

Privy Council Appeal No. 132 of 1923.

Allahabad Appeal No. 8 of 1921.

Debi Rai and others - - - - - *Appellants*

v.

Pahlad Das and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 28TH NOVEMBER, 1924.

Present at the Hearing :

LORD SUMNER.

LORD PHILLIMORE.

SIR JOHN EDGE.

SIR LAWRENCE JENKINS.

[*Delivered by* LORD PHILLIMORE.]

This was a suit brought by the grand-nephews of one Dwarka Das deceased against Musammat Bhagirathi, a dancing girl, to recover possession of a house in the dancing-girls' quarter in Benares, asserting that the plaintiffs and Dwarka Das had formed a joint family, that the house in question was bought out of family money and had become joint family property ; but that it had been improperly transferred by Dwarka Das in the exercise of his power as Karta or manager of the family property to Bhagirathi.

The defence set up by Bhagirathi was that the house was her own, bought out of the proceeds of her own money and jewels.

Since the first decision she has died, and the case has been continued by her representatives.

The Subordinate Judge decided in favour of Bhagirathi ; but the High Court of Allahabad reversed that decision and decreed possession to the plaintiffs. Hence the present appeal.

The house in question was bought in February 1899. It was pulled down and rebuilt with shops under it, and Bhagirathi lived in it and took the rent of the shops. Dwarka Das used to visit her there, and in his last illness went to her and died there.

After his death, one of the plaintiffs according to his evidence, called upon Bhagirathi and requested her to give directions that the rents of the shops should be paid to his brother and himself, and thereupon she set up the case—which he said was wholly new to him—that the property was hers. Whereupon he instituted enquiries, and he and his brother then began the present suit. It is a little difficult to believe that Bhagirathi's case was wholly new to him inasmuch as the rents of the shops had passed through the account books of the firm, with which he was acquainted, and were shown in them as paid over to Bhagirathi.

Dwarka Das and his great nephews had carried on a business as bankers and moneylenders and landowners, and no doubt they formed a joint family with joint family property.

The paper title to the property showed a conveyance of the house on 13th February 1899 to Dwarka Das in consideration of the sum of Rs. 3,000 and a subsequent conveyance purporting to be a sale deed dated 18th March 1900, by Dwarka Das to Bhagirathi for the same amount. This by itself would give colour to the plaintiffs' suggestion that Dwarka Das having acquired the property with money of the joint family and for the joint family had attempted to make a gift of it to Bhagirathi, the alleged payment of Rs. 3,000 by her to him being fictitious. Such a transaction would not be improbable, and a claim by a person like Bhagirathi after the death of the executant of the deed, would require careful examination.

Bhagirathi met these suggestions by the account which she gave of the transaction. She said that she had been living in a rented house and wanted one of her own; that she had money and jewels (some she had earned, some she had inherited from her mother who, like herself, had been a dancing girl) among other things, that she had two good pearls. She said she had instructed Dwarka Das to buy this house in the quarter of Benares in which she would naturally live, for her; that after he had procured the preliminary contract for purchase, it was discovered that there was someone who said that the house had been previously agreed to be sold to him, and that this person was likely to sue for specific performance of his contract, making defendants not only the vendor but any person who claimed to be a subsequent purchaser; that she did not want to be made defendant in a law-suit and be brought before a Court of Justice, and so the conveyance was taken in the name of Dwarka Das, though it was her money which paid for it; that the anticipation was right—an action was brought for specific performance, and Dwarka Das was made a defendant;—that after the action was dismissed and the storm had blown over, he who

had been benamidar for her, transferred the title to her. She produced a copy of the decree in the specific performance suit, dismissing that suit. It was dated September 9th, 1899, and, allowance being made for expiry of the time of possible appeal, the transfer to her, in March, 1900 was not unduly long after.

