Privy Council Appeals Nos. 5, 6, *and* 7 *of* 1914.

Oudh Appeals Nos. 6, 7, *and* 8 *of* 1910.

Pandit Suraj Narain and Another - - - *Appellants,*

v.

Pandit Ratan Lal and Another - - - *Respondents,*

Pandit Ikbal Narain and Others - - - *Appellants,*

v.

Pandit Ratan Lal - - - - - *Respondent,*

Pandit Ikbal Narain and Others - - - *Appellants,*

v.

Pandit Ratan Lal and Another - - - *Respondents,*

Consolidated Appeals

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH JANUARY, 1917.

Present at the Hearing:

THE LORD CHANCELLOR (LORD BUCKMASTER).
LORD WRENBURY.
MR. AMEER ALI.

[*Delivered by* THE LORD CHANCELLOR (LORD BUCKMASTER).]

In April 1867 Bakhshi Bishnu Narain died, leaving four sons, whose names in order of birth are: Raj Narain, Ram Narain, Bakht Narain, and Suraj Narain. The family was a Hindu joint family, governed by the Mitakshara law and possessing ancestral property. Accordingly, upon his father's death the eldest son, Raj Narain, became Karta, and so continued until his death in August 1890. His brother, Ram Narain, then succeeded and acted as Karta until his death in October 1900. Disputes then arose between Bakht Narain and Suraj Narain as to Bakht Narain's claim to be registered as

Karta and as to their rights and the rights of their respective sons in the joint family properties. Some arrangement and reconciliation of this family quarrel, though one neither firm nor durable, seems to have been effected, but disputes broke out again with regard to the property, and four suits were instituted on the 3rd November, 1903, by Bakht Narain, and a fifth suit in 1905 by Suraj Narain who claimed a half share in the entire joint estate. These appeals are consolidated appeals in those suits, the question for determination being whether certain very numerous properties acquired since the death of Bakhshi Bishnu Narain are joint property. The appellants, who are certain members of the joint family, contend that they are. The respondent, who is the son-in-law of Ram Narain, says that they are not. The Subordinate Judge decided in favour of the present appellants. The Court of the Judicial Commissioner of Oudh reversed that decision. Hence these appeals.

Raj Narain had no son. Ram Narain also had no son, but had one daughter, to whom her father was much attached. She married Ratan Lal, the respondent, who contends that the disputed properties were either bought with his money or were given him by Ram Narain, and for those reasons are his own, or, at any rate, are not joint property.

The material facts that led up to this dispute are these :—

From about the year 1864 to the year 1880, or, perhaps later, Raj Narain practised as a pleader at Lucknow. In the year 1869 Ram Narain, who was then 23 years old, left Lucknow for Hardoi, and from that year onwards practised as a pleader at Hardoi. He was successful, and later in life became a rich man. Before 1890, while Raj Narain was Karta, and after 1890, when Ram Narain was Karta, properties were acquired at Hardoi. They were taken in various names—that of Raj Narain, that of Ram Narain, that of Ratan Lal, those of Ratan Lal and of his son Madan Mohan Lal, and of other persons. The books of account of the family property were kept at Lucknow, where Raj Narain lived; but Ram Narain, who was at Hardoi, acted as manager of the properties at Hardoi as well before as after 1890. He bought properties at Hardoi, receiving, at any rate in one instance which is proved (that of the village Mahora), money from Lucknow to make the purchase, and he received income and made disbursements in respect of joint family property at Hardoi. But the purchases at Hardoi were made to a large extent not with joint family monies, but with fees earned by Ram Narain in his practice as a pleader, and it is with these properties that these appeals are concerned. Under these circumstances their Lordships have taken as the first question to be answered in order to adjust the rights between the parties this question :—

Whether there is sufficient evidence to show that Ram Narain so blended his own property with the joint property as to make the whole joint property.

In the Hindu joint family the law is that, while it is possible that a member of the joint family should make separate acquisition, and keep monies and property so acquired as his separate property, yet the question whether he has done so is to be judged from all the circumstances of the case. The latest authority is *Lal Bahadur* v. *Kanhaia Lal* (34 I.A. 65). The facts there were that in 1866 a partition of ancestral property had been effected between three brothers. The question arose in the case of one of the brothers who had thus taken his third share of the ancestral property. He had children. From the year 1852 onwards he had earned money as an official of the Indian Education Department, which he had paid into the same banking account as monies admittedly joint. The question was whether these earnings were joint property. This Board held that they were. The dominant sentence in the judgment is as follows :—

> " It is admitted that Durga Parshad and his sons lived together as a " joint Hindu family, and it is established that there was a considerable " nucleus of ancestral property in his hands after the partition. The " onus was, therefore, on the respondent to prove that his subsequently " acquired property was his separate estate."

