
(1909) 07 CAL CK 0057
In the Calcutta High Court

Gannu Singh

APPELLANT

Vs

Musammat Bhagwati Koeri and Others

RESPONDENT

Date of Decision : 30-07-1909

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : 3 Ind. Cas. 234

Hon'ble Judges : Sharf-ud-din, J;Richardson, J

Bench : Division Bench

Judgement

Sharf-ud-din, J.—This is an appeal from the judgment of the First Subordinate Judge of Monghyr dated 5th May 1906. The facts of the case are that there were two brothers named Gannu defendant No. 1 and Lalji Singh. Defendants Nos. 3 to 6 are the sons of Gannu Singh. Defendant No. 7 is the grandson of Gannu Singh through his son defendant No. 4. Lalji Singh was married to Musammat Nawratan Koeri alias Chunder Varti Koeri. She is now a widow and is the defendant No. 2. Lalji Singh had a daughter by Nawratan named Bhagwati Koeri, plaintiff No. 1. Ananta Prasad Singh plaintiff No. 2 and Shewnandan Prasad Singh plaintiff No. 3 are the minor sons of Bhagwati.

2. The plaintiff's case is that Gannu Singh and Lalji Singh were two brothers; they separated and Lalji Singh left his paternal house at Shakarpura and built a new house at Jailakh Abhiman, and continued to reside there up to his death, which took place in Pous 1305 Fasli; in 1304 he separated his collection from that of his brother and brother's son and grandson. After the death of Lalji Singh the defendant No. 2. Nawratan Koeri his widow caused her name to be separately recorded in the collectorate. In the said proceedings Gannu Singh defendant No. 1 opposed her alleging that Lalji Singh his brother was joint with him up to his death, but in spite of his allegations an order for the registration of the name of the defendant No. 2 in place of her deceased husband Lalji Singh was passed on the 13th June 1898. The defendant No 1 Gannu Singh appealed against that order to the Divisional Commissioner, but his appeal was dismissed Gannm Singh

defendant No. 1 then brought a regular suit, against Nawratan Koeri defendant No. 2, praying for a declaration, that Lalji Singh died joint in mess and harbar with his brother defendant No. 1 and that the latter, therefore, was entitled to the estate of Lalji Singh, under the Hindu Law, by right of survivorship. To that suit the present plaintiffs were not made parties. The plaintiffs say that as they are residents of the Bhagalpur District, they had no knowledge of that suit. In that suit Gannu Singh defendant No. 1 is said to have paid a sum of Rs. 10,000 to Nawratan defendant No. 2 and agreed to pay a further sum of Rs. 5,000 and thereby to have obtained the consent of Nawratan Koeri to a solenama (Exhibit No. 29) dated 28th November 1900, by which the defendant No. 2 Nawratan was made to admit that her husband Lalji Singh died joint in food and karbar with Gannu Singh defendant No. 1. She also admitted in the solenama that after her death Gannu Singh and his sons and heirs were entitled to take possession of all the movable and immovable properties forming the estate of her deceased husband. It seems that under the arrangement arrived at by the solenama Nawratan was allowed to live separately with possession of all the properties of her deceased husband up to her death and that her name was allowed to remain in the Collector's register as proprietor in place of her husband. The plaintiffs alleged that the object of this solenama was to deprive them of their rights as reversionary heirs of Lalji Singh, so that a cloud was thrown over their rights as reversioners and that this has given them a cause of action. They also allege that as they are residents of another district they had no knowledge of the solenama filed in the previous suit and that they came to know of it for the first time in September 1901. In the present suit they pray for a declaratory decree to the effect that Lalji did not die joint in food and harbar with defendant No. 1 and his descendants, and that on the death of Nawratan Koeri, defendant No. 2. the plaintiff No. 1 as daughter of Lalji Singh is entitled, if she survives the widow, to succeed to the estate, the reversionary heirs being her minor sons the plaintiffs Nos. 2 and 3. The defendants Nos. 4, 5 and 7, filed written statements and in effect took common ground. Their pleas were (1) limitation, (2) that there was no cause of action, (3) that the parties were governed by Mithila Law, (4) that Lalji Singh and the answering defendants lived joint in food and harbar up to the death of Lalji Singh.

3. The Subordinate Judge has decreed the suit with costs, and the defendant first party Gannu Singh has appealed to this Court. On the appeal coming on for hearing, the grounds urged on his behalf are (1) that there is no cause of action, (2) that practically the suit was for setting aside the solenama and as such was barred by the Law of Limitation, (3) that on the evidence the lower Court should have held that Lalji Singh and Gannu Singh with " his descendants were joint in food worship and estate (4) that the provisions of Section 42 of the Specific Relief Act have been misapplied.

