

Privy Council Appeal No. 38 of 1942

Allahabad Appeal No. 4 of 1939

Babu Jyoti Bhushan Gupta - - - - - Appellant

v.

Babu Shashi Bhushan Gupta and others - - - Respondents

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 27TH JULY, 1944

*Present at the Hearing:*

LORD PORTER

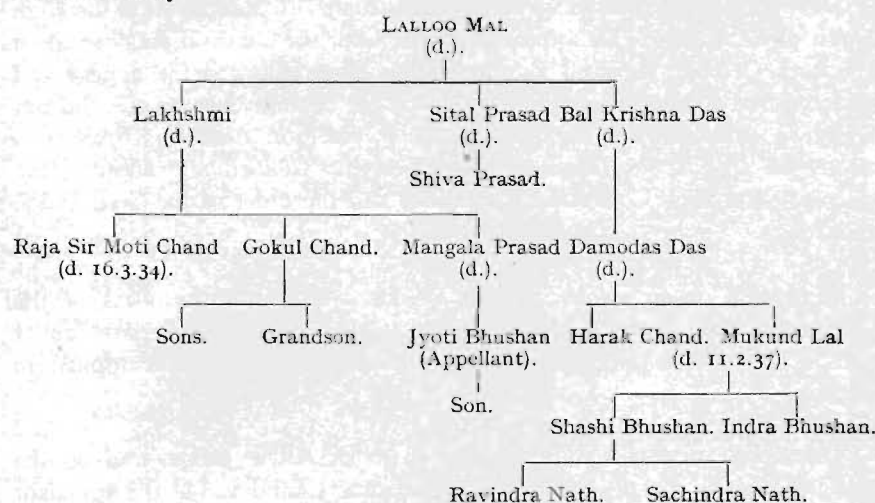
LORD GODDARD

SIR MADHAVAN NAIR

[Delivered by LORD PORTER]

This is an appeal from a decree of the High Court of Judicature at Allahabad dated the 3rd November, 1938.

The parties are members of a family of landlords and bankers of whom Rajah Sir Moti Chand, C.E., was head. Their inter-relationship appears from the subjoined table.



NOTE.—d. = died prior to the partition of 1922-25.

On the 25th May, 1922, partition of the family property was by consent referred to two arbitrators. They made their award on the 30th November, 1925, and the Subordinate Judge of Allahabad passed a decree in terms of the award on the 25th February, 1926.

In accordance with those terms the following shares were apportioned to the various members of the family:

- (1) one third to the descendants of Lakhshmi jointly;
- (2) one third to Shiva Prasad;
- (3) one sixth to Harak Chand;
- (4) one sixth to Mukund Lal, now represented by the four respondents.

In order to equalise the shares the descendants of Lakhshmi were ordered to pay with interest certain sums of money, of which the sum payable to Mukund Lal was Rs.9,06,239-3-10. Five lakhs of this total were to be paid by transferring 5000 cumulative preference shares in the Bharat Abhyudaya Cotton Mills Ltd., and the balance of Rs.4,06,239-3-10 by five annual instalments.

The shares were duly transferred and in the succeeding years sums amounting to Rs.3,45,430 in all paid in cash. Sir Moti Chand died on the 16th March, 1934, and his share in the family property passed to Gokul Chand and to the appellant.

Shortly afterwards partition proceedings were instituted between Gokul Chand's branch and the appellant's branch and on the 25th March, 1935, whilst these proceedings were pending Mukund Lal made an application for execution against the branch represented by the appellant and Gokul Chand—the amount claimed being Rs.11,10,278-2-4.

About this time execution proceedings were also started against the appellant's branch of the family at the instance of Shiva Prasad, who like the respondents was entitled to a money decree under the terms of the arbitrator's award and had obtained an order for the attachment and sale of a house at Allahabad and other execution decrees.

Before further steps were taken the United Provinces Encumbered Estates Act 1934 (United Provinces Acts XXV of 1934 and IV of 1935) came into force and on the 5th of October, 1936, Gokul Chand and his descendants applied to the Collector of Benares under Sec. 4 of the Act requesting that the provisions might be applied to him. The Collector duly forwarded this application to the Special Judge pursuant to Sec. 6 of the Act. On October 9th application was made by the same parties to the Civil Judge of Allahabad for a stay of the execution proceedings and this application was granted on the 10th October.

Thereupon Shiva Prasad on the 19th February, 1937, applied to the High Court of Allahabad to set aside or vary the Order of the Civil Judge, and on the 12th October the Full Bench of that Court allowed the appeal and directed that Execution should proceed on the ground that the Act did not apply to sums due for equalisation under partition decrees. From this decree an appeal was taken to His Majesty in Council and allowed, the decree of the High Court being set aside, and the order of the Civil Judge restored.

Meanwhile on or about the 5th October, 1936, the members of the appellant's branch of the family applied to the Collector at Benares under Sec. 4 of the Act praying that the provisions of the Act be applied to them.

This application was duly transferred to the Civil Judge, and on the 8th October the general attorney of both Gokul Chand and of the appellant applied to the Civil Judge of Allahabad for stay of the Execution proceedings.

On the same day the Civil Judge stayed Execution. From his order an appeal was taken to the High Court at Allahabad.

Before a decision was reached Mukund Lal died on the 11th February, 1937, and the respondents as his representatives were substituted for him on this record.

On the 3rd November, 1938, the High Court, following the previous decision of the Full Bench, directed the Execution to proceed. The present appeal is taken from that decree.

As will be seen from the facts narrated above the question at issue in the present appeal is identical with that started by Shiva Prasad and previously decided by their Lordships who for the reasons given in the judgment in that case are of opinion that the decree of the High Court cannot stand. They will accordingly humbly advise His Majesty that the appeal should be allowed, the decree of the High Court dated the 3rd November, 1938, set aside and the order of the Civil Judge of Allahabad dated the 8th October, 1936, restored. The respondents will pay the appellant's costs in the High Court and of this appeal. There will be a set-off of such costs against the sums owing under the partition decree.

In the Privy Council

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BABU JYOTI BHUSHAN GUPTA

v.

BABU SHASHI BHUSHAN GUPTA  
AND OTHERS

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[DELIVERED BY LORD PORTER]





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