
(1922) 01 AHC CK 0017
In the Allahabad High Court

Jhabbu Lal and Others

APPELLANT

Vs

Jwala Prasad and Others

RESPONDENT

Date of Decision : 25-01-1922

Acts Referred:

Citation : AIR 1922 All 531 : 66 Ind. Cas. 986

Hon'ble Judges : Walsh, J;Piggott, J

Bench : Division Bench

Judgement

1. The plaintiffs in this suit as originally filed were Sukh Lal, son of Shib Charan Lal, together with Jhabbu Lal and Daulat Ram, sons of Kallu Mal, an own brother of Sukh Lal. The fact that Sukh Lal has since died and is now represented in this appeal by his sons does not affect any of the questions before us for determination. The principal defendant, Jwala Prasad, is the daughter's son of Lalji Mal, brother of Shib Charan Lal. For certain reasons which are not material in view of the decision we have come to in the case as a whole, there were joined with him as defendants his father Janki Prasad and his wife Musammat Dropadi. In dealing with the appeal before us we propose to treat Jwala Prasad as the principal and the only substantial defendant in the case. It is admitted that Shib Charan Lal and Lalji Mal had two other brothers named Manna Lal and Bindraban. Of these four brothers Lalji Mal died first, in or about the year 1879 A. D., Shib Charan died in 1889, Bindraban in 1909 Musammat Genda, widow of Lalji Mal and grandmother of the principal defendant died on the 9th of May 1913. Manna Lal survived her, but had died before the institution of the present suit. The plaint as drafted can only be described, in view of the facts disclosed by the evidence, as a thoroughly disingenuous document. It alleges that Lalji Mal died at a time when he and his three brothers still formed a joint undivided family and it carefully avoids admitting that separate possession or enjoyment in respect of any portion of the joint family estate was ever conferred upon his widow Musammat Genda. There is an admission that this lady's name was recorded as the owner of a rateable share in some of the Zemindari property belonging to the joint family. This is said to have been done "for consolation"

only, and there is an express plea., that Musannat Genia never enjoyed actual possession over the landed property standing in her name With reference to certain other items of property, which admitted*** not form part of the joint family estate at the time of Lalji Mal s death, there are allegations to the effect that they had been acquired with the income from ancestral property but fictitiously in the names of certain of the defendants. The plaintiff goes on to state that after Musammatt Genda's death, the defendants by setting up false and unfounded claims have dispossessed the plaintiffs in respect of some of the items of property specified at the foot of the plaint and have denied their title in respect of other items. The suit, therefore, is for recovery of possession in respect of shares in a number of items of property and a dec***laration of title in respect of the plaintiffs' shares in certain other items. The principal defence was undoubtedly that there had been a separation in the family prior to the death of Lalji Mal, that; Musammatt Genda had succeeded to Lalji Mal's estate as a Hindu widow and that the principal defendant Jwala Prasad was the heir (o that estate under the Hindu Law after the death of his mother and of his grandmother. There can be no question, however, that the written statement of this defendant did also set up a certain alternative line of defense. It admitted that the death of Lalji Mal had taken place in the year 1879, whereas a formal and effective partition of the joint family property only took place five years later, that is to say, in 1884. Inasmuch, however, as Musammatt Genda was, according to the defendant, assigned a 1/4th share in all the property divided at the partition of 1884, and was assigned this share as the representative of Lalji Mal, it was contended that, if she did in fact take this property in the ordinary way as the widow of a separated Hindu, then she must be taken to have received it at the partition with full proprietary right and it was pleaded that before her death she had executed a Will in favour of the principal defendant. In the closing paragraph of the written statement the plea was very distinctly taken that, in any possible event, the defendant Jwala Prasad, as the representative (that is to say, as the lawful heir and successor) either of Lalji Mal or of Musammatt Genda, had a better claim than any of the plaintiff to that portion of the property in suit which had formed part of the original joint property of the family and had been assigned to Musammatt Genda at the partition of 1884. With regard to other items of property the defendants contended that they represented acquisitions made by Musammatt Genda out of the surplus profits of the property in her hands, that they had never accreted to the estate of Lalji Mal in the hands of his widow, that she had retained full disposing power in respect of the same and that she had disposed of them in favour of the defendants. There were also certain pleas challenging the right of the plaintiffs to sue for a mere declaration in respect of some items of property. The suit was tried out in the Court below upon issues very carefully framed which seem fai***ly to cover the whole ground of the controversy between the parties. The second issue was in the following terms:

2. Which of the disputed properties existed in Lalji Mal's time and what interest

did Musammat Genda acquire in it?

