

Privy Council Appeal No. 53 of 1933

Allahabad Appeal No. 28 of 1931

Nathu Lal and Another - - - - - Appellants

v.

Babu Ram, since deceased, and Others - - - Respondents

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 19TH DECEMBER, 1935.

Present at the hearing:

LORD BLANESBURGH.

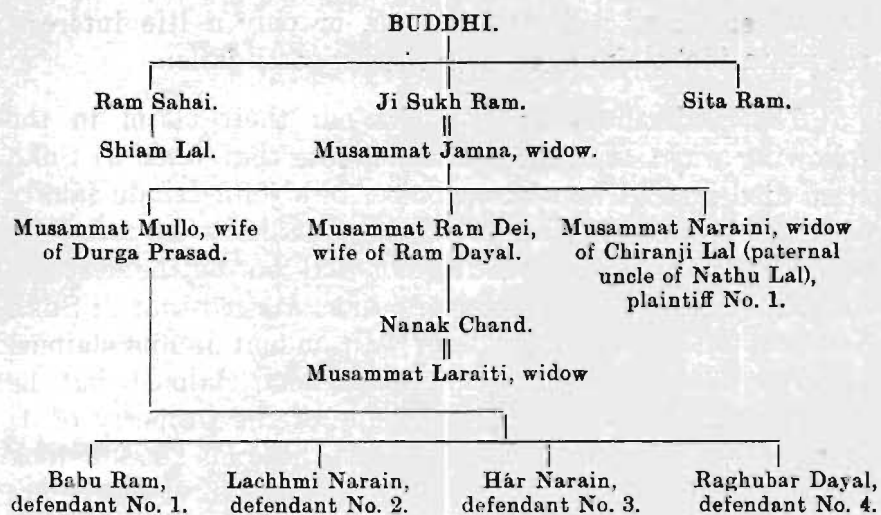
LORD MACMILLAN.

SIR JOHN WALLIS.

SIR GEORGE LOWNDES.

SIR GEORGE RANKIN.

[Delivered by SIR GEORGE RANKIN.]



The plaintiffs, on the 22nd March, 1927, sued the defendants in ejection to recover possession of certain zemindary property and a share in a house (*haveli*). The defendants had obtained mutation of names from the revenue authorities on the death of Musammat Naraini who held possession during her lifetime. Plaintiff No. 1, Nathu Lal, is the only son of a brother of Musammat Naraini's husband, and as such he is admitted to be the only person entitled to succeed to any estate of which she was full owner as distinct from estate held by her as a

limited owner. The second plaintiff is a purchaser from the first and has been joined as such. The defendants, four in number, are sued as being the persons in possession of the property claimed, but the title under which they defend their possession is that they are the reversioners of Jai Sukh Ram, Musammat Naraini's father. From the pedigree which has been prefixed to this judgment it will be seen that they are the sons of Musammat Mullo, a sister of Naraini. When Naraini died in 1923 both her sisters had predeceased her.

The question for decision is whether or not Musammat Naraini owned the property in suit absolutely and the plaintiffs suing in ejectment have to recover on the strength of their own title. Their claim is that Naraini had absolute right by reason that on the 25th April, 1905, her mother, Musammat Jamna, being absolutely entitled, executed a deed of gift to her daughters of certain property in unequal shares, 7 annas being given to Musammat Mullo, 6 annas to Musammat Ram Dei and 3 annas to Musammat Naraini. The property in suit is the property which by this deed was conveyed to Musammat Naraini; and as there is no doubt that Musammat Jamna purported by the deed to convey an absolute right, the question for decision in the present suit is whether or not the property was held by Musammat Jamna for an absolute estate or for a limited estate. The exact date of the death of Musammat Jamna does not appear, but it is conceded that she predeceased her daughter Naraini. If in the property in suit Musammat Jamna had only the limited estate of a Hindu woman, or only a life interest, the plaintiffs' claim to recover the property fails.

