

Privy Council Appeal No. 78 of 1925.
Bengal Appeals Nos. 12 and 13 of 1924.

Radha Binode Mandal - - - - - *Appellant*

v.

Sri Sri Gopal Jiu Thakur and others - - - - - *Respondents*

Same - - - - - *Appellant*

v.

Bhola Nath Mandal and others - - - - - *Respondents*

(Consolidated Appeals)

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 25TH MARCH, 1927.

Present at the Hearing :

LORD ATKINSON.

LORD CARSON.

SIR JOHN WALLIS.

SIR LANCELOT SANDERSON.

[Delivered by SIR LANCELOT SANDERSON.]

These are consolidated appeals against two decrees of a Division Bench of the High Court of Judicature at Fort William in Bengal, dated the 3rd March, 1924.

The first decree reversed a decree dated the 9th May, 1921, of a learned Subordinate Judge of Alipore, and the second varied a decree of another learned Subordinate Judge of that Court dated the 20th September, 1921.

The decree of the 9th May, 1921, was made in suit No. 155 of 1919, and the decree of the 26th September, 1921, was made in suit No. 214 of 1919.

The appellant to His Majesty in Council in both appeals is Radha Binode Mandal.

The suit 155 of 1919 was instituted on the 26th July, 1919, by the plaintiffs (1) Sri Sri God Gopal Jiu Thakur and (2) Sri Sri God Shambuth Nath Shib Thakur—represented by the Shebait Narendra Nath Mandal. Radha Binode Mandal is the first defendant and there are 19 other defendants.

The shebait plaintiff, Narendra Nath Mandal and the defendants are all members of the Mandal family of Bawali.

The plaint alleges that the properties described in the schedule attached to the plaint are owned and possessed by the plaintiff Thakurs, and that the property numbered 1 is the residential house of the plaintiff Thakurs, where the plaintiff Thakurs have resided with other Thakurs connected with them and where the sheba and worship have been performed. The relief claimed in the suit is for a declaration that the properties in suit are owned and possessed by the plaintiff Thakurs as debottar properties.

At the trial Radha Binode Mandal was the only contesting defendant, and his case was, 1st that the suit was barred by reason of *res judicata*, and 2nd that there was no valid dedication of the properties in suit to the idols and that the properties were not debottar.

The learned Subordinate Judge, who tried the suit, decided both these questions in favour of the defendant Radha Binode Mandal and dismissed the suit with costs.

The plaintiffs appealed to the High Court, and the Division Bench of the High Court, consisting of Chatterji and Cuming, JJ., held that the suit was not barred by reason of *res judicata*, and that the properties mentioned in the schedule to the plaint, except items 14 and 15, were debottar properties.

The suit 214 of 1919 was instituted on the 17th September, 1919. The plaintiff is Radha Binode Mandal and the defendants are the other members of the family.

The plaint alleges that the 28 plots of property, described in the schedule to the plaint in that suit, are ancestral joint properties of the plaintiff and the defendants, and that the plaintiff and the defendants are in joint possession thereof.

The plaintiff claims a declaration that he has a two-annas share in the properties mentioned in the schedule, and he asks for a preliminary decree for partition of the properties.

This suit was contested. The learned trial Judge held as follows: "The evidence shows that the disputed properties were the debottar properties, but, subsequently, in suit 206 of 1915 it was decided that the properties were not debottar."

He therefore decided in favour of the plaintiff and made a preliminary decree for partition, and directed a Commissioner to be appointed to effect a partition of the disputed properties.

Certain of the defendants in that suit, including Narendra Nath Mandal, appealed to the High Court, one of the grounds of

appeal being that the learned Subordinate Judge should have held that the disputed properties were debottar.

The appeal was heard by the same learned Judges in the High Court, and they stated that in the other appeal they had held that all the properties mentioned in the schedule to the plaint in the suit 214 of 1919, except properties numbered in that schedule 22 and 27 were debottar properties.

They therefore varied the decree of the learned Subordinate Judge and directed that the plaintiff's suit in respect of items other than Nos. 22 and 27 should be dismissed, and they further ordered that the case should be sent back to the lower Court in order that partition might be effected of items Nos. 22 and 27, in accordance with the directions contained in their judgment.

Radha Binode Mandal, has appealed, as already stated, against the two above-mentioned decrees of the High Court.

