

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Net Ram Singh and others v. Musammat Tursa Kunwar, from the High Court of Judicature for the North-Western Provinces, Allahabad (P.C. Appeal No. 85 of 1912); delivered the 18th July 1913.

PRESENT AT THE HEARING :

LORD ATKINSON.

LORD PARKER OF WADDINGTON.

SIR JOHN EDGE.

MR. AMEER ALI.

[DELIVERED BY MR. AMEER ALI.]

The suit, which has given rise to this Appeal, was brought by the Plaintiffs in the Court of the Subordinate Judge of Aligarh, to obtain a declaration that, as members of a joint undivided Hindu family, they became entitled by right of survivorship to the shares of their half-brother, Chhiddu Sing, in the properties mentioned in the schedule to the plaint, upon his death in 1907. The Plaintiffs and Chhiddu Sing are the sons by different mothers of one Narayan Sing, who died in 1879. They allege that after their father's death the family continued joint during the whole of Chhiddu's lifetime, and that in 1907, after Chhiddu's death, his widow, Tursa Kunwar, the Defendant to the present action, obtained from the Revenue Courts an order to have her name recorded in the Collector's Register as proprietor in place of her deceased husband.

The Defendant, Tursa Kunwar, contested the claim on the ground that her husband was at the time of his death separate from his brothers, and that consequently his share in the several properties had rightly devolved on her. In support of her contention she relied mainly on a number of documents consisting chiefly of entries in revenue records and mortgage deeds separately executed by the brothers.

The Subordinate Judge, upon a review of the evidence, was of opinion that the Plaintiffs had established their allegation, and accordingly decreed their claim. On appeal, the High Court of Allahabad has taken a different view. It has held in effect that whatever might have been the position among the Plaintiffs *inter se*, the evidence and inferences from facts proved, left no room for doubt that at the time of his death Chhidu was separate from his brothers. The learned Judges accordingly varied the decree of the Subordinate Judge and dismissed the Plaintiffs' suit, save as regards one village, with respect to which they agreed with the Lower Court.

The Plaintiffs have appealed to His Majesty in Council, and the main contention advanced on their behalf is that the High Court was in error in relying on the entries in the revenue records, which by themselves are not sufficient to rebut the presumption of Hindu law relating to jointness or to prove separate possession by the different members of a family which in its inception was admittedly joint.

Their Lordships, however, observe that the learned Judges in the Court below have not rested their Judgment merely on entries which, standing by themselves, may be regarded as inconclusive. They have drawn inferences from

the acts of the brothers which are consistent only with the hypothesis of separation. They say:—

“Not only do we find this separate entry of names in regard to specified areas of the village Nimgaon, but we further find that on the 8th of March 1900, three separate mortgages were made by Net Ram, Kanhai Singh, and Mukhram Singh, respectively. Each of them purported to mortgage a specified portion of the land in Nimgaon, separately entered in their names, and described it as owned and possessed by him alone. So that not only were their names separately entered in the revenue papers in regard to specified areas, but they dealt with those areas as separate owners thereof.”

The Plaintiffs made no attempt to explain how, if the brothers were joint, as they allege, at the time of the transactions, separate mortgages were executed by them in respect of specified areas held by each separately in the village of Nimgaon. The circumstances connected with these mortgages were within their knowledge, and it lay upon them to show that the transactions, although separate, were consistent with jointness.

The learned Judges refer also to the admitted partition among the five brothers of the village of Susayan in 1898, to the entry of Chhiddu's name alone in respect of one village, and of the names of his four half-brothers in respect of another, to the separate enjoyment of their respective *Sir* lands by Chhiddu and the Plaintiffs all tending to show a separation in estate before Chhiddu's death.

On the whole, their Lordships see no reason to disturb the finding of the High Court, and they will, accordingly, humbly advise His Majesty that the Appeal be dismissed. As the Respondent does not appear there will be no costs.

In the Privy Council.

NET RAM SINGH AND OTHERS

v.

MUSAMMAT TURSA KUNWAR.

DELIVERED BY MR. AMEER ALI.

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