4. Out of the four grounds taken stress has been laid mainly on grounds (1) and (3). The solenama (Ex. 29) is a most remarkable document. According to the appellant's case Lalji Singh's estate has been inherited by Gannu Singh by right

of survivorship. According to his case Lalji and Gannu were joint. If that were so, Musammat Nawratan Koeri would be entitled to have maintenance, but under the solenama she gets a large sum of money from Gannu Singh and full control of her husband's estate during her own life-time with the limitation or condition that she shall not transfer the properties in any way, whatsoever. The most important passage in the solanama is the following: "That after the death of the defendant (Nawratan Koeri) the plaintiff (Gannu Singh) and his sons and heirs shall take possession of all the movable and immovable properties forming the estate of the defendant's husband (Lalji Singh) that will remain in her possession at the time of her death, and that the plaintiff (Gannu) on his part shall not interfere during her lifetime in any way with the said properties which are given to the defendant (Nawratan Koeri) by way of khorposh under this compromise, nor shall he (Gannu Singh) dispossess the defendant (Nawratan Koeri) therefrom, that except the plaintiff (Gannu Singh) his sons and heirs, no body has or shall have any connection with the properties belonging to the defendant (Nawratan Koeri.)" This solenama is dated 28th November 1900. On this solenama having been filed, the order passed was, "The parties having come to terms and filed petition of compromise, a decree is passed in accordance with the terms of the petition so far as they relate to the subject-matter of the suit." It must not be forgotten that Gannu Singh brought his suit against Nawratan Koeri after he had failed in opposing her application for the registration of her name in the Collectorate Register. The matter of registration as already observed, went up to the Commissioner's Court by way of appeal, where also Gannu Singh failed. We repeat that it was after these proceedings that Gannu Singh instituted his suit (No. 380 of 1899) for a declaration that he himself and his brother Lalji Singh, at the time of the death of the latter were "members of a joint family. In the registration proceedings Nawratan Koeri's case was that her deceased husband Lalji Singh was seprate from his brother Gannu Singh. But having been given a large amount of money and full control over the income of her deceased husband's estate under the solenama, she completely turned round and contradicted her own case in the Land Registration proceedings by admitting that her husband and Gannu Singh were joint and that by right of survivorship the latter and his sons and heirs were entitled to the properties of her husband. It is surprising, that if the two brothers were joint, Gannu Singh should have entered into a contract with Nawratan Koeri wherein he had to pay a large sum of money and had to give up his right of present enjoyment of the properties. If the two brothers were joint, Nawratan Koeri was entitled only to maintenance for life. It is evident that Gannu Singh was eager to secure the admission of Nawratan Koeri that he was joint with his brother Lalji Singh, in order that it might be of some use as evidence, in the event of the daughter and the grandsons of the latter (the plaintiffs in the present case) laying any claim to Lalji's estate.

5. The appellant's contention is that there is no cause of action which would entitle the plaintiffs to the relief claimed. Their prayer is inter alia for a declaration that the allegations of the defendant first party (Gannu Singh) and

the defendant second party (Nawratan Koeri) made in the petition of compromise filed in Suit No. 380 of 1899, instituted in this Court, that Lalji Singh aforesaid died while living joint with defendant first party (Gannu), and after the death of the defendant 2nd party (Nawratan Koeri) the defendants first and third parties Gannu Singh and his heirs should be entitled to the estate of Babu Lalji Singh aforesaid, and that no other person would be entitled to the said properties, are not true and correct." It is contended that the above prayer does not disclose any cause of action. Our attention has been drawn to the case of *Rajha Nilmony Singh v. Kally Churn Battacharjee* 2 I.A. 83 : 23 W.R. 150 : 14 B.L.R. 382 where a landlord, who was in receipt of rents and profits instituted a suit against a number of his tenants to obtain possession of a share of certain mouzas under a Mal title by setting aside the false Mogolee Brahmatra title stated by the defendants," and it was held that such a suit being merely a suit to set aside an assertion, and one in which no relief could be granted, was not maintainable. It was further laid down that Section 15 of Act "VIII of 1859 gave a right of obtaining a declaration of title only in those cases where the Court could have granted relief if relief had been prayed for. The section referred to enacted as follows: No suit shall be open to objection on a ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Civil Court to make binding declarations of right. without granting consequential relief." The case was decided in 1874 and the present Specific Relief Act did not become law till 1877. In 1874 there was no statutory provision authorising declaratory decrees except the provisions contained in Section 15 of Act VIII of 1859, Section 42 of the Specific Relief Act now enacts that any person entitled to any legal character or to any right as to any property, may institute a suit against any person denying, or interested to deny his title to such character or right and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title omits to do so." It is manifest from this provision that a wide discretion has been given to the Courts to make in suitable cases decrees of a merely declaratory character. In our opinion the statements in the solenama afford a sufficient basis for the present suit under the existing law. No doubt in the case cited their Lordships of the Privy Council considered that apart from any rule of law, a declaration of title should not, in the proper exercise of Judicial discretion, have been made. But they had previously pointed out that the object of the plaintiff was to set aside a mere assertion or allegation of the defendant tenants that they had a certain tenure, an assertion which for all that appeared might have been merely by word of mouth. In the present case, when Nawratan Koeri dies, her statements in the solenama will be admissible in evidence under Clause (3) of Section 32 of the Indian Evidence Act. Those statements are more than mere assertions. They are admissions.

