

Privy Council Appeal No. 102 of 1933.

Patna Appeal No. 6 of 1932.

Babu Ramasray Prasad Choudhary and another - - - *Appellants*

v.

Babuyee Radhika Devi and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 11TH OCTOBER, 1935.

Present at the Hearing:

LORD THANKERTON.

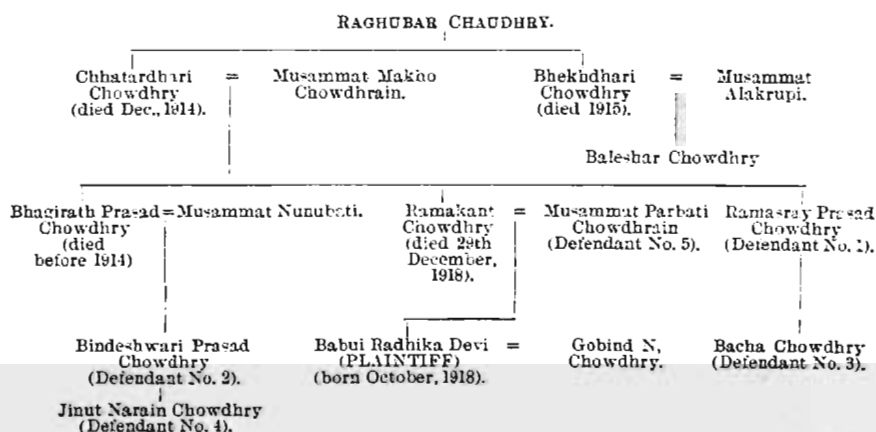
SIR JOHN WALLIS.

SIR SHADI LAL.

[*Delivered by* SIR JOHN WALLIS.]

This is a suit instituted by Babuyee Radhika Devi, a minor suing by her father-in-law as her next friend, for a declaration that she will be entitled to succeed to the share of her father Ramakant in the suit properties on the death of her mother Parbati and the determination of her widow's estate, on the ground that at the time of his death on the 29th December, 1918, Ramakant had become separated from his brother Ramasray and his nephew Bindeshwari the 1st and 2nd defendants. The High Court at Patna reversing the judgment of the Subordinate Judge of Darbhanga has decreed the suit, and the 1st and 2nd defendants have appealed.

The following genealogical table shows the state of the family.



The family were wealthy zemindars and money-lenders, and the plaintiff's branch of the family owned an eight annas share of the suit properties, the other eight annas share being owned by the minor Baleshwar who was under the guardianship of his mother Alakrupi. After Ramakant's death his widow Parbati remained for about a year in her husband's family, and then went away to her own family taking with her the plaintiff who was then an infant having been born in October, 1918, and never returned. In 1920 she applied to the Revenue Court for registration of her name in the revenue records as having succeeded to her husband's share in the suit properties; but, owing, it is now alleged, to want of means to prosecute her claim, entered into a compromise with the defendants by which she accepted in full satisfaction, a maintenance allowance of Rs.3,500 a year and a sum of Rs.9,000 to be spent on pilgrimages and fasting (*sic*). It is alleged in the plaint that she was induced to enter into the compromise by fraud and collusion, but no question as to this arises in the present appeal, as it is not contended that the widow's compromise affects the plaintiff's right to the declaration prayed for in the event of her establishing that her father Ramakant had separated from the joint family.

Five years later, when the plaintiff was seven years old, her mother arranged to marry her to the son of Babu Ajodhia Chaudhury. Ajodhia was a zemindar of means and in a position to finance this litigation and there can be little doubt that the prospect of recovering her father's share for his son's wife was his inducement for bringing about this marriage, as it was the defendants' reason for opposing it. They succeeded in obtaining a temporary injunction restraining the performance of the marriage, but Ajodhia and the plaintiff's mother none the less proceeded to celebrate it, thereby exposing themselves to proceedings for disobeying the injunction which did not affect the legality of the marriage; and shortly afterwards Ajodhia as the plaintiff's next friend filed the present suit on the 20th July, 1925.