At the trial she was examined and cross-examined at considerable length and the Trial Judge who saw her believed her evidence. She also called a witness named Majid-ullah who knew the parties and witnessed the original sale deed. He gave the same account of the reason why the original conveyance was taken in the name of Dwarka Das. He said that Bhagirathi raised the money by her ornaments which she gave to Dwarka Das. He said that Bhagirathi had ever since been in possession and narrated how she had paid the cost of certain ceremonies usual upon the entry into a new house and had taken that part in the ceremonies which an owner usually takes. In cross-examination he explained at length how he came to take part in the transactions and all about them. The Judge believed him.

There were other witnesses for her who gave some confirmation of this account.

The material evidence for the plaintiffs was that of Bhagdwan Das, the younger of the two brothers and of one Debi Charan. It is not unworthy of note that only the younger of the two plaintiffs was called. There was an eldest brother in whose handwriting most of the accounts were : he had died. Since he was dead, the natural person to be chief witness was his next brother—for some unexplained reason he was not called.

The younger brother could only give general evidence to show that there was a joint family of which Dwarka Das was head and manager, and as to the entries in the accounts, Dwarka Das' general mode of life and the conversation he had had with Bhagirathi after Dwarka Das' death. He had to admit that the receipts for water tax were taken in the name of Bhagirathi, and that when he had claimed rent from the tenants of the shops, they had said they did not know him.

Debi Charan had been in the service of Dwarka Das, and of the joint family, principally in connection with the outdoor work, *i.e.*, the agricultural property and a flour mill. But he had no doubt a good general knowledge of the way in which all the business was managed, and he knew and could prove the handwriting of the plaintiffs' elder brother and the clerks who had made entries in the various account books. He also attested the original sale deed. He spoke of various entries in the accounts and explained some of them where they needed explanation. He said that the original purchase money Rs. 3,000 had been paid out of the cash or till of the firm. At one moment he said he was cashier at that time and paid it to the vendor or to the latter's mortgagee ; at another moment he said he had not paid it. He was cross-examined at enormous length and not unnaturally began

to resent his treatment. His variety of statements with regard to the payment of the Rs. 3,000 from the till, is not of much importance. Whichever story is true, it is probable that the actual cash which went to the vendors did come out of the firm's till. The real question is whether Bhagirathi paid in a corresponding sum, the firm being for this purpose merely bankers.

A number of accounts and account books were put in, principally by the plaintiffs, and were the subject of much discussion. During the cross-examination of Debi Charan it was suggested on behalf of Bhagirathi that some of them were faked, and the Trial Judge did think them suspicious. Upon the whole he accepted the defendant's evidence, thought her case not surprising and gave judgment for her.

The Judges in the High Court took a different view. They thought Bhagirathi's statements with regard to her expenditure of money, vague and strange; and, going principally on the accounts, they decided against her. They did not think that the accounts had been fabricated, and indeed they said that very little argument to that effect had been addressed to them.

— — — — — Though it is not very explicitly stated, it appears that the Judges in the High Court thought that the story of Bhagirathi was one which very well might have been invented. As to this their Lordships agree. On the other hand, it is not at all improbable that what she stated, might actually have happened. The probabilities being thus balanced, the disregard which the High Court has shown to the opinion of the credibility of the witnesses formed by the Judge who saw and heard them, if founded upon the accounts alone, can only be supported if the accounts are at least nearly conclusive.

It may be observed here that while there is much oral testimony of opinion, there is no testimony as to direct fact adduced on the part of the plaintiffs upon the issue now in question which is inconsistent with the case made for Bhagirathi.

Their Lordships have now to examine the accounts. For the purposes of what follows they will treat them as genuine. There are the various municipal receipts given in the name of Bhagirathi. There is a document produced by her which apparently is a summary of her account with the plaintiffs' firm showing that shortly before the death of Dwarka Das, a sum of money amounting to Rs. 3,000 odd was due from the firm to her. This account however starts from a date considerably later than the purchase of the house; and its only value appears to be to show she was at any rate at one time a lady with means.

