partition of the family property on that occasion failed completely. Then they proceeded to consider the position of affairs when Loke Narain reappeared in 1889 after his father's death and took up his abode in the village where the surviving members of the family lived. The view of the Court was that he was then recognised as a member of the family, and that no case of exclusion from the joint property could be made out against him till five or six years before suit, when there appeared to have been exclusion from commensality but no partition of the family property.

The case was very fully and very ably presented to this Board by the learned Counsel for the Appellants, but their Lordships are not satisfied that there is any ground for disturbing the judgment of the High Court.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be dismissed with costs.

In the Privy Council.

JEOLAL MAHTON AND ANOTHER.

v.

LOKE NARAYAN MAHTON AND
OTHERS.

DELIVERED BY LORD MACNAGHTEN.

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