

Privy Council Appeal No. 116 of 1915.

Bengal Appeal No. 22 of 1912.

Chowdhuri Shyamananda Das Paharaj Bid-
yadhar Bhuiya Mahapatra - - - - *Appellant,*

v.

Ramakanta Das Mahapatra 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 23RD MAY, 1917.

Present at the Hearing :

LORD BUCKMASTER.

LORD ATKINSON.

SIR JOHN EDGE.

[*Delivered by* LORD BUCKMASTER.]

Their Lordships do not think it is necessary to call on the respondents in this case. After having heard all that can be urged on behalf of the appellant they are of opinion that this appeal should fail.

The real question is whether certain findings by the Subordinate Judge and the High Court are concurrent findings of fact that exclude the appellant, or whether, as the High Court considered, they involved and depended on questions of law.

It is not always an easy matter to separate a finding of fact from a question of law. It may often be open to argument that the materials which have been accepted by one Court as establishing a certain conclusion were not in themselves sufficient for its support, if their legal weight had been properly measured and ascertained. It is that consideration that is the real foundation of the appellant's argument.

In truth the whole of his case depends upon whether or not there was sufficient evidence of the fact of exclusion of the plaintiffs from a joint estate to show that they were unable to maintain this suit, which is a suit for partition. The other

findings are far more clearly and distinctly findings of fact, and can give rise to no controversy.

There is no doubt that the question of what constitutes exclusion may well, in many cases, be a question of law. But in this case the Board are clearly of opinion that the facts relied on to establish the exclusion are quite insufficient for the purpose, and as the burden of proof on this issue lay in the first instance on the appellant, this disposes of the appeal.

Their Lordships therefore think that the whole of this case is really determined by findings of fact on which both the Subordinate Judge and the High Court agree, and they can find no reason why those findings of fact should be revised.

Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs.



In the Privy Council.

CHOWDHURI SHYAMANANDA DAS
PAHARAJ BIDYADHAR BHUIYA
MAHAPATRA

v.

RAMAKANTA DAS MAHAPATRA
AND OTHERS.

DELIVERED BY
LORD BUCKMASTER.