It is alleged in the plaint, and not denied in the written statement, that at the time of his death in 1914, Chatardhari the plaintiff's grandfather was living jointly with his sons, Ramakant the plaintiff's father and Ramasray the 1st defendant and Bindeshwari, the 2nd defendant, who was the son of a deceased eldest son. The omission of any mention of Bhekhdari's branch of the family which was then represented by his minor son Baleshwar, suggests that Bhekhdari's branch had become divided before his death in 1915; and in the judgment of Kulwant Sahay J., with which James J. concurred, it is said to have been admitted by the defendants at the hearing of the appeal that the two branches of the family were separate. The rent collections continued to be made on behalf of both branches, until in 1918 owing to Ramasray's interference Baleshwar's mother and guardian

Alakrupi claimed to have separate collections for her son's share. Ramakant took no part in this dispute which resulted in civil and criminal proceedings in the course of which Ramasray is said to have spent Rs.30,000 in the next two years. Their Lordships have referred to this dispute at the outset because it figures largely in this case, as the Subordinate Judge has refused to act on most of the documentary evidence tendered for the plaintiff on the ground that it was fabricated in support of Alakrupi's case in this dispute; but, as already stated, it does not appear that there was then any dispute about the separation of the two branches of the family, nor has it been attempted to show that any of these documents were used in support of Alakrupi's case. In their Lordships' opinion this summary rejection of the plaintiff's documents was unwarranted, and deprives the Subordinate Judge's finding on the main issue of any weight.

The plaint in the present case sets up the same case as was put forward by the plaintiff's mother, Parbati, in the mutation proceedings in 1920. It alleges in paragraph 3 that owing to unpleasantness in the family Ramakant became separated in mess utensils and grain in Fasli 1323 beginning in October, 1915, that in Fasli 1324 there was a partition of money, jewels and other moveable properties, and that from the beginning of Fasli 1325, October, 1917, there were separate collections of rents.

The Subordinate Judge has given strong reasons for holding that the oral evidence as to the alleged divisions of properties in Faslis 1323 and 1324 is false, and this finding has not been questioned in the judgment of the High Court.

As regards the alleged separation in the collection of rents as from the beginning of Fasli 1325, evidence was given for the plaintiff that from that date Ramakant collected his own share of the agricultural rents from the ryots by his own patwaris; but, as will appear later, their Lordships are of opinion that even this has not been proved. It is, however, well settled that a member of a joint family may effect a separation in status by giving a clear and unmistakable intimation by his acts or declarations of a fixed intention to become separate, even though he goes on living jointly with the other members of the family, and there is no division of property (*Bal Krishna v. Ram Krishna*, 58 I.A. 220), and that is the sort of separation which the High Court has found to have taken place in the present case.

The learned Judges have based their finding mainly on the documentary evidence to which their Lordships will now proceed to refer. The evidence as to the collection of rents from the ryots is conflicting. The plaintiff has exhibited Ex. 10 series which purport to be receipts signed by patwaris for Ramakant's separate share of these rents, and the defendants have exhibited Ex. U series, similar receipts

showing collections on behalf of the joint family. There is little to choose between the witnesses who prove these receipts. Further, there is other evidence in the case that during Ramakant's management the whole rents of these lands were collected by a trusted servant of the family, who divided them between the two separated branches of the family; and it was Ramasray's attempt to interfere with this system that led to the dispute already mentioned. On this part of the case their Lordships agree with the Subordinate Judge that Ramakant is not proved to have obtained separate receipts from the ryots for his share of the rents of these lands, and are of opinion that the first indications of an intention to separate are to be found in May and June, 1918. Ramakant was then already suffering from advanced phthisis, and his wife Parbati, who gave birth to the plaintiff in the following October, was manifestly with child. In these circumstances, it is suggested, it would be only natural that his wife and his wife's relations should urge him to separate, and it would be equally natural that his own family should be strongly opposed to separation so that he may well have hesitated as to which course to adopt.

The family was in receipt of rents from six indigo factories under European management, and on the 4th May, 1918, Ramakant gave a separate receipt, Ex. 1 (a), for his one-third share of the rent of the Harsingpur factory, and another receipt, Ex. 2, was given by his brother Ramasray for the remaining two-thirds. Ex. 11, dated the 30th May, and Ex. 17, dated the 8th June, are similar receipts for the rent of the Mongalgarh factory. Their Lordships agree with the High Court that there are no sufficient reasons for rejecting these receipts. Then, on the 22nd June, 1918, three applications Ex. 3, 3 (a) and 3 (b) were made by Ramakant Ramasray and Nanuvetti as guardian of her minor son, Bindeshwari, for mutation of their separate shares in a small property which had been jointly purchased in 1917, and their shares were accordingly registered separately in the register Ex. D. These are indications of an intention to separate. On the other hand, in respect of this period the defendants have exhibited a single receipt Ex. U. 14, signed by Ramakant for Rs.29, on account of julkar rent for Mauza Ranpurdih on the 2nd June, 1918, and a plaint, Ex. T, filed by both branches of the family on the 27th May, 1918, for money due on a bond executed in 1914. It is stated in that plaint that Ramakant, his brother Ramasray, and his nephew Bindeshwari, belonged to a joint family and were joint in mess and business. The explanation accepted by the High Court that this statement was made to avoid the necessity of obtaining a succession certificate and paying succession duty cannot be supported, as the Succession Certificate Act did not apply to property passing as in this instance by survivorship. In their Lordships' opinion if this

evidence stood alone, it might well be argued, that it would be insufficient to show a fixed and unmistakable intention on the part of Ramakant to become separate from the joint family, but read with the rest of the evidence, it at least suggests that at this time Ramakant was contemplating the separation of which he gave clear intimation in the last three months of his life.