The arguments, which were presented to their Lordships, related mainly to the suit No. 155 of 1919, which was brought by the two above-mentioned gods, through the shebait, Narendra Nath Mandal, against Radha Binode Mandal and others.

It was contended, on behalf of the appellant in the first place, that the question whether there had been a valid dedication of the properties in suit, and whether they were debottar properties, was *res judicata*, and reliance was placed upon Section 11 of the Civil Procedure Code of 1908.

The material facts which it is necessary to state for the consideration of this argument are as follows :—

In 1914 a suit, No. 212 of 1914, was instituted by Gopal Lal Mandal, Ram Lal Mandal, and six others, against other members of the family, and it was prayed that it might be declared that the properties mentioned in the schedule were debottar properties of Sri Sri Iswar Gopal Jiu Thakur established by the late Peary Lal and Moni Mohan Mandal.

The suit was valued at Rs. 1,87,052.

This suit was withdrawn on the 5th August, 1915, with liberty to bring a fresh suit.

On the 24th September, 1915, another suit (No. 206 of 1915) was instituted by Gopal Lal Mandal and Ram Lal Mandal. In the plaint the plaintiffs were described as "Sri Sri Iswar Gopal Jiu Thakur's Shebaites."

Gopal Lal and Ram Lal Mandal are defendants 2 and 3 in the present suit (No. 155 of 1919).

The defendants in the 1915 suit, nineteen in number, were the other members of the Mandal family, and they included Narendra Nath Mandal and Radha Binode Mandal.

The defendants also were described as "Sri Sri Iswar Gopal Jiu Thakur's Shebaites."

The first prayer in the plaint was as follows :—

"That all the properties, being debottar properties of Sri Sri Iswar Gopal Jiu Thakur established by the said Peary Lal Mandal and Moni Mohan

Mandal, a scheme may be framed for the preservation, management and improvement of the said properties, and for the efficient performance of the daily and periodical shebas of Sri Sri Iswar Gopal Jiu Thakur and the festivals, etc."

There was a further prayer that a manager or trustee should be appointed.

The plaint contained allegations that the defendant No. 10, viz., Radha Binode Mandal and certain other defendants, had been putting obstacles in the way of the collection of rents and of the management of the properties, and that on account of difference of opinion among the shebaitis it had become very difficult to manage the debottar estate properly, to collect rents and to perform the deb-sheba, etc., in a proper way.

Radha Binode Mandal (defendant No. 10 in the 1915 suit) denied that the properties were debottar.

Among other issues the following issues were stated in the Court of the learned Subordinate Judge who tried the suit :—

"(3) Is the suit maintainable in its present form ?

"(5) Are the properties described in the schedule of the plaint debottar properties? Was there any valid arpanama or dedication of the same to the Thakur Sri Sri Gopal Jiu ?"

On the third issue, the learned Subordinate Judge held that the frame of the suit was defective. He was of opinion that the plaintiffs should have directly prayed for a declaration that the properties of the plaint were dedicated debottar properties.

He pointed out that in the previous suit (viz., the 1914 suit) such a prayer was made; that the Court called for *ad valorem* Court fees on the value of the properties; that the plaintiffs in that suit were unwilling to pay such fees, and that the suit was withdrawn.

He came to the conclusion that the 1915 suit had been framed in a slightly different form in respect of practically the same relief, and with a view to avoid the payment of a large amount of Court fees. He therefore held that the suit was not maintainable as framed.

Although the learned Judge had come to the above-mentioned conclusion, that the suit as framed was not maintainable, he proceeded to consider the fifth issue, and in respect thereof he held that the plaintiffs had failed to prove that the properties were debottar. This decision was on the 31st July, 1916.

There was an appeal by the plaintiffs to the learned District Judge, who held that the plaintiffs had not succeeded in establishing an absolute endowment, and he agreed with the learned Subordinate Judge that the suit was not maintainable in its present form. He said :—

"The character of the property was a direct issue in the case and the plaintiffs should not have attempted to obtain a decision on this direct issue by bringing a suit in such a form as to avoid the payment of a larger amount in Court fees."

The appeal accordingly was dismissed with costs. This was on the 19th July, 1917.

As already stated, the suit, now under consideration, No. 155 of 1919, was instituted on the 26th July, 1919.

The seventh issue at the trial of that suit was, "Is the suit barred by the principles of *res judicata*?"