The plaintiffs seek to make out their claim in the following way: It is the plaintiffs' case that when Ji Sukh Ram died in 1891 he was a member of a joint Hindu family of which he and his elder brother Ram Sahai were members. Ram Sahai had a son called Shiam Lal, but on the death of Ji Sukh, Shiam Lal, who was a minor, alleged that Ji Sukh had adopted him in his lifetime. Musammat Jamna claimed to be the heir of her husband. Ram Sahai claimed that, he being joint with Ji Sukh, the whole of the property of Ji Sukh passed by survivorship and that his widow took nothing by inheritance. In these circumstances a dispute arose before the revenue authorities and was being taken on appeal to the collector, the question being whether Ram Sahai, Shiam Lal or Musammat Jamna was entitled to be recorded as proprietor. Ram Sahai's case was that there was no occasion for any partition of the property of which he and his brother had been in joint possession. Musammat Jamna's case was that a partition was necessary in order to put her in possession of her husband's share as representing her husband's estate. These disputes between Ram Sahai and Musammat Jamna were referred to the arbitration of five arbitrators by written instrument dated 8th February,

1892, and by an arbitration award dated the next day and signed by both parties in token of acceptance, the arbitrators, finding that the joint property was worth Rs. 40,000, and that the debts due therefrom amounted to Rs.6,000, divided it between Ram Sahai and Musammat Jamna in unequal proportions. They gave the lady lands worth Rs.10,000 and the eastern half of the dwelling house. Upon this, the plaintiffs' case is that Ram Sahai and Ji Sukh were joint, that the whole property passed by survivorship to Ram Sahai; that under this award the property given to Musammat Jamna was given to her for an absolute estate, so that Naraini took an absolute estate from her mother by the deed of 1905, accordingly that the plaintiffs are entitled, and the defendants, as reversioners of Ji Sukh, have no claim.

The trial Court found that the plaintiffs had established this case and its decree was confirmed on appeal by the Additional District Judge. On second appeal by the defendants to the High Court at Allahabad these decisions were reversed and the plaintiffs' suit was dismissed on the view that as Musammat Jamna's only claim at the time of the death of her husband was to inherit from him, she could not afterwards claim to hold the property adversely to her husband's estate or to have an absolute right therein.

The first question for consideration is whether the interest of Ji Sukh passed by inheritance or passed by survivorship to Ram Sahai. The evidence upon which the trial Court found that Ji Sukh and Ram Sahai were members of a joint Hindu family was, first of all, an instrument of partition executed by Ram Sahai and Ji Sukh as to one part, and by their younger brother Sita Ram as to the other part, on the 17th April, 1873. It is common ground that at this date the father of these three brothers, by name Buddhi, was alive. Indeed he is one of the persons signing the instrument as witnesses. It is not disputed that the property partitioned by this instrument was property which had been acquired by the three brothers, there being no evidence that their father at any time had property or had any share in the property comprised in the instrument. The family were liquor sellers by caste and the three brothers were engaged in business of this character. By the deed of 1873 certain specified property consisting of houses, shops, and zemindary property, is stated to have been owned by the three brothers, and specified items are allotted as the share of Sita Ram, other items being allotted in one share to Ram Sahai and Ji Sukh jointly; that is to say, the property is partitioned into two shares, one going to Sita Ram and the other to his two brothers. The instrument contains the following provision:—

“ All ornaments, utensils of bell-metal and brass etc., and the household goods shall be owned by the one who possesses them. 'Balu', i.e., 'dast-miana', 'ekka', three cauldrons and four 'tapkas' (?), etc., the entire factory of the distillery shop, situate at

Bazar Guzari, etc., Koil, are all owned by us, Ram Sahai and Ji Sukh. Now there is no longer any amount, charge or costs due by us to Sita Ram or *vice versa*."