Then there are the books of the firm. First, the ledger. That contains an account apparently kept with the house as if it was a person. The account starts with a debit of Rs. 3,000 for the purchase and a credit for some brokerage which the broker refused to accept. It proceeds to debit the house with the expenses of rebuilding and repairing, municipal rates and so forth

and credits it with the rents received from the various shops. At first sight, this account and the fact that other accounts containing details of the expenses are in the books of the firm, might look as if the house were the property of the firm or joint family. But, though the case first made by the plaintiffs was an alternative one, either that Bhagirathi had no real interest in the house, being benamidar for Dwarka Das, or that Dwarka Das had given her the property by a deed which though effective in his life, would not operate against the joint family upon his decease—yet the first line of argument disappeared in the course of the proceedings, as it was obvious that Bhagirathi was treated as the owner. The second is the only case.

This being so, the explanation of the accounts relating to the house being entered in the books of the firm, must be that Bhagirathi kept no accounts of her own, and that Dwarka Das being a man of business had the accounts of his mistress kept by his clerks in his book.

Then a point is made that there is in this account a debit item for the purchase and no credit item for the receipt of the purchase money. But if the account be Bhagirathi's, this is intelligible. A person who buys a piece of property and wishes to see what it costs him, and what returns he gets from it, naturally debits the property with the cost of purchase as well as with subsequent expenditure, credits it with the rents and profits, and if and when he sells it or any part of it, credits it with the money received. Till that event the original purchase money remains unbalanced.

Then there is a strange account in the ledger headed the account of "Bhagirathi, dancing girl" and supported by entries in the cash book. On the face of it, it would appear as if Bhagirathi was debited with the price of all the jewels and ornaments bought for or given to her and credited with the value of them, in some rare cases where they have been disposed of with the price realized, but in most cases as valuables which she kept. It is difficult to understand this account and impossible to draw from it any inference bearing on this case. It rather looks like a business man's strange way of keeping an account of what his mistress cost him. It is enough to say that it seems to have no bearing upon the decision now to be given.

There remains the cash book. This certainly shows in such pages as have been extracted for the Court, the payment of Rs. 3,000 (as has been already stated) to the vendors of this house, and there is no balancing entry of a receipt of Rs. 3,000 or jewels or ornaments of any value from Bhagirathi. There may be several explanations of this, one possible one being that for some reason Dwarka Das did not choose to bring the money he received from her into the account. There is also a possible explanation to be deduced from the evidence of Debi Charan. The printed extract begins on page 222 of the cash book; and the witness says that on page 221 there is this entry apparently under date February 12th,

1899. "Rs. 3,000 are due on account of the price of a pair of pearls. This amount has been sent to Malda." Malda is a place where a branch business of the firm was carried on.

Bhagirathi says that she had two very good pearls. If this were really so, what they realized was for some reason of business sent to the branch house, and the whole thing would be explained.