The learned Subordinate Judge held that the judgment in the suit, No. 206 of 1915, operated as *res judicata*.

The Division Bench of the High Court came to the conclusion that the decision in the 1915 suit did not operate as *res judicata*, and the learned Judges stated several reasons for the conclusion at which they arrived.

The above-mentioned reasons were fully debated and considered during the arguments, but their Lordships do not think it necessary to refer to them in detail because, in their Lordships' opinion, this part of the case should be disposed of on one consideration which goes to the root of the matter.

The plaintiffs in the suit which is now under consideration, viz., No. 155 of 1919, are the two gods, Gopal Jiu Thakur and Shambuth Nath Shib Thakur, suing by the Shebait Narendra Nath Mandal.

In their Lordships' opinion, these two gods were not parties to the 1915 suit.

It is true that in the 1915 suit the plaintiffs were described as "Sri Sri Iswar Gopal Jiu Thakur's Shebait," and it was argued that the 1915 suit must therefore be regarded as having been brought on behalf of the deity "Gopal Jiu."

Their Lordships, however, are not prepared to accept that argument.

It is to be noted that not only were the plaintiffs described as the shebait of the god, but the defendants also were described in the same way. Therefore, if the god Gopal Jiu were to be regarded as a plaintiff, he must also be regarded as a defendant, which would be a *reductio ad absurdum*.

For the consideration of this point, however, it is necessary to examine not only the heading of the plaint, but also the allegations therein.

In their Lordships' opinion, the allegations in the plaint show that the 1915 suit was based upon the assumption that the properties were debottar properties, and that the suit was brought for the purpose of having a scheme framed by the Court for the preservation and management of the properties and for the performance of the daily and periodical shebas.

The suit, it was alleged, had become necessary by reason of the disputes as to the management of the properties between the plaintiffs and some of the defendants, all of whom were alleged to be shebait of the god, and it was apparently not thought necessary to make the two gods, the plaintiffs in the present suit, parties to the 1915 suit.

In their Lordships' opinion the description of the plaintiffs and the defendants in the 1915 suit as shebait of the Thakur,

and the nature of the suit, as disclosed by the allegations in the plaint, are not sufficient to constitute the 1915 suit a suit by or on behalf of the gods, who are the plaintiffs in the present suit, viz., No. 155 of 1919.

The result, therefore, in their Lordships' opinion, is that the suit of 1915 was not between the same parties as the parties in the suit now before the Board; the case, therefore, does not fall within Section 11 of the Code of Civil Procedure, 1908, or within the statement of the general law made in *Krishna Behari Roy v. Brojeswari Chowdranee*, 2 I.A. 283, at page 285.

For the above-mentioned reason, their Lordships are of opinion that the conclusion, at which the learned Judges of the High Court arrived on the issue of *res judicata*, was correct.

They desire to guard themselves by saying that they must not be taken as adopting the grounds upon which the decision of the High Court was based. They express no opinion on any ground other than that which has been hereinbefore dealt with.

Secondly, it was argued on behalf of the appellant that the decision of the learned Judges of the High Court as to the character of the properties in suit was wrong.

Their Lordships had the advantage of a very careful and elaborate examination of the documents and evidence presented to them by the learned counsel who appeared on behalf of the appellants.

They have the further advantage of a judgment of the High Court, which is conspicuous for the care with which it was obviously prepared. All the material points, which were urged by the learned counsel for the appellant, were referred to and considered by the learned Judges of the High Court, and no fault could be found with the accurate statement of the facts and evidence in relation to such matters.