6. The appellant has also invited our attention to the case of *Strimathoo Moothoo Vijia Ragoonadah Ranee Kolandapuree Natchiar v. Dorasinga Taver* 2 I.A. 169 :

15 B.L.R. 83 : 23 W.R. 314 : 5 Mad. H.C.R. 310. In this case it was held that a declaratory decree could not be made unless there was a right to consequential relief capable of being had in the same Court, or, under special circumstances as to jurisdiction in some other Court. This case again was decided in the year 1875, that is to say before the Specific Relief Act came into force and a perusal of the judgment will show that the case turned entirely on the construction of Section 15 of Act VIII of 1859 above quoted. It is obvious that an authority upon the construction of that section is not necessarily conclusive upon the construction of Section 42 of the Specific Relief Act, and if the view we take is correct, the latter section has considerably altered the law on the subject of declaratory decree and has enlarged the discretionary power of the Courts to make such decrees.

7. The next case cited was the case of Pirthi Pal Kunwar v. Guman Kunwar 17 I.A. 107 : 17 C. 933. This case is no doubt an authority as it was decided in 1890 after the Specific Relief Act came into force. But that case raised the question, not whether a declaratory decree could be made, but whether in the exercise of a sound judicial discretion, it should be made. The facts were very different from the facts here. A declaratory decree had been refused in India, and in affirming that decision, their Lordships of the Privy Council said :-" It appears to their Lordships that the Judicial Commissioner exercised a very sound judgment in what he did. All that is suggested by the learned Counsel on the part of the appellant, in support of a declaratory decree is this : that at some time or other after the death of the present plaintiff, the person who according to the plaintiff's contention is not an adopted son may, by some means, either by an act of the Government or otherwise, obtain possession as an adopted son. The only object, therefore, of having a declaratory decree is to prevent him being put into possession. Their Lordships cannot assume that the Government if petitioned to put the person claiming to be an adopted son into possession, would do so unless they saw that he had a right to that possession. The officers of Government would, in ordinary course, if there were any doubt as to the title, refer the parties to the Civil Court."

8. We are supported in the view we take by the case of Upendra Ndrain Myti v. Gopeenath Bera 9 C. 817 : 12 C.L.R. 356 cited on behalf of the respondent in which it was held by this Court that where the next reversioner after a Hindu widow sues, during the life-time of the widow for a declaration that a compromise made by her is not binding on him, it is no sufficient ground for refusing the declaration, that the plaintiff may not succeed for many years to the possession of the property."

9. On behalf of Gannu Singh it is alleged that there was never any separation between him and his brother. But it seems to us from the evidence on the record that while originally the two brothers were no doubt joint, disputes arose between their wives and they began to drift away from each other till finally they became separate in mess, worship and business". It is alleged by the plaintiffs