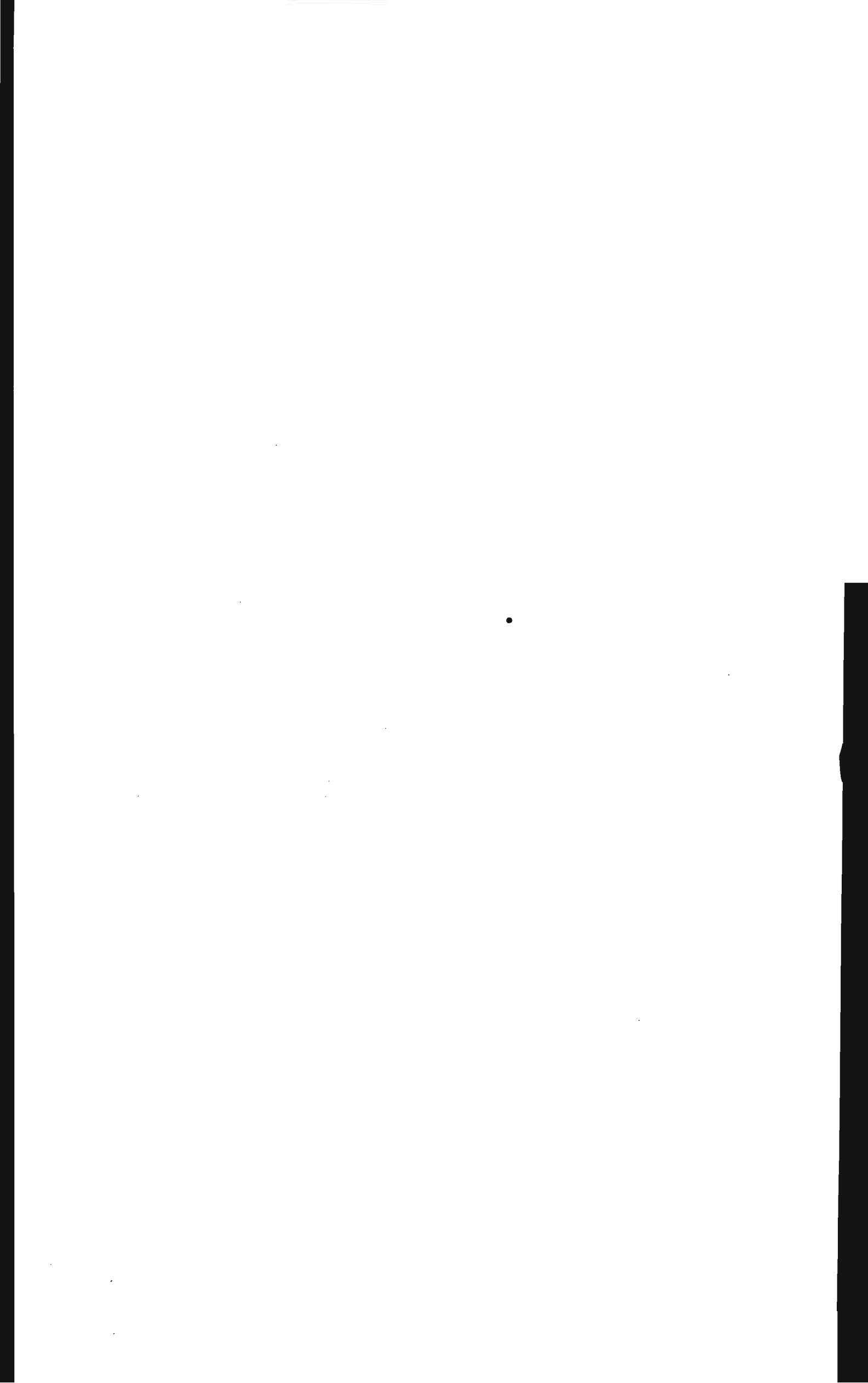
It is true that Debi Charan says that it was impossible that she should have had a pair of pearls of this value, and it would be unsafe to place much reliance upon this entry without knowing more of the way in which it appears in the cash book. But it suggests an explanation and at any rate indicates the sort of difficulty which arises if a case is made to rest upon bare items in account books, some 16 years old and not kept by the party whose testimony it is proposed by their means to discredit. Section 34 of the Indian Evidence Act 1872 which makes entries in these books relevant, provides at the same time for a limit upon their evidential value.

Upon the whole in this confused state of the accounts it would be, in their Lordships' opinion, wrong to discard the view of the value of the witnesses taken by the Trial Judge, because of mere deductions from these accounts.

In their view it is not proved that the house was the property of Dwarka Das or of the joint family of which he was a member.

It remains to consider a possible claim for expenditure in rebuilding the house and for later repairs. There is evidence from Bhagirathi that she contributed towards them; but it is probable that the greater part of the cost was provided by Dwarka Das. If he chose to expend the income of the joint family property upon his mistress in making improvements on her property, there is no rule of law which would enable the survivors of the joint family to follow these monies into the property, still less to sue for possession of the property.

Their Lordships will therefore humbly recommend His Majesty that this appeal be allowed, and the judgment of the Trial Judge be restored with costs here and below.



In the Privy Council.

DEBI RAI AND OTHERS

vs.

PAHLAD DAS AND ANOTHER.

DELIVERED BY LORD PHILLIMORE.

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