Their Lordships call attention to the fact that the person here spoken of as having ancestral property " in his hands " was the Karta. Down to 1890 Ram Narain was not the Karta. After that date he was. The decision, therefore, applies in strictness to the present case only from that date. Further, in that case the father was the Karta and not, as in the present case, a brother. But in the facts to be presently stated their Lordships find that the decision has a very close application to the present case.

The position with regard to the private earnings of Ram Narain is this : It has not been established that any circumstances existed from which it could be inferred that there was any joint family estate in the separate earnings of the four brothers, and it must be accepted that the earnings of Ram Narain were monies which he was at perfect liberty to use in any manner that he thought fit. At the same time, it would be quite consistent with the principle which regulates joint family estates that he should in fact have brought them into the joint property and made them part of the whole. The question is : Has he done so ?

There is really little or no direct evidence upon the point except the books of account that he kept, supplemented by his own verbal evidence in a suit that was decided in 1893. But this evidence is important, and, in their Lordships' view, throws considerable light upon the true history of the case. The book of account that he kept, apart from the books of a cloth business carried on at Hardoi and admittedly joint property, and separate registers and accounts of each of the villages, was a book which appears to have been in the same form and continued from

1869 down to the date of his death. It is not strictly an account book at all, but a book in which is recorded from day to day various payments and receipts of money from different sources, and undoubtedly it includes—and, so far as their Lordships are aware, it is the only book that includes—the receipts of his earnings as pleader and his private payments. For the year 1876 the book has been placed *in extenso* in the record. This year has been selected as a typical year, and their Lordships have accepted it as characteristic of the accounts throughout the whole material period of time. In addition to receipts from his professional income, it shows receipts from several properties which are admittedly joint properties, and, although the books and materials were open for the respondents' inspection, and these books included the register of the villages admittedly owned by the joint family in the Hardoi district, it has been impossible to show that these entries do not include receipts from all the joint properties that were then under Ram Narain's management. The entries also undoubtedly show certain payments of joint accounts, and in the case of the Mahora village they show the receipt of money from the joint family estate and its application in the purchase of this property. There are entries of revenue payments in respect of villages which were joint property; of income received from such villages; of fees received for professional work as pleader; of payments for the purchase of villages—*e.g.*, the village of Samrehta, which was acquired in the name of Raj Narain the Karta in July 1876; the villages of Kasmundi and Backharwa, acquired in the name of Raj Narain in the same month; the village of Masit, acquired in December 1876 in the name of Ram Narain; of payments made to servants at Lucknow on account of their pay, and so on. The account may be called an "omnibus" account, into which Ram Narain's professional fees are carried in common with other items such as described, and from these mingled sources a balance is struck day by day, and the whole account is abstracted and summarised at the end of the year. The receipts amount to Rs. 27,206 : 13 : 8, of which Rs. 2,866 : 4 : 9 are fees, Rs. 12 are presents, Rs. 1,578 : 3 : 6 are income from "personal villages on account of village Mahora" and from "joint villages"; Rs. 2,819 : 6 : 3 are "from the account of the personal and the leased villages," and so on. On the other side are "purchases, Rs. 16,056 : 14 : 0," among which the villages of Masit, Samrehta, and Kasmundi are found. As the result, a credit balance of Rs. 189 : 1 : 6 at the beginning of the year becomes a credit balance of Rs. 141 : 11 : 1 at the end of the year.

Now there is nothing whatever to show that out of this account payments were from time to time transmitted to the joint family accounts that were kept at Lucknow, and this, in their Lordships' opinion, is a most material matter because, if no such remittances were made, it follows that the balances that

were carried forward from time to time and brought into account against future purchases were blended balances of Ram Narain's own earnings and of joint monies and that they remain so blended throughout the whole period of time. It is quite true that, as time went on, other monies were also entered in these accounts which cannot be regarded as joint. There were monies received from Kishan Lal and Ratan Lal, from his daughter, and, it may even be, from other sources, and it is urged that these monies cannot possibly be regarded as blended with the joint family estate, and that therefore Ram Narain's private earnings ought equally to be regarded as outside the joint property. But this argument is not conclusive, because these monies, regarded as the monies of Kishan Lal, Ratan Lal and his wife, were not the monies of people sharing in the joint estate, and were incapable of being blended in the manner suggested and they would remain monies for which Ram Narain would be liable to account; but his own means stood in a different position, and if their association with the joint family monies in the account in the manner mentioned would be sufficient evidence of their being blended, the mere fact that other monies were there also would not necessarily destroy the value of the inference.

