

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Balabux Ladhuram v. Rukhmabai and another, from the Court of the Judicial Commissioner, Hyderabad Assigned Districts; delivered the 29th April 1903.*

---

Present at the Hearing :

LORD DAVEY.

LORD ROBERTSON.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

Prior to and in the year 1869 three brothers, Girdhari Lall, Kunyaram, and Ladhuram, lived together as an undivided family and owned a shop which had been founded by their father, Amarchand, at Ellichpur, in the Hyderabad Assigned Districts. At some time in 1869 or 1870 (for the date is uncertain) Kunyaram separated from his brothers, took out his share amounting to about Rs. 11,000, and started a shop of his own. There is no direct evidence of any agreement between Girdhari Lall and Ladhuram. Girdhari Lall's widow, Rukhmabai (who is the first Respondent in the present appeal and will hereafter be referred to as the Respondent), says she was at Ellichpur at the time of the separation and heard there was a document about their partition and that it had been prepared by a Panchayet, but she does not know what has become of that document. And there is no further evidence whether any such

document was signed or what were the contents of it, if any such document there were. There is also no evidence that Ladhuram drew out his share of the family property or any part of it, and the fair inference would seem to be that he left it in the family shop, which continued to be carried on by Girdhari Lall under the firm name of Amarchand Girdhari Lall. About the time of the partition Ladhuram sent his wife and infant son, the Appellant Balabux, to reside in a place referred to as Bhorteda, and a few months afterwards he seems to have joined them there and they then went together on a pilgrimage to Prayag (Allahabad), where he died in the year 1873. Thereupon Girdhari Lall brought the Appellant's mother, Birjubai, and the Appellant, then a lad 13 or 14 years of age, to his residence in Ellichpur and they lived with him there until his death in 1882. He left one daughter, but no male issue.

After Girdhari Lall's death the two families continued to live together and the two widows managed the shop. Differences arose between the ladies and in 1889 on the advice of friends the business was divided into two shops, one of which was carried on by the Respondent for her own profit, the other being in like manner carried on by Birjubai for herself and the Appellant. A complete and apparently exact division was then made of the stock-in-trade, book debts, and other assets of the business and, according to the Respondent, of the houses, the jewels in the house, and the utensils also, but this does not seem to be proved. The parties, however, continued to live in the family house, though whether they messed together is not clear, until 1894 when the final rupture took place and the Respondent went to reside elsewhere. The Appellant became of age on the 25th March 1887, but he seems to have been more studious of religious observances than of the care of the business and

he did not in fact give much attention to the business at any time, though there are entries in his handwriting in the books before the division in 1889 and even in the Respondent's books after the division. It should be mentioned that expenses connected with Ladhuram's funeral ceremonies were paid out of the moneys of the business, and by agreement a sum of Rs. 4,000 was allowed at the time of the division in 1889 for the marriage expenses of Girdhari Lall's daughter.

In the present suit the Appellant claims, as the survivor of a joint family, consisting of his uncle Girdhari Lall and himself, to be sole owner of the family shop and business, and treats the division in 1889 as an arrangement for management only to avoid quarrels and as a matter of convenience, and he suggests that it was made by his mother and his aunt before he was perfectly able to understand things.

The Respondent's story was that there was a complete separation between the brothers in 1869, and that Ladhuram took out his one-third share and set up a shop of his own at Bhorteda, and the family shop in Ellichpur thereupon, became the separate property of Girdhari Lall. She further said that after Ladhuram's death Girdhari Lall out of charity and family affection brought the Appellant and his mother to his own house and maintained them, and before his death verbally directed her to give the Appellant one half of the property, which she had done by the division in 1889. There is, however, no evidence that Ladhuram drew out his third share or set up a shop of his own in Bhorteda or elsewhere, and the one fact which is clear in this cloud of uncertainty is that Girdhari Lall in his lifetime never treated himself as the sole owner of the business.

The question for consideration therefore is, what was the nature and legal effect of the transactions which took place in 1869 or 1870 and 1889? The Civil Judge of Ellichpur was of opinion that, reading the whole mass of evidence together, it appeared that there was a partition between Girdhari Lall and his two brothers in 1869, but that there was union between the present Appellant and his mother and Girdhari Lall some years before the latter died, so the effect of this reunion must be taken as cancelling the first division between them. The learned Judge also held that the division in 1889 was made as a family arrangement only, and without the consent of the Appellant, who was therefore at liberty to impeach it. He therefore made a decree in the Appellant's favour. Their Lordships are of opinion that the learned Judge's view as to the reunion after the death of Ladhuram cannot be supported, and indeed it was not maintained by the Appellant's Counsel. A reunion in estate properly so called can only take place between persons who were parties to the original partition. This appears to be the meaning placed on the well-known text of Vrihaspati (Mitakshara, Ch. 2, Sec. 9):—"He who being once separated dwells again through affection with his father, brother, or paternal uncle is termed re-united." It is difficult also to see how an agreement for that purpose could have been made by or on behalf of the Appellant during his minority.

