Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Chand Hurree Maitee v. *Rajah Norendro Narain Roy and another, from the High Court of Judicature at Fort William in Bengal; delivered 15th February* 1873.

Present:

LORD JUSTICE JAMES.
SIR BARNES PEACOCK.
LORD JUSTICE MELLISH.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

IN this case their Lordships are of opinion that the decree of the High Court cannot be sustained, and that the decree of the officiating Principal Sudder Ameen ought to be affirmed.

The property in question consisted of two small lots of land, apparently of considerable value at the present time, which had been taken possession of by the Appellant as an execution creditor of one Roodro Narain, which Roodro Narain was by adoption the brother of Lukee Narain, the predecessor in title of the Respondents. It appears that Roodro Narain and Lukee Narain as far back as the year 1845 had litigation for the purpose of establishing the title of Roodro Narain, as a brother and co-sharer in the family property. He succeeded in that litigation. His title was established as a brother and co-sharer. But it appears, as far as there is any evidence before their Lordships, that in the decree establishing his right no possession was actually directed to be given to him except of the zemindary, which was

the principal family estate. It appears that the two lots in question were no parts of the zemindary proper, but one of them had been acquired as a separate inheritance by the ancestor, and the other was purchased by Lukee Narain himself before the title of Roodro Narain was established. It was purchased benamee in the name of the priest of the family. The Sudder Ameen decided in favour of the Appellant. Their Lordships are of opinion, that under the circumstances, Roodro Narain's title to the two lots was precisely the same as his title to the zemindary; that the family property, with regard to the one lot, would be exactly in point of title the same as the zemindary itself; and with regard to that which was purchased in the name of the priest the presumption of law, and the presumption of fact would be that the property acquired in that way by the managing representative member of the joint family would be joint family property. The burden of proof, therefore, lay upon those who insisted that these two lots did not form part of that joint family estate. If they did form part of that joint family estate, then the title of the execution creditor so far as it was affirmed by the Principal Sudder Ameen (which was only to one moiety) was a good title. It was, therefore, on the Respondents to show that there had been anything which amounted to adverse possession so as to be an ouster of the co-tenant.

Their Lordships, having looked through the evidence, are satisfied that there is nothing like trustworthy evidence that amounts at all to proof of such adverse possession or ouster. It is perfectly well known to all persons conversant with these matters in India that the receipt by one member of a family may be quite consistent with the title of the whole. One member of a family may be in receipt of one part of an estate, and another may be in receipt of another part of the

estate, and they may have afterwards to account the one to the other in respect of the excess of receipts over their respective rights. Moreover, there being no evidence of the adverse possession, except the receipt of rents on behalf of Lukee Narain and Lukee Narain's descendants, there is on the other side evidence of very nearly the same character, evidence not amounting to much, but evidence of the same character and description, showing Roodro Narain's occupation or possession of part of the property, his personal dealing with it, and also receipts of rent on his behalf.

Under those circumstances their Lordships will humbly recommend to Her Majesty that the decree of the High Court be reversed, and the decree of the Principal Sudder Ameen be affirmed; that the Appellants receive back all the costs which they have paid under the order of the High Court; and that having regard to the arrangement entered into by the Appellant with the Respondent Norendro Narain Roy, that each party was to bear his own costs in the lower Courts and all subsequent Courts, their Lordships will recommend that one half the costs of the Appellant in the Courts below, and one half the costs of this appeal, be paid to him by Ranee Treepoora Soondoree, the second Respondent.