The respondents had the means of showing before the Subordinate Judge that this system of account could be and was explained, *e.g.*, that this was but an omnibus book, and that he kept a separate joint property account. The respondents did not do so. The Subordinate Judge had all the books before him. Their Lordships have not. He concluded that the appellants were right. Their Lordships are not prepared to differ from him as to the effect of the books, all of which he saw and some of which their Lordships have seen. They have looked carefully to see what the Judicial Commissioners held on appeal as regards this part of the case. They express themselves as "perplexed" by the entries and found it "impossible to arrive at any certain conclusion as to the system on which these various account books were kept up." Their Lordships are not prepared to stop at the point of perplexity. They think that the books blend Ram Narain's professional earnings with his receipts and payments on account of joint properties, and thus afford evidence upon the question under consideration.

A second and most important head of evidence is found in a deposition made by Ram Narain on the 5th August, 1893. This was three years after he became Karta. He says:—

"The money was of our family, partly on account of savings from "my practice and partly from remittances from Lucknow. The sale "deeds are in names of Raj Narain and some in my name too. I did "not send any money in cash to Raj Narain from Hardoi. He never "asked me to send."

And in cross-examination :—

"Money was not sent from Hardoi, as property was being "purchased there. The proceeds of sale of ancestral villages and "other ancestral money were used in villages in this district and also "in other work of the family. No profit was [*sic*] ever took place in "our family. My father had four sons: viz., Raj Narain, eldest, "myself, Bakht Narain, and Suraj Narain. We were all joint and all "family property was joint. Partition never took place. One member "of the family works as manager. Raj Narain was manager and "now I am manager. I, Bakht Narain, and Suraj Narain are still joint."

Their Lordships cannot find that the Judicial Commissioners gave any effect to this evidence. It is plain and directly to the point, and they have found no answer to it.

This conclusion, however, does not determine the case. Some of the properties that are in dispute are properties that were purchased in the name of the respondent, Ratan Lal, and it is still open to him to show that each of those transactions represented a gift from Ram Narain to himself. This question also is singularly destitute of direct evidence. There is an undoubted foundation from which such an intention could be readily assumed. Ram Narain was on terms of very close and intimate affection with his daughter. She was his sole child, and the formal phrase Nurchasmi, under which he constantly referred to her, conveyed more than a formal meaning. Ratan Lal, his son-in-law, also shared his affection, and seems to have made considerable sacrifices in return. He allowed his wife to stay in her father's house, and in the disputes which divided thefamily he took the side of Ram Narain against his own parents, and it is said, was therefore disinherited. Ram Narain undoubtedly received from his son-in-law monies for profitable investment, and the suggestion that these monies might be regarded as returned by the payment of certain household expenses is one repugnant to the best ideas and traditions of a Hindu family, and one which their Lordships wholly reject. It is therefore easy to infer that Ram Narain had many motives which would prompt him to make abundant provision for his daughter and her husband, neither of whom would in the absence of such provision have any share in his estate.

But even with this presumption, the mere fact of purchases of properties in the name of Ratan Lal would not of itself be sufficient to show that they were intended as a gift, but their Lordships think that evidence is not wanting to make the inference complete, and that evidence is contained in the statement of Ram Narain himself. Their Lordships are in entire agreement with the Subordinate Judge and the learned Judicial Commissioners in holding that the statement of Ram Narain made in 1899 is properly admitted in evidence. It was a statement which, whether the property was joint or whether it was his own, it was against his own personal interest to make, since in effect it declared that the

properties there referred to were those of Ratan Lal; nor do their Lordships see any reason why it should be discredited; and if accepted it furnishes sufficient evidence, taken in connection with the circumstances, to support the claim of Ratan Lal. It is in these terms:—

"The capital outlay required to pay the arrears of revenue was "provided partly by me and partly by Ratan Lal. The profits will be "enjoyed entirely by him. I manage this estate for him and also his "other *zamindari* in this District. I have bought a lot of *zamindari* in "his name, in order to make provision for him, as against my adopted "son, who would be my heir."

