Privy Council Appeal No. 90 *of* 1910. *Bengal Appeal No.* 4 *of* 1907.

Parbati Dasi, since deceased (now represented by Udoy Nath Kar) - - - - *Appellant,*

v.

Raja Baikuntha Nath De and others - - *Respondents.*

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 3RD DECEMBER 1913.

Present at the Hearing:

LORD MOULTON. MR. AMEER ALI.
SIR JOHN EDGE.

[*Delivered by* MR. AMEER ALI.]

This is an Appeal from a Judgment and Decree of the High Court of Bengal, dated the 27th of July 1906, which affirmed a Decree of the Subordinate Judge of Cuttack, in the Province of Orissa, dismissing the Plaintiff's suit.

The parties are Hindus governed by the Dayabhaga law, and are descended from one Raghunath De. Raghunath had three sons, Rup Charan, Sonatan and Shyamanand, who admittedly formed a joint Hindu family. The Plaintiff is the daughter of Rup Charan, and she brought this suit in the Court of the Subordinate Judge for a declaration that certain properties included in Schedule Ka attached to the plaint were the self-acquired properties of her father which devolved upon her after the death of her

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mother, Annapurna, and for the usual consequential relief in respect thereof. She also alleged that Rup Charan survived his father, and that she is entitled to the one-third share in Raghunath's estate which vested in Rup Charan on Raghunath's death.

The Defendants, on the other hand, alleged that Rup Charan predeceased his father and that the Ka properties were acquired by Raghunath in the name of Rup Charan, and were not the self-acquired properties of Rup Charan.

Both the Courts in India have concurrently found against the Plaintiff the facts on which she bases her claim. They have held that she has failed to prove that the Ka properties were acquired by her father out of his own funds; and that it had been established that Raghunath survived Rup Charan. They have accordingly dismissed the Plaintiff's suit.

As it is not their Lordships' rule to interfere in cases in which there are concurrent findings of fact, it has been argued by Mr. Ross, on behalf of the Plaintiff, that the Courts below erred in not drawing proper conclusions from the documentary evidence of the Plaintiff. In other words, he contended that as the conveyances stood in Rup Charan's name the Courts ought to have presumed that the Ka properties were his self-acquired properties until disproved by the Defendants.

The principle applicable to this class of cases where there is a dispute whether a property standing in the name of a junior member of a Hindu family was his self-acquisition was enunciated so long ago as 1843 in *Dhurm Das Pandey* v. *Mussumat Shama Soondri Dibiah* (3 Moore's Ind., Rep. 229), where Lord Campbell said :—" The criterion in these cases in India is " to consider from what source the money comes " with which the purchase money is paid."

This principle was reaffirmed in 1854 in *Gossain* v. *Gossain* (6 Moore's Ind. Rep. 53).

In the present case both the Courts below have found that there was no evidence that Rup Charan had any separate funds or that the properties in dispute were purchased with money belonging to him. In the absence of such evidence the presumption is clear and decisive that they were acquired by the father in the name of the son, and that they were not the self-acquired properties of Rup Charan.

On the whole their Lordships are of opinion that this Appeal should be dismissed with costs. And they will humbly advise His Majesty accordingly.

In the Privy Council.

PARBATI DASI, SINCE DECEASED (NOW REPRESENTED BY ULOY NATH KAR)

v.

RAJA BAIKUNTHA NATH DE AND OTHERS.

DELIVERED BY MR. AMEER ALI.

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