The Judicial Commissioner also held that Girdhari Lall and Ladhuram separated in 1869 or 1870, but he held that they then became partners in the firm of Amarchand Girdhari Lall, the Appellant taking the place of his father on Ladhuram's death, and the Respondent taking Girdhari Lall's place on the latter's death.

He further held that the firm of Amarchand Girdhari Lall was dissolved in January 1889, each partner taking half of the assets and liabilities as nearly as could be ascertained, and from that date the Respondent became sole owner of the firm of Amarchand Girdhari Lall, and the Appellant became sole owner of the firm of Amarchand Ladhuram. By his Decree dated the 4th April 1899 (which is the Decree under Appeal) the Judicial Commissioner accordingly dismissed the Appellant's claim with costs in both Courts.

There is therefore a concurrent finding that there was a partition between all three brothers in 1869 or 1870. The Judicial Commissioner's opinion on this point, however, seems to be based more on the legal inference to be drawn in the absence of any direct evidence of the actual agreement between Girdhari Lall and Ladhuram than on a consideration of evidence. Their Lordships, therefore, think it will be more satisfactory for them to state their own reasons for agreeing with the Judicial Commissioner. There is no doubt some evidence both of a continued union between Girdhari Lall and Ladhuram and against it. On the one hand the absence of any proof of an actual division of property between Girdhari Lall and Ladhuram and the fact of the former having taken the Appellant and his mother back to the ancestral home are evidence of the two brothers having agreed to remain united. On the other hand the fact of Ladhuram having sent his wife and child to reside at Bhorteda and himself leaving the ancestral home (though it is said for a pilgrimage only), and the evident and expressed desire of Girdhari Lall, concurred in by the Appellant and his mother until 1894, that the Appellant should be treated as entitled to one half the business and property is evidence in the contrary

direction. But the evidence either way is too slight to form a satisfactory basis for decision. What then is the result? It appears to their Lordships that there is no presumption, when one co-parcener separates from the others, that the latter remain united. In many cases it may be necessary, in order to ascertain the share of the outgoing member, to fix the shares which the other co-parceners are or would be entitled to, and in this sense the separation of one is said to be a virtual separation of all. And their Lordships think that an agreement amongst the remaining members of a joint family to remain united or to re-unite must be proved like any other fact. They agree, therefore, with the Judicial Commissioner on this part of the case, and they think that his inference of a partnership between Girdhari Lall and Ladhuram and afterwards the Appellant, either by express agreement or by operation of law, is the hypothesis which best reconciles all the proved facts in the case.

The Judicial Commissioner has very carefully considered and stated the effect of the evidence as to the division in 1889. With the assistance of Counsel their Lordships have examined the evidence, both oral and documentary, upon which the learned Commissioner's finding is based, and they agree with him as to the result of it. They need not therefore repeat what he has said. They find that the Plaintiff was of age and was present and took an active part in the arrangement then made, and that a careful and exact division was made of the assets and liabilities of the former firm between the two new firms. There is evidence also that the house in which the Appellant and Respondent resided was divided, the Respondent taking the northern portion and the Appellant and his mother the southern portion, but it is not quite clear to what period the division should be referred. Their

Lordships also think that the Judicial Commissioner was right in not attaching any importance to the fact of the Wabipuja having been performed by the Appellant in the Respondent's shop or his having visited her shop and even made entries in her books. It appears from other evidence that the Appellant and Respondent remained on friendly terms until the commencement of the present suit.

Their Lordships therefore are of opinion that the transaction of 1889 was a dissolution of the partnership theretofore subsisting between the Appellant and the Respondent as heir and representative of Girdhari Lall, and even if they took a different view of what took place in 1869 or 1870, they would hold that the arrangement made in 1889 was not, as alleged by him, of a merely temporary character, but was intended to be a permanent family settlement, and in the circumstances cannot be impeached by, and is binding upon, him.

They will therefore humbly advise His Majesty that the Appeal be dismissed, and the Appellant will pay the costs of it.

---