Their Lordships do not think that this evidence and that given in 1893 are irreconcilable. The former related to a period different from the latter, and it does not follow that they cover the same transactions. Upon the view which their Lordships have already expressed, Ram Narain did blend his own monies with the joint family monies, and purchased property in his own name and that of Raj Narain which must be regarded as joint estate; but this does not necessarily lead to the conclusion that the properties purchased in the name of Ratan Lal were of the same character. It is admitted that there were abundant monies coming from the private earnings of Ram Narain to furnish the consideration for these purchases, and that he was at full liberty to use them for that purpose if he so desired. But if once the intention to buy them for Ratan Lal be accepted, as their Lordships think it must, there only remains the question as to whether these monies had been so dealt with by Ram Narain before his purchase as to put it outside his power to gratify the intention of making the gift. The material before their Lordships does not lead them to this conclusion. Remembering that Ram Narain had full power to deal with his earnings as he thought fit, the fact that he blended those that were not otherwise used does not mean that every entry of a purchase in the book is an entry of a transaction so dealt with that it must be regarded as joint property. If, for example, having monies of Ratan Lal's in his own hands, he either by using his own monies or by borrowing on his own account obtained the funds necessary for the purchase of the property in question, and such properties were bought with the intention of benefiting Ratan Lal, the mere fact that the transactions were recorded in the books which also recorded the receipts of his own and the joint monies would not prevent them being used for that purpose, and this view appears to have been taken by the Subordinate Judge; but if this be so it appears to their Lordships to apply equally to purchases made with Ram Narain's monies alone, when once it is accepted that they were used with the intention of making a gift. The learned Judicial Commissioners appear to think that even assuming that they had been blended in the first instance, there was nothing to prevent Ram Narain from making this

use of them, and there would appear to be some support for this view in the fact that similar joint monies were apparently used for the endowment of the daughter of Ikbal Narain.

Their Lordships do not, however, think it is necessary to rely on this circumstance. For reasons already given, they think that the gift in favour of Ratan Lal may be regarded as established so far, but so far only, as the properties are concerned in the Hardoi district, which were bought in the name of Ratan Lal alone.

There only remains one further point for consideration, and that affects certain properties, Nos. 1–4 inclusive and No. 32 in List 5, which were purchased at auction at a sale under order of the Court in the name of Ratan Lal. Their Lordships were satisfied that any claim to these properties by the appellants is defeated by Section 517 of the Civil Code.

Their Lordships will therefore humbly advise His Majesty (1) that these appeals ought to be allowed in part; (2) that the decrees of the Court of the Judicial Commissioner of Oudh respectively, dated the 30th day of October, 1909, and the decrees of the Court of the Additional Judge of Hardoi respectively, dated the 27th day of August, 1908, as regards the following properties which have not been in question upon these appeals ought to be affirmed: List V annexed to plaint in Suit 1 of 1908, Item 23, Mauza Gobardhanpur, 2 biswas; List VIA annexed to plaint in Suit 1 of 1908, Item 1, houses and shops in Hardoi Khas; List VIII annexed to plaint in Suit 1 of 1908, Item 42, decree in suit of Pandit Ratan Lal *v.* Sripal Singh, and the business carried on in the cloth shop at Hardoi; (3) that it ought to be declared that the appellants are also entitled to the following properties; List V annexed to plaint in Suit 1 of 1908, Item 30, Kashmiri Bagh Sitlaji, Item 31, half share of the land at Pakra; List VIA annexed to plaint in Suit 1 of 1908, Item 19, land at Suklapur, Item 20, land at Thok Khala, Item 21, land at Thok Uncha; List VIII, annexed to plaint in Suit 1 of 1908, Item 34, decree against Pandit Ram Narain, Item 35, agreement for costs; (4) that the appellants' claim to the remaining properties ought to be dismissed; (5) that in other respects, except as to costs, the decrees of the Court of the Judicial Commissioner ought to be set aside; (6) that subject to the aforesaid declarations and modifications the decrees of the Court of the Additional Judge ought to be restored; and (7) that the parties ought to bear their own costs of these appeals.

In the Privy Council.

PANDIT SURAJ NARAIN AND ANOTHER

v.

PANDIT RATAN LAL AND ANOTHER.

PANDIT IKBAL NARAIN AND OTHERS

v.

PANDIT RATAN LAL.

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DELIVERED BY
LORD BUCKMASTER.

PRINTED AT THE FOREIGN OFFICE BY C. R. HARRISON.

1917.