that at the date of his death Lalji Singh was separate from Gannu Singh. Generally speaking the presumption of Hindu Law is in favour of a family being joint, and the onus is on him who alleges separation. But in considering the question of onus we have also to consider a number of facts admitted by the defendants. From para. 6 of the written statement of Gannu Singh it is clear that he himself and his family lived at Shakarpura, the ancestral home, while, Lalji Singh lived at Joylakh Abhiman with his family. The explanation offered that owing to want of accommodation in the old house, Lalji Singh and his wife with Budree Narain Singh, Gannu Singh's son, lived in the new house, built by joint funds, for the sake of convenience &c." does not appear to us convincing. From other circumstances which will be detailed hereafter it seems to us that the first step towards separation was the removal of Lalji Singh with his family to Joylakh Abhiman. This mouza is only at a distance of a few Rassis from Shakarpura but is a different mouza. From the deposition of Gannu Singh it appears that at the time when the house at Joylakh Abhiman was built he had only two sons, one only of whom was married while it is admitted that Lalji had only a daughter. That being so, it is hardly credible that the old ancestral house at Shakarpura was not sufficient for the convenient accommodation of the family. It is also admitted that the messing at Joylakh Abhiman was separate. Gannu Singh tries to explain by saying that it was he as the karta of the family who defrayed all the expenses incurred at Joylakh Abhiman. He admits, however, that a new family idol was consecrated at Joylakh when Lalji and his wife commenced to reside there. When so many facts indicating separation were disclosed by the evidence, the burden of proof would no doubt be shifted on to the shoulders of the party alleging joint ness. We are supported in this view by the observations of their Lordships of the Privy Council in the case of *Ram Pershad Singh v. Lakhpati Koer* 30 C. 231 : 7 C.W.N. 162 to the following effect. But in this case the District Judge and the High Court agree that as regards residence, food and worship, the family had long ceased to be joint the only point of difference being as to partition of ancestral property. Upon this question their Lordships have come to the same conclusion as the High Court." And the High Court's remarks as to the onus were contained in the following passage of their judgment:- The Subordinate Judge has proceeded upon the presumption that the ordinary state of a Hindu family is joint and he has, accordingly, thrown on the defendants the onus of proving separation. It seems to us that the Lower Court is in error on this point. When the question simply is whether the deceased was separate or joint, the onus no doubt is on the party alleging separation; but where it is found as in this case that the parties were living separately, messing, separately, and worshipping separately, the ordinary presumption falls to the ground; in such a case it rests on the party who alleges continuance of indivision, in spite of severance in these particulars, to prove his allegations." Lalji Singh is said to have died in the month of Pous 1305, and it appears from the evidence of the proprietors of Joylakh that it was Lalji who had erected the new house there, acquired Jote and proprietary rights in this village and opened separate collections a year before his death.

10. It appears that owing to disagreement between the wives of Gannu Singh and Lalji Singh, the latter deemed it necessary to build a permanent dwelling house for himself and his family and for this purpose he secured a piece of land measuring one bigha, 16 cottahs 15, ohurs in mouza Joylakh Abhiman from Jew Singh and Rajab Singh, for which he gave to them in exchange a piece of land with an equal area in the same mouza. This is apparent from the deed of exchange dated 15th November 1878 (Ex. 17).

11. From Ex. 7 which is a certified copy of a petition ;for registration of name, it appears that the two brothers Gannu Singh and Lalji Singh had purchased on the 25th of August 1878 a fractional share in inouza Joylakh Abhiman. Application was made on the 6th of September 1878 for the registration of the name of Gannu Singh for self, and as manager on behalf of Lalji Singh. We have already observed that the two brothers began to drift away from each other and that the original partial separation culminated in a complete separation some little time before, the death of Lalji Singh. One of the earliest steps taken by Lalji Singh was to live in a separate house and hence we find him securing a suitable piece of land in exchange for another for the purpose of, as he says, in Exhibit 17 "building my permanent dwelling houses." This separate acquisition of land for a house in lieu of a specific portion of the paternal land is an indication of an intention. On the part of Lalji Singh to separate himself and his family from his brother Garmu and the paternal house.

12. We find that originally certain ancestral properties stood in the name of the two brothers. But subsequently Lalji Singh styling himself a resident of Shakarpura, applied (Exhibit 22) for the registration of his name with regard to his own share in. some of the ancestral rnouzas. In this connection our attention has been directed to the case of Hoolash Kooer v. Kassee Proshad 7 C. 369 where it was held that a registration of the specific share of the co-owners in a Mitakshara family under the provisions of the Land Registration Act does not amount to a partition. We have no reason to differ from the proposition of law there laid down but we find that the only acts indicating separation in that case were the obtaining of a certificate under Act XI of 1858, and registration of the names of the members of a joint family with the specification of the shares of each. The District Judge, in that case found that in spite of the certificate and registration, the properties remained joint and the profits of the property were enjoyed jointly by all the members, who lived in commensality without reference to their respective shares and that there had not been any separate appropriation of the funds of the family or the profits arising from the landed property. The learned Judges who decided the above case held that any declaration by a member of a joint Hindu family that he is the owner of a particular share not accompanied by an intention to deal with the particular share separately would not constitute a separation of the joint family. In the present case we find that there was a clear intention on the part of Lalji Singh to deal with his own share separately.