At the beginning of July, Ramakant went to Calcutta, it is said for treatment, and did not return home until the middle of October. For this period the defendants have exhibited two receipts signed by Ramakant for the whole rent of the Mirzapur and Majhaul factories, dated the 27th July and the 3rd October, 1918. They have also exhibited a large selection of letters which passed between Ramakant in Calcutta and his brother Ramasray and their mother's brother Soney Lal, who is said to have been in management during Ramakant's absence. In their Lordships' opinion these letters are not inconsistent with the case of either side, whether it was that the delicate subject of separation was deliberately avoided, or, as suggested for the plaintiff, that the defendants have kept back the letters containing such references. The correspondence exhibited, which is admittedly incomplete, deals with all sorts of business and family matters; and it is certainly remarkable that it contains no reference to such an important matter as the dispute then going on between Ramasray and Alakrupi as to the collection of rents which resulted in criminal proceedings being taken against Ramasray's servants at the beginning of September.

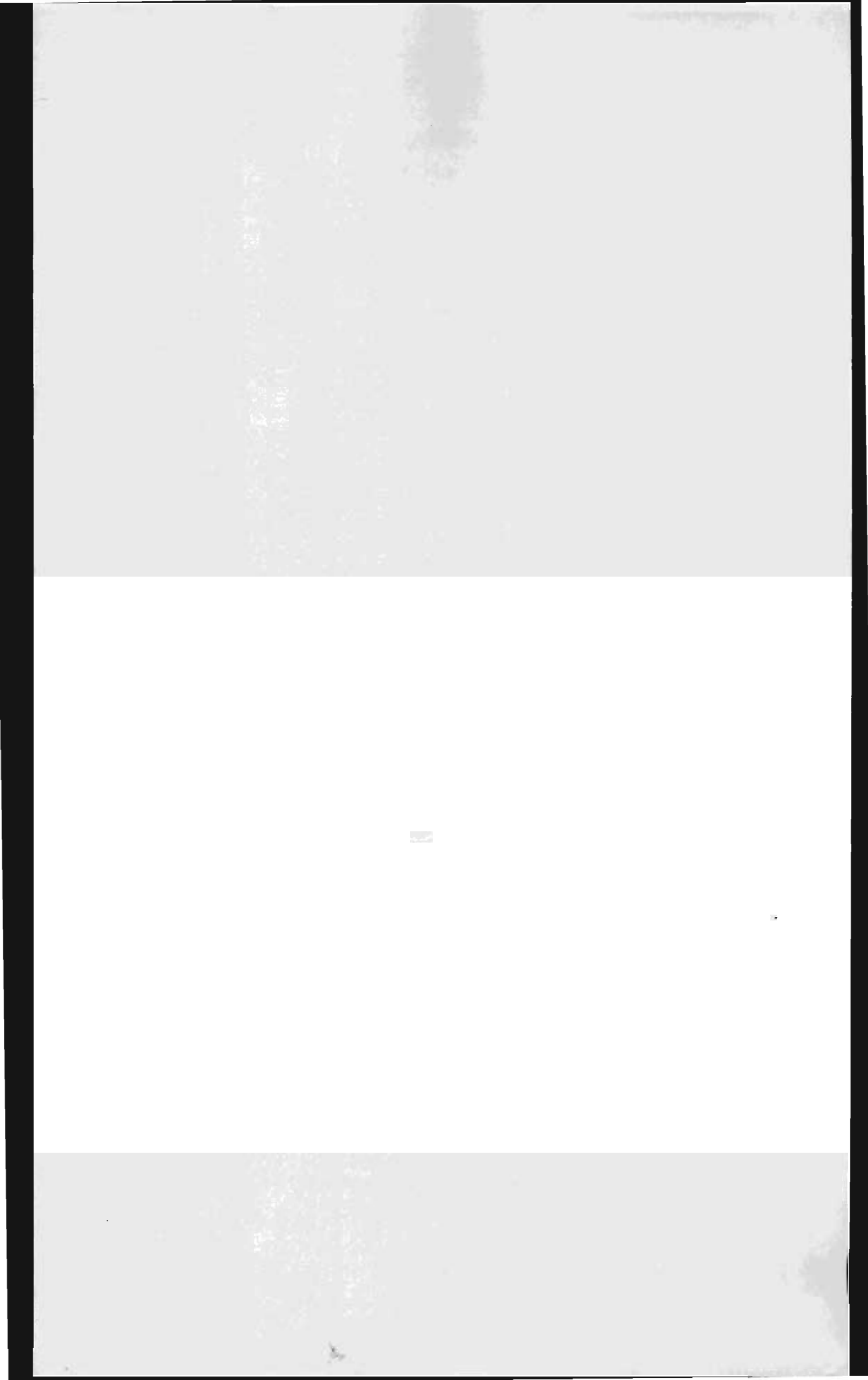
However this may be, it is in their Lordships' opinion established by the evidence that before leaving Calcutta in October Ramakant had decided to put on record clear and unmistakable declarations of his intention to separate by filing six suits Ex. 14 series for his separate shares of the rents of lands belonging to the family. The dispute between Ramasray and Alakrupi, in which Ramakant admittedly took no part, was then going on; and there is nothing surprising in his having preferred to avail himself for this purpose of the services of Alakrupi's manager Gopi Lal, rather than of the estate servants who may well have been under Ramasray's influence. Gopi Lal accordingly saw to the preparation of the plaints and vakalatnamas or pleaders' retainers which were taken to Calcutta by one of the plaintiff's witnesses to be signed by Ramakant. They were afterwards, as appears from the endorsement on the vakalatnamas, given by Gopi Lal to the pleaders, and the suits were filed on the 21st October. The plaints, which appear to have been hurriedly drawn and were filed on the last day before the suits would have been barred, contain numerous mistakes and inaccuracies to which Mr. Jinnah has called attention, but they all state the fact of separation in the clearest terms and claim Ramakant's share of the rents. In order to comply

