Privy Council Appeal No. 16 *of* 1935
Patna Appeal No. 6 *of* 1933

Mahanth Ramdhan Puri and others - - - - - - *Appellants*

v.

Chaudhury Lachmi Narain 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 16TH DECEMBER, 1936

Present at the Hearing:

LORD ROCHE.
SIR SHADI LAL.
SIR GEORGE RANKIN.

[*Delivered by* SIR GEORGE RANKIN.]

The suit out of which this appeal arises was brought *in formâ pauperis* on the 18th September, 1922, by the three sons of one Kashinath against no fewer than 78 defendants. The plaint is a long and complicated document of 69 paragraphs and the general outline of its contents is that Kashinath, the father and karta of a Mitakshara family, had embarked upon a career of vice and extravagance, in the course of which he had parted with a number of the family properties and had lost other properties by sales in execution of decrees. The purpose of the plaint was to recover various properties from the persons to whom they had been thus alienated, upon the footing that the alienations were not made for family necessity and if made for Kashinath's antecedent debt, were not binding against his sons by reason that they were made for purposes which the Hindu law regards as immoral. In respect that all the transactions impugned were brought under the allegation as to Kashinath's bad character and habits, the various transactions raised what may be called a common question of fact, and in a very extended sense of the phrase it may be said that they constituted a series of transactions, but their Lordships have no doubt that this plaint challenged a greater number of transactions and impleaded a greater number of defendants than was either necessary, reasonable or convenient; in so saying their Lordships have not forgotten that in some cases different defendants by virtue of different transactions have come to have competing claims in respect of the same property.

The appellants before their Lordships are defendants 28, 33 and 35, their names being Mahant Ramdhan Puri, Bipat Ram and Adjodhya Prasad respectively. The two last mentioned had joined in one written statement. The first had filed another written statement jointly with defendant 36. The properties in which these defendants, or some of them, were interested included some property as to which the Courts in India dismissed the plaintiffs' claim, and this appeal concerns two items of property only, each item being a share of a village called Rupau. Property No. 1 is a third share, that is a 5 annas 4 pies share in this village. Property No. 2 is a share represented by a very small fraction and is called the 2 dams 19 kouris share. Property No. 1 was part of the ancestral family property of Kashinath. Property No. 2 was not. The first connection of the plaintiffs' family with property No. 2 was that on 18th February, 1917, one Gopal Narain sold it to the plaintiffs' mother, Musammat Thakur Kuer.

The transactions which took place with reference to the two properties now in question were fully investigated by the learned Subordinate Judge of Patna in the course of a long trial. His decision was that the plaintiffs have established their right to a three-fourths interest in each of these two properties and his conclusions have been concurred in by the High Court of Patna on appeal by these defendants. On this appeal no complaint is made of the decree being limited to a three-fourths interest. The trial Court's judgment is dated 31st March, 1928, more than five years from the date of the plaint, and the decree of the High Court is dated 16th December, 1932.

To deal first with property No. 1—the 5 anna 4 pies share:

In 1913 Kashinath had executed in favour of his wife a mukarrari lease comprising this property and certain others. In 1915 this property was sold for arrears of road-cess and was purchased by Bipat Ram, the second of the present appellants, who in 1917 re-conveyed it to Musammat Thakur Kuer. The Courts in India having without difficulty found that the lady in this transaction was acting as her husband's nominee and on behalf of the joint family of which he was karta rightly concluded that these transactions did not exclude or affect the interest of the plaintiffs in this property. On the 29th May, 1920, however, one Durga Prasad who had lent money to Kashinath on a bill of exchange upon which a pleader called Sital Prasad was acceptor, and had obtained a money decree (15th November, 1912) therefor against Kashinath, caused this property to be put up for sale in execution of the decree and purchased it himself. When he came to take possession of it, however, Kashinath's wife, Musammat Thakur Kuer, resisted him, claiming on the strength of her mukarrari lease; whereupon Durga Prasad brought a suit against Kashinath and his wife to have it declared that the mukarrari lease was a collusive document. In this suit

Durga Prasad obtained an *ex parte* decree on 26th April, 1920, and again took out execution against property No. 1 and purchased it himself. This execution-sale having been confirmed and certain objections thereto taken by Kashinath and by his wife having been dismissed, each brought an appeal in the Court of the District Judge, challenging the execution-sale. While these appeals were pending Durga Prasad died and the disputes were compromised with his widow. On 1st April, 1921, an ijara deed was entered into by Kashinath and his wife with one Munshi Deonath Sahai comprising *inter alia* this property whereby Rs.10,000 was raised to be given to Durga Prasad's widow as a term of the compromise. The lender, Munshi Deonath Sahai, was defendant No. 51 in the present suit and his rights under the ijara deed were challenged by the plaintiffs. On the same date the compromise with Durga Prasad's widow was completed by her executing what purports to be a deed of relinquishment, but which recites that both the appeals to the District Judge were withdrawn, that she had returned the sale certificate, that she had no longer any interest in or possession over the property, and that her rights had been acquired by Kashinath and his wife. This deed was stamped as a deed of relinquishment under the Indian Stamp Act and not at the higher rate payable in the case of a conveyance.