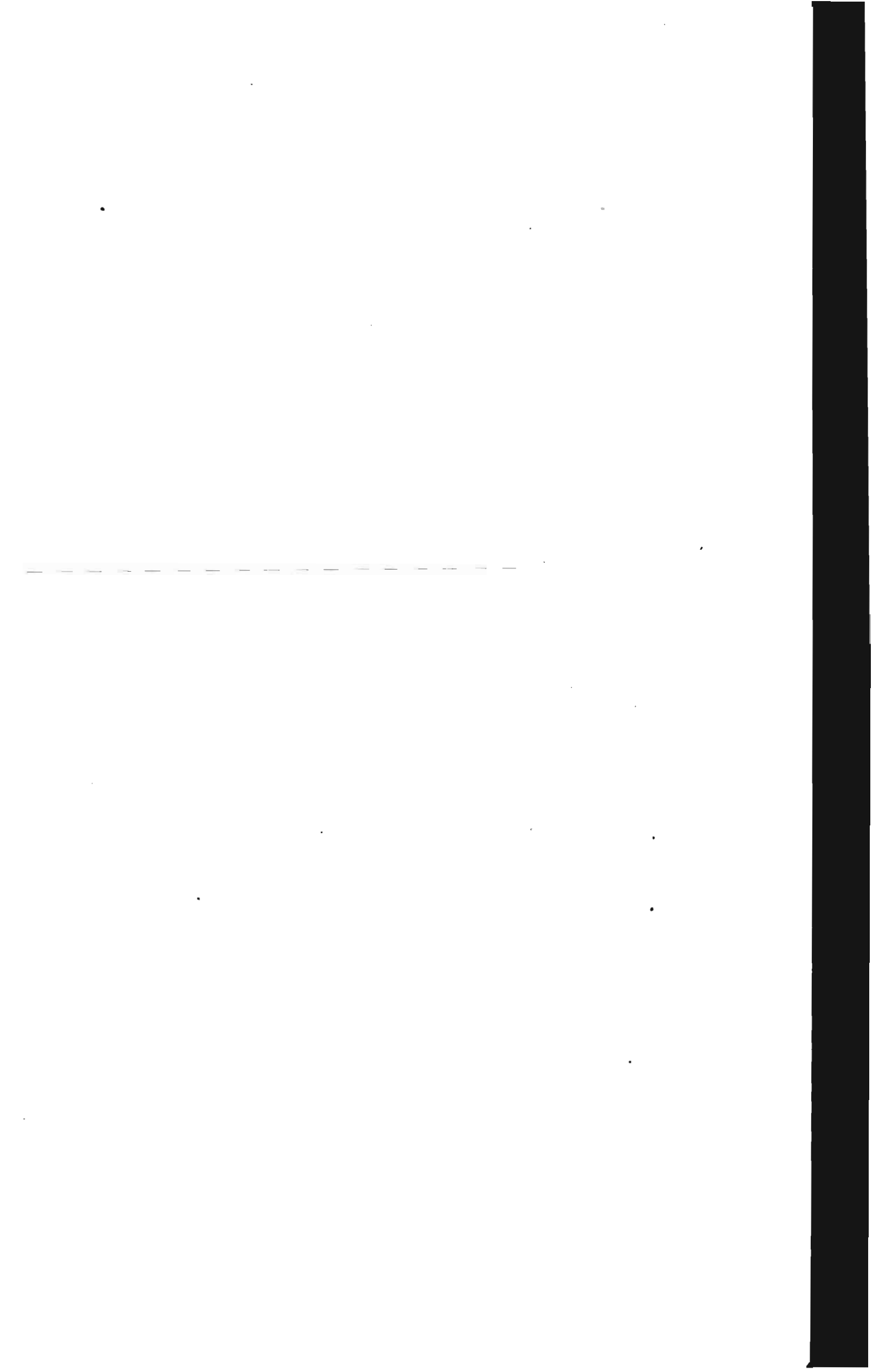
In their Lordships' opinion, there is only one question on this part of the case, viz., whether the learned Judges were justified in drawing the inference from the evidence, to which they referred, that the properties described in the schedule, with the exception of two items, were debottar properties.

Their Lordships, having come to a clear conclusion during the course of the argument, did not think it necessary to call upon the learned counsel for the respondents for an answer on this part of the case.

In their Lordships' opinion, there was ample evidence in the case to justify the inference which the learned Judges drew as to the character of the properties.

Their Lordships, therefore, are of opinion that the appeal of Radha Binode Mandal against the decree of the High Court in the suit No. 155 of 1919 fails. It follows as a necessary consequence of the findings of the High Court being upheld, that the appeal of Radha Binode Mandal against the decree of the High Court in suit No. 214 of 1919 also must fail.

Their Lordships, therefore, are of opinion that both the appeals should be dismissed with costs, and they will humbly advise His Majesty accordingly.



In the Privy Council.

RADHA BINODE MANDAL

v.

SRI SRI GOPAL JIU THAKUR AND OTHERS.

SAME

v.

BHOLA NATH MANDAL AND OTHERS.

(*Consolidated Appeals.*)

DELIVERED BY SIR LANCELOT SANDERSON.

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