13. Partition among the members of a joint family may be effected without any instrument in writing, *Rewun Persad v. Musammat Radha Beeby* 4 M.I.A. 137 : 7 W.R. 35 (P.C.). Numerous circumstances are set out by writers on Indian law as being more or less conclusive of a partition having taken place such as separate food, dwelling, or worship, separate enjoyment of the property, separate income and expenditure, business transactions with each other, and the like. But all these circumstances are merely evidence, and not conclusive evidence, of the fact of partition. Partition is a new status which can only arise where persons, who have hitherto lived in co-parcenary intend that their condition as co-parceners shall cease. That being the law, we have to ascertain from the evidence whether the two brothers in this case, namely, Gannu Singh and Lalji Singh were separate in mess, dwelling and worship; in enjoyment of the property; as regards income and expenditure; and the like; and whether over and above this there was an intention that their condition as co-parceners should cease. From the evidence, we repeat, it appears clear to us that there was such an intention, and in this connection reference may be made to the case of *Appovier v. Rama Subba Aiyan* 11 M.I.A. 75 : 8 W. 1 (P.C.) their Lordships of the Privy Council at page 90, make the following observations: "But when the members of an undivided family agree among themselves with regard to particular property that it shall thenceforth be the subject of ownership in certain defined shares then the character of undivided property and joint enjoyment is taken away from the subject-matter so agreed to be dealt with and in the estate each member has thenceforth a definite and certain share which he may claim the right to receive and to enjoy in severalty although the property itself has not been actually severed and divided."

14. About eighteen months after the separate registration of the name of Lalji above referred to, he exchanged certain land as stated above for other land on which he erected a new house for himself. This was at a time when disagreement between the wives of the two brothers had already commenced. That being so, from the conduct of Lalji Singh it is apparent that he was gradually separating himself from his brother Gannu Singh. Ex. 28 is a petition for registration of name dated 9th January 1832 on behalf of Lalji Singh only with regard to a share of mouza Joylakh Abhiman which he alleged was purchased by him under a deed of sale. Here also the intention on the part of Lalji Singh appears to become separate from his brother Gannu. But in 1878 there was an application made (Ex. H. 7), another (Ex. H. 6) in 1880 and another (Ex. H. 4 in 1883) by Gvinu Singh on his own behalf and as manager of Lalji Singh for the registration of his name with regard to certain mouzas by virtue of purchase.

15. It is contended on behalf of the appellant that these Exhibits clearly show that the two brothers were joint. We have already observed that complete separation was only attained by gradual steps. If Gannu Singh was the karta, of the family and remained so during the life-time of Lalji Singh there can be no reason for Lalji Singh to have applied for registration of his name separately from his brother and for his exchanging a piece of land for another piece belonging to

a third party without the intervention of the karta of the family. Each step towards separation may not, taken by itself, prove much; but the collective effect of the various acts of Lalji Singh most clearly indicate a final intention on his part to effect a complete separation from his brother. We find that a little before his death a complete separation had taken place. Collection was separate, the families of the two brothers had separate dwelling houses, they had separate idols, and in fact a little before the death of the two brothers Lalji Singh had become completely severed from his ancestral home and was in separate enjoyment of his share of the profits from the ancestral state.

16. It is admitted that Lalji Singh left Sankarpura in 1291 Fusli or thereabouts and began to live at the new house at Joylakh Abhiman; and after his removal to the new house, it seems, he began to call himself a resident of Joylakh Abhiman. It seems that he had purchased a share of 4 annas and odd in Joylakh Abhiman and had his name registered in the Collectorate with regard to this share. On the 17th of September 1892, under Ex. 27 he applied for the partition of the above share. Either in the purchase of the share, or in the application for Registration, or partition his brother Gannu Singh did not take any part. Of this partition petition, Gannu Singh in his deposition, denies all knowledge, it shows that owing to a family dispute the brothers were becoming indifferent to each other's affairs. We find farther that farther separate acquisitions by Lalji Singh began to take place after the family disputes commenced. By Exhibit 11 dated 22nd of March 1881 we find that Ram Bharasa Singh and others executed a Katkina, Patta in favour of Lalji and not in favour of both the brother jointly with regard to a small fractional share of Joylakh Abhiman. In this transaction also we find that Gannu Singh does not take any part. As a Katkinadar Lalji Singh paid rents and obtained receipts Exhibits 9 and 10. Gannu Singh does not seem to have any interest in this Katkinadar. Exhibit 43 is an extract from a Khatian. We find that in this the tenant's name is that of Musammam Nawratan Koeri widow of Lalji Singh. Similarly Exhibit 44 which is also an extract from a Khatian shows the name of Lalji's widow as the tenant.