In addition to this deed the trial Court had before it seven sale deeds showing that Ram Sahai and Ji Sukh jointly purchased properties at dates between 1881 and 1890: also certain statements made by Musammat Jamna and others to the arbitrators in 1891 after her husband's death; and the recitals or conclusions of fact expressed by the arbitrators in the award. It had also the evidence of witnesses for the plaintiffs and for the defendants upon the question whether Ram Sahai and Ji Sukh were joint at the time of Ji Sukh's death. Four witnesses on this point gave evidence for the defendants and were disbelieved by the trial Judge, while credit was given to two witnesses for the plaintiffs on the same point. His finding was:—"I have not the slightest hesitation in holding that at the time of the death of Ji Sukh Ram, he and Ram Sahai were members of a joint Hindu family."

The learned Additional District Judge came to the same conclusion holding that the phrase "ek shamil" appearing in the deed of 1873 meant that the two brothers were joint in estate and business:—

"I have considered the oral evidence also and I believe plaintiffs' witnesses that the three brothers were joint till 1873 and then Sita Ram separated while the other two brothers continued joint."

The learned Judges of the High Court state that they would have accepted this finding of jointness if a determination of the question of jointness between Ram Sahai and Ji Sukh had been open in this litigation.

Before the Board the main contention of the defendants was based upon the doctrine that if some only of the members of a joint Hindu family acquire property without the aid of joint family property by their joint labours, such property is not joint family property but is joint in a limited sense only—so that a son by birth does not become entitled to a share in it. In support of this contention they cited certain observations of Bhashyam Ayyangar J. in *Sudarsanam Maistri v. Narasimhulu Maistri* I.L.R. 25 Mad. 149. It was further contended that on the death of one of the joint acquirers such property does not pass to the others by survivorship. Examining the instrument of 1873 upon this footing, learned Counsel for the defendants contended that, Buddhi having had no share in the acquisition of this property, it was not joint family property in the hands of his three sons. Accordingly, that if nothing happened to alter the position before the time of Ji Sukh's death in 1891, it could not be held in respect of this property that Ram Sahai took by survivorship at Ji Sukh's death. Their Lordships on this footing were invited to reverse the findings of all three Courts below notwithstanding the provisions of section 100 of the Civil Procedure Code.

It is not perhaps surprising that there should be little reliable information as to the condition of this family prior to 1873 or the circumstances which led to the partition deed in that year. The plaint alleged that the three brothers were the members of a joint Hindu family. By the written statement the defendants asserted that prior to the deed of 1873 the three brothers were separated, and they called oral evidence to this effect, which evidence was disbelieved. There is no specific evidence that prior to 1873 the sons had separated from the father. On the other hand the partition in 1873 was not merely a partition of business premises or zemindary properties acquired out of the business, but was a partition of everything, including ornaments, utensils of bell metal and household goods. It is very difficult to think that after the execution of this deed Sita Ram or Buddhi remained a member of an undivided Hindu family with Ram Sahai and Ji Sukh, nor are they shown to have claimed this character at any time thereafter. Though Buddhi was only a witness, the deed is *prima facie* evidence of a complete disruption of whatever element of jointness remained in them. But the more important and more difficult question has reference to Ram Sahai and Ji Sukh who were to hold their share jointly. Were they minded to be joint in the full sense as members of an undivided family or were they divided brothers holding certain assets jointly? As the assets seem to have been their all, and as they were brothers remaining in business together otherwise than as contractual partners, and without stipulation for defined shares, there is some probability as a practical matter that they meant to be a joint Hindu family in the ordinary sense of the Benares school of law. But 1873, is not, after all, the material date. The trial Court and the Court of first appeal, exercising its functions as the final Court on questions of fact, had before them the evidence of the documents by which Ram Sahai and Ji Sukh acquired further properties; the admission of Musammat Jamna before the arbitrators that Ram Sahai and Ji Sukh lived jointly, i.e., as one Hindu household; the conclusions of the arbitrators, some of whom were castemen and fellow townsmen of Ji Sukh; and the oral evidence for the plaintiffs which they thought reliable. In these circumstances there was ample evidence to support the concurrent findings of the Courts below, and their Lordships are of opinion that the rights of the parties must be determined upon the footing that on the death of Ji Sukh his property passed by survivorship and not by inheritance. The defendants accordingly can take nothing on the mere ground that in 1923 upon the death of Ji Sukh's daughter Naraini, they became reversioners to the estate of Ji Sukh.