Now between the purchase by Durga Prasad on 29th May, 1920, and the deed of relinquishment (so called) of 1st April, 1921, namely, on the 26th July, 1920, this 5 annas 4 pies share in village Rupau had been purchased by Bipat Ram, appellant No. 2 before their Lordships, at another execution-sale. In 1913 one Mohanth Dalmir Puri, a co-sharer malik of village Rupau, brought a partition suit (No. 23 of 1913) against his co-sharers, including Kashinath, in respect of his interest in property No. 1, and also including Gopal Narain, to whom this judgment will make further reference in connection with property No. 2. Kashinath having set up his wife's interest under the mukarrari lease before mentioned, she also was impleaded. The suit resulted in a decree for partition which contained certain orders for costs. In execution of this decree, at the instance of the plaintiff Mohanth Dalmir Puri, property No. 1 was put up for sale on 26th July, 1920, as being then the property of Kashinath, and it was sold to Adjodhya Prasad, appellant No. 3, who was acting for Bipat Ram, appellant No. 2. This sale was duly confirmed by order of the Court. The present plaintiffs having made an unsuccessful attempt to suggest that the partition decree was not binding upon them, set up against Bipat Ram who purchased on 26th July, 1920, the fact that on the 29th May of that year property No. 1 had been purchased by Durga Prasad. This by itself would not enable the plaintiffs to succeed in ejectment against the present appellants (as they could only succeed upon the strength of their own title) but the plaintiffs further rely upon the deed of 1st April, 1921, as being not merely a relinquishment of claim by Durga

Prasad's widow but a conveyance by her to the plaintiffs' father and mother of the title to property No. 1 which Durga Prasad obtained by his purchase of 29th May, 1920, confirmed as it was by order of the executing Court and by the orders of the District Judge dismissing the two appeals therefrom. Their Lordships agree with the Courts in India in construing the deed of 1st April, 1921, as a conveyance, and on this view though the sale to Bipat Ram on 26th July, 1920, was valid and regular, the judgment debtor had no longer any interest which could pass by such sale, and the title relied upon by the present appellants in respect of property No. 1 has no validity. The plaintiffs' title therefore prevails as the Courts in India have held.

The dispute with reference to property No. 2, the smaller share in this village of Rupau, can be more shortly disposed of. When Gopal Narain, in 1917, sold this property to the plaintiffs' mother, she was acting, as the Courts in India have found, on behalf of the joint family. This property was put up for sale in execution of the partition decree in suit No. 23 of 1913 already mentioned, and on the 26th July, 1920, it was sold to appellant No. 3 on behalf of Bipat Ram, appellant No. 2, as being the property of Gopal Narain. That is to say what passed to Bipat Ram by the sale was the right title and interest of Gopal Narain. At this date, however, Gopal Narain had no interest left in him by reason of his transfer to the plaintiffs' mother in 1917. The Courts in India have rightly rejected the suggestion that Bipat Ram can claim to have taken good title by his purchase by reason that Kashinath is stopped from denying that the title was in Gopal Narain, by his failure to bring this fact to notice on the occasion of the execution-sale.

The reasons which induced the Courts in India to find in favour of the plaintiffs and against the title set up by the present appellants have now been explained. The complaint made by Mr. Eddy on behalf of the appellants is really two-fold. He complains first that so many parties and so many causes of action should never have been joined in one suit under the provisions of Order 1 rule 3 and Order 2 rule 3, and that the misjoinder is not merely a technical objection but one which, in the language of section 99 of the Code, affected the merits of the case. His second complaint is that the purchase by Durga Prasad on 29th May, 1920, of property No. 1 should not be relied upon in any way by the Courts as against the appellants, because in the plaint it was part of the plaintiffs' case that the loan taken by Kashinath from Durga Prasad was for immoral purposes; that his clients by their written statement had admitted this allegation and had, at the trial, treated this as common ground between the plaintiffs and themselves, not calling evidence to establish it, and not cross-examining witnesses called to establish the contrary.