17. Gannu Singh claims to be the Karta of the joint family. He has filed a large number of registered documents executed by debtors in the joint names of the two brothers. If Gannu Singh had really been treated as a Karta of the joint family one would have expected that some of these documents would have been in his sole name. But in all, the names of the two brothers are given with their different residences.

18. We find from Exhibit 1 dated 17th July. 1897 that on behalf of Lalji Singh a clear declaration was made that he was separate from his brother. This was a notice to Mr. F. Holloway by a pleader Bunsu Prasad informing him that the collection of the two brothers since 1304 had become separate and that he should in future pay half the share, of rent to Lalji separately.

19. There was one Gannu Lall who was the-putwari of the two brothers when they were; joint. Lalji Singh filed an Ism nabisi for the appointment of one Lall

Nath Sahai as a putwari along with Gannu Lall (Exhibit 20 dated 27th July 1897). From Exhibit 21 we find it stated in its 12th column that Lalji Singh was the proprietor of eight annas of the Mahals Muhamadpur, Mukhachuk and Nadail Bikram, and that his name was registered to that extent. It is also stated in that column, that the other eight annas belong to Gannu Singh and that formerly the collection of the entire sixteen annas was made jointly and Gannu Lall was the patwari of the entire sixteen annas. The most important passage in this column, indicating a complete separation, is the following :-" At present the said Gannu Lall being in collusion with the aforesaid Gannu Singh, has been making golmal in collection of rent and does not properly render account to your petitioner, and is mostly engaged in doing the work of Babu Gannn Singh, the holder of eight annas, and so, your petitioner's business suffers much."

20. On behalf of the plaintiffs collection papers have been filed in proof of the separate collection by the two brothers. One Sumari Lall who is a witness for the defendants was examined before the Deputy Collector in the patwari case above referred to. In that deposition he had said : " the collection used to be made-separately from 1304 to 1309." But when asked in the present case if he had made such statement in the patwari case, he pleads a blank memory. We are not surprised at his weak memory when we find him stating in the present case: "I do not remember whether the evidence which I gave before the Deputy Collector (Patwari case) was correct or false. I have got summons in this suit on behalf of both parties. I all along attended on all dates. I was not inclined to give my evidence on behalf of the plaintiffs. Now I am in the service of Gannu Singh and Udit Narain Singh, Both Gannu Singh and Udit Narain Singh are Gotias." Now that he is in service of Gannu Singh his evidence is that Lalji Singh and Gannu Singh were always joint.

21. We also find that a notice similar to one that was given to Mr. Holloway was given to Mohunt Luchmi Das.

22. From the evidence of Jawaluddin (witness No. 2 for the plaintiff), who appears to be a disinterested witness, it is clear that payments of rent by the Maujhoul Factory used to be entered in the Factory's cash register in the names of Lalji Singh and Gannu Singh separately, and that after Lalji Singh's death the rent used to be paid to his widow separately from Gannu Singh.

23. From a review of the whole evidence it is quite clear that sometime in 1304 the brothers became quite separate in mess, in business, and in worship. This was brought about not by any single step but gradually. In these circumstances we are of opinion that the judgment of the lower Court is correct and we, therefore, dismiss this appeal with costs.

Richardson, J.

24. I associate myself entirely with that part of the judgment, read by my learned brother, which deals with the question whether this is a case in which the Courts are empowered to make and should make a declaratory decree. In my

opinion this question should be answered in the affirmative on the grounds already stated and the plaintiffs are entitled to the declaration for which they seek.

25. In regard to the main question of fact which is raised in the case, whether at the date of his death Lalji Singh had ceased to be joint with his brother Gannu Singh, I am in entire agreement with the conclusion at which my learned brother has arrived and generally for the reasons indicated by him. The learned Subordinate Judge in the Court below has dealt with this part of the case in a careful and convincing judgment which goes fully into the details of the relations between the two brothers and I have nothing to add except an expression of my agreement with the inference which he has drawn from the evidence adduced in the case.