It remains to examine the plaintiffs' title in the light of the events of 1891 and subsequent years. On behalf of the defendants it is contended that an examination of the award of 9th February, 1892, will show that Musammat

Jamna was given thereunder no greater estate than the limited estate of a Hindu widow or possibly a life estate. It is said that her only claim being to inherit from her husband as a Hindu widow the award is to be construed, if possible, in the light of this fact, and that mere absence of express words imposing a limit on her interest does not conclude this question of construction. The theory put forward by learned Counsel for the defendants is that although only part of her husband's property was awarded to Musammat Jamna she, as regards that part, did not acquire a new title by way of grant from Ram Sahai, but was given only the interest which she was competent to claim prior to the award. Reference was made to *Khunni Lal v. Gobind Krishna Narain* (1911) 38 I.A. 87 at 102 where a transaction was described as follows:—

“The true character of the transaction appears to us to have been a settlement between the several members of the family of their disputes, each one relinquishing all claim in respect of all property in dispute other than that falling to his share, and recognizing the right of the others as they had previously asserted it to the portion allotted to them respectively. It was in this light, rather than as conferring a new distinct title on each other, that the parties themselves seem to have regarded the arrangement, and we think that it is the duty of the Courts to uphold and give full effect to such an arrangement.”

Their Lordships are not of opinion that it is possible to put a similar construction upon the transaction in the present case. The award recites that both the brothers continued to carry on their shop and zemindary affairs jointly. Having found the total value of the joint estate and of the debts, the arbitrators recite a statement made by Musammat Jamna before them to the effect that she does not want to live jointly with her brother-in-law, but wants her share to be separated and granted to her with power to make transfers of all kinds, adding “and Ram Sahai also agrees to this”. The language in which the operative clauses of the award are couched is the same as regards the property given to Ram Sahai and the property given to Musammat Jamna, no words being inserted to narrow her interest, notwithstanding that the question of power to make transfers of all kinds had been expressly raised in a previous passage. As regards the *haveli* or house which was given half to one, and half to the other, there is an express provision that whenever any one of the parties intends to sell half of the *haveli*, then one of the co-sharers shall be entitled at first to purchase for Rs. 2,000. Upon the true construction of this instrument their Lordships are satisfied that the purport and intention was to confer upon Musammat Jamna an absolute estate in the property allotted to her upon the footing that Ram Sahai was entitled by survivorship and was competent to make the grant.

No doubt, had the facts been that Ji Sukh at the time of his death was separated from his brother, this award could have availed the plaintiffs nothing against a claim by Ji Sukh's

reversioners. On the face of the transaction it is not such a compromise by a Hindu widow as could be held binding upon her husband's reversioners. In the present case, however, as it has been established that Ji Sukh at the date of his death left no heritable interest in the property in suit, the sole question decisive of the rights of the parties is the true construction of the bargain made by Musammat Jamna with Ram Sahai. Their Lordships consider that the absolute title of Musammat Jamna is established and that the learned Judges of the High Court were wrong in thinking that, because her claim before the arbitrators was originally a claim by a Hindu woman to take her husband's estate by inheritance, the estate which she in fact obtained under the award was confined to a limited estate. By the bargain which she drove the reversioners of her husband were not damnified. She did not bind them or represent them, and she was not their agent or trustee to acquire property for her husband's estate. She is not estopped as against them from setting up the title which she took from Ram Sahai: nor have they any claim to share in what she gained.

Their Lordships will humbly advise His Majesty that this appeal should be allowed with costs, and the decree of the trial Judge restored with costs in all the Courts.

In the Privy Council.

NATHU LAL AND ANOTHER

2.

BABU RAM, SINCE DECEASED, AND
OTHERS

DELIVERED BY SIR GEORGE RANKIN.

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