Upon the first contention their Lordships are of opinion that the joinder of so many distinct causes of action against so many sets of defendants might well have led the trial

Court to decline to entertain so many matters in one suit, even if they were within a sound construction of the rules. There is good reason to think that the inconvenience and expense avoided by the plaintiffs who sued *in formâ pauperis* has been much exceeded by the inconvenience and expense caused to the defendants. The written statement of the present appellants (as is common in India) contained a plea that the suit was bad for misjoinder or multifariousness but their Lordships have not been satisfied that at any time before the commencement of the trial any appropriate and serious application was made to the Court upon the face of the pleadings for an order requiring the plaintiffs to amend by discarding portions of their claim. They are satisfied, however, that the heavy task which fell to the learned Trial Judge of dealing with so many matters in one trial was ably and fairly discharged and that he arrived at a correct view of the facts. It is desirable to point out that under the rules as they now stand the mere fact of misjoinder is not by itself sufficient to entitle the defendant to have the proceedings set aside or action dismissed. Section 99 of the Code is in plain words but their Lordships may repeat what was said by Lord Justice Pickford in *Thomas* v. *Moore*, [1918], 1 *K.B.* 555 *at* 565, " Whatever the law may have been at the time when *Smurthwaite v. Hannay*, [1894], A.C. 494 was decided joinder of parties, and joinder of causes of action are discretionary in this sense, that if they are joined there is no absolute right to have them struck out but it is discretionary in the Court to do so if it thinks right ". Their Lordships are of opinion that in the present case no effect can be given to this objection of misjoinder, the merits of the case having been satisfactorily disposed of in spite of the complication of the proceedings.

The second ground of appeal was dealt with very carefully by the High Court. It is true that in paragraphs 9, 10 and 11 of the plaint an averment is made that the loan from Durga Prasad was taken without any legal necessity of the joint family, and that upon this basis it was suggested that Durga Prasad's decree and execution-sale and the compromise that ensued thereon had not the effect of binding the interest of the plaintiffs in the family property. The plaint, moreover, contained general allegations that Kashinath's indebtedness was tainted by an immoral origin. Of the two written statements filed by the present appellants paragraph 9 is to the effect that the answering defendants did not deny the allegations made in paragraphs 9 and 10 of the plaint, which means in effect that they did not challenge the attack made upon Durga Prasad's representatives, his widow, Musammat Bhawani Kuar being defendant No. 14. In one of the two written statements it is pleaded that " the " plaintiffs' allegations in respect of drinking, debauchery, " extravagance and adultery of defendant No. 1 are " wrong, false and fictitious ". Whether or not the loan made by Durga Prasad was tainted with an immoral origin was a matter directly in issue between the plaintiffs and Munshi Deonath Sahai, defendant No. 51. An issue was taken upon the question. The plaintiffs having called

Sital Prasad the pleader at Gaya to support their contention, this witness, as the High Court afterwards pointed out, was cross-examined on behalf of two of the present appellants as well as by the pleader of other defendants. The trial Judge took the view that he must ascertain and go by the facts as against the present appellants equally as against other defendants. He came to the conclusion that it was not proved that the loan made by Durga Prasad was tainted by immorality: indeed his view was that the plaintiffs' allegations of bad character on the part of their father were extravagant and unjustified. While the case was being argued on appeal before the High Court that Court took the view that the plaintiffs should be made to proceed regularly, and gave leave to amend the plaint. The present appellants were also given leave to file an additional written statement. This they did complaining that by reason of the allegations in the original plaint of 1922 they had made no attempt to obtain oral or documentary evidence in support of the allegation that Durga Prasad's loan had been obtained for immoral purposes; they complained also that the papers in connection with the execution cases had, in the meantime, been destroyed in the ordinary routine and were no longer to be found on the record of the executing Courts. They further pointed out that the pleader, Sital Prasad, had since died and could not be further cross-examined. The High Court having framed an additional issue upon the question whether the sale in favour of Durga Prasad was legal and valid, the appellants stated that they did not desire that the case should be remanded for the trial of this issue for the reasons set out in their written statements and asked the Court to decide the case on the materials on the record. The learned Judges of the High Court carefully considered the position before allowing the additional issue. Having pointed out that Sital Prasad had been examined in the trial Court and cross-examined not only on behalf of defendants 50-53 but also on behalf of defendants 28 and 36; that the appellants had not mentioned any other witness by name who could have thrown any light upon the question; and that the order sheet of the execution proceedings started by Durga Prasad after he had obtained his money decree was still existent and available; the High Court held that the pleas taken in the written statement, by way of showing that the new issue should not be entertained, had no validity. Upon a review of the whole matter, their Lordships are in agreement with the opinion of the High Court and treating the question before them as a question whether leave to amend has been properly granted they are of opinion that an affirmative answer can safely be given. The amendment was within the competence of the High Court, having regard to the terms of Order 6, rule 17, and is not of such a character as to be objectionable either as changing the subject matter of the suit or as being otherwise unfair.

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

(39668—3A) Wt. 8136—2 180 1/37 P. St. G 338

In the Privy Council.

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AND OTHERS

v.

CHAUDHURY LACHMI NARAIN
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DELIVERED BY SIR GEORGE RANKIN

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