with the requirements of the Bengal Tenancy Act regarding rent suits the other members of the family were made defendants, and the Court records, Ex. 16, 16 (a) and 16 (b), show that on the 20th December, shortly before Ramakant's death, Ramasray in three of these suits filed applications for time to file written statements. It is said that no written statements were necessary, as he was only a formal defendant; but, if he had then decided to deny the separation after Ramakant's death which was then impending, as he eventually did, he may have thought it advisable to take this step as showing that he did not admit the fact of separation. For reasons already given their Lordships are unable to accept the defendants' contention that Ramakant's signatures to the plaints were forgeries, and that they were filed without his knowledge in support of Alakrupi's case in her dispute with Ramasray. Moreover they do not stand alone, as there is other documentary evidence showing from this time onwards a fixed intention to separate.

Ex. 1, 2 (a) and 9 are separate receipts dated the 31st October and signed respectively by Ramakant, Ramasray and Nanuvetti as guardian of her minor son Bindeshwari for the one-third shares of the rent of the Harsingpur factory. There is also a somewhat curious receipt, Ex. E. 2 of the 21st October, 1919, exhibited by the defendants in which the minor Bindeshwari signed a receipt for the rent of the Majhaul factory for Fasli 1326 on behalf of himself and Ramasray, omitting Ramakant, who had given his sole receipt for the rent for Fasli 1325 on the 3rd October, as already stated. Exhibits 6 (a) to (d) are separate receipts given on the 21st November, 1918, by Ramakant, Nanuvetti as guardian of her minor son Bindeshwari, Ramasray, and Alakrupi as guardian of her minor son Baleswari in full satisfaction of a mortgage bond dated 5th January, 1907. Their Lordships agree with the High Court that the defendants' explanation that the mortgagor, who has not been called, insisted on the receipt being made out in this way cannot be accepted.

Lastly, on the 10th December, 1918, within three weeks of his death, Ramakant filed four returns Ex. 8 to 8 (c) for purposes of road cess dealing with his shares in the lands of some villages therein mentioned as his separate property, and thus apparently availing himself of a last opportunity of asserting his separation.

The case for the appellants has been exhaustively argued by both their learned counsel, and after full consideration their Lordships, for the reasons already given, find themselves unable to differ from the finding of the High Court that Ramakant had sufficiently and unmistakably manifested his intention to separate. They are therefore of opinion that the appeal fails and should be dismissed with costs, and they will humbly advise His Majesty accordingly.



In the Privy Council.

BABU RAMASRAY PRASAD CHOUDHARY
AND ANOTHER

v.

BABUYEE RADHIKA DEVI AND OTHERS

DELIVERED BY SIR JOHN WALLIS.

Printed by His Majesty's STATIONERY OFFICE PRESS,
POCOCK STREET, S.E.1.

1935