3. We have laid some stress upon the pleadings and the frame of the issues, because it has been suggested to us that the argument principally relied upon before us on behalf of the defendants-respondents sets up on their behalf a case not taken in the Court below, or raises some issue, not tried by that Court. We think it will be sufficiently clear when we come to deal with the point that this is not the case, in view of what has been stated above, regarding the pleadings and the second issue in the case. The learned Subordinate Judge found that Lalji Mal died whilst still in a state of jointness with his three brothers, but that there was a partition, accompanied by a complete division of the joint family property in the year 1884, five years after the death of Lalji Mal. At this partition certain property, including some on the landed property in suit, was handed over to Musammat Genda. It remained in her possession from that date until her death in 1913. She made savings out of the income of this property and by means of these savings acquired some of the other properties in suit. She seems also to have invested mosey in constructing an indigo factory which was also one of the properties claimed by the plaintiffs. In respect of those items of property set forth at the foot of the plaint which had originally belonged to Lalji Mal and his three brothers jointly, and had been dealt with at the partition of 1889, the learned Subordinate Judge found that a share in these properties was given to Musammat Genda as a provision for maintenance and that upon her death these properties would go, neither to her own heirs nor to the heirs of her husband, but, as he puts it, to "the estate from which" the property had been taken. Upon this finding he has decreed the plaintiff's claim for a certain rateable share in each of those items of property which he has put in this case. Their suit has been dismissed in respect of other properties acquired by Musammat Genda out of her savings, on the ground that these acquisitions had never been amalgamated, with the corpus of the property obtained by her under the partition, that they were acquisitions of her own over which she had full disposing power and that the defendants were lawfully in possession of the same. There has also been a finding adverse to the plaintiffs on the question of their right to a mere declaration in respect of one item of property. The suit having been partly, decreed and partly dismissed, the plaintiffs have appealed to this Court and the defendants have filed cross-objections. The memorandum of appeal raises one or two questions of detail regarding particular items of property, It contests the finding of the Court below with regard to Musammat Genda's acquisitions out of the income of the property in her hands and it challenges the finding of the lower Court as to the extent of the share to which the plaintiffs were entitled. The defendants have filed a petition of cross-objections raising more than one point, but principally contending that the suit ought to have been altogether dismissed. It was admitted in argument that the defendants could not seriously press the contention that Lalji Mal had separated from his brothers during his life time. We must, therefore, proceed with the case on the assumption that the Court below rightly found that Lalji Mal died in a

state of jointness with his three brothers. Five years later we find these three brothers engaged in effecting a complete partition of the joint family property in their hands. There was moveable as well as Immovable property concerned. Four lists were drawn up and one of these lists, admittedly specifying property amounting to a full one-fourth share of the whole, was headed "share of Lalji Mal," and the properties therein specified were made over to Musammat Genda. There is not the slightest doubt that this lady continued for her life-time in full possession and enjoyment of the properties thus assigned to her. As a matter of fact some years later there was a further division and apportionment of property, consequent upon the dissolution of a family business, and bore again a full one-fourth share was handed over to Musammat Genda. The principal question which we have to determine is the effect of the partition proceedings of 1884. The learned Subordinate Judge has assumed, almost without discussing the point, that the properties assigned to Musammat Genda at this partition were given to her in recognition of her right of maintenance. It is not perfectly clear from his judgment which of two propositions he intended to affirm. He may have meant that the three brothers, Shib Charan Lal, Manna Lal and Bindraban never parted with any property at all in favour of Musammat Genda and never created any estate in her favour. From this point of view it would have to be contended that the cash and moveables assigned to Musammat Genda were treated as representing money immediately needed by her for her maintenance and that the shares in the landed property made over to her remained all the time in the ownership of the three brothers, while Musammat Genda enjoyed only a permissive possession, by license of the real owners, in lieu of cash which they would otherwise have to pay her for maintenance. This position is scarcely arguable and it has not been seriously pressed upon us on behalf of the appellants. The amount of the property made over to Musammat Genda, being far in excess of what she needed for her comfortable maintenance, and the considerable sums assigned to her at the divisions of the moveables and the joint business make it impossible to suppose that there was no transfer of ownership and no estate created in her favour. In reply to the question whether or not the three surviving brothers or the heirs of those brothers, could at any given moment have resumed possession over the whole or any part of the Immovable property assigned to Musammat Genda in 1884, the only possible answer seems to be that they could not have done so, because the proceedings at the partition had amounted at the very least to a transfer of those properties in favour of Musammat Genda for her life-time. Now, assuming that a life-estate was created by the partition of 1884 in favour of Musammat Genda, the real question in issue is:-who would succeed to that estate upon the death of that lady? The learned Subordinate Judge does not seem to have looked at the case from this point of view at all. He quotes decision in *Debi Mangal Prasad Singh, v. Mahadeo Prasad Singh* 14 Ind. Cas. 1000 : 34 A. 234 : 9 A. L. J. 263 : 11 M. L. T. 217 : 16 C. W. N. 409; (1912) M. W. N. 324 : 14 B. L. R. 220 : 15 C. L. J. 344 : 22 M. L. J. 462 : 39 I. A. 121 (P.C.), as authority for the proposition that property taken upon a partition by a Hindu widow reverts on her death to the lawful owners of the

estate from which that property was taken, As a matter of fact the decision in this case was that such property passed on the death of the widow to the heirs of her deceased husband. If that decision can be applied literally and fully to the facts of the case now before us, it is so far from being authority in favour of the plaintiffs that it is decisive against them. The plaintiffs are not the heirs of Lalji Mal; on the contrary, that gentleman's heir under the Hindu Law is the principal defendant, Jwala Prasad, As a matter of fact the case in question is distinguishable from the present. The property dealt with in the reported case was the share taken on partition by a Hindu mother, that is to say, a share to which the widow concerned had a legal right which she could have enforced if necessary by suit. In the present case, assuming that Lalji Mal died in a state of jointness with his brothers, his widow, had a right to nothing except, maintenance. What we have to determine is whether, the surviving brothers having under the circumstances allotted to the widow a full 1/2th share in the joint family property, such as would be taken by her husband had he survived until the date of the partition, is it to be presumed that they created in her favour the ordinary estate of a Hindu widow passing on her death to the heirs of her husband, or are we to take it that they intended to create in her favour a special kind of life estate, with reversion on her death to the donors or heirs of the donors? We have been referred in argument to an old case which is the foundation of much of the subsequent case-law on the subject, that of *Sreemuty Rabutti Dassee v. Sibchunder Mullick* : 6 M. I. A. 1 : 1 S. P. C. J. 484 : 19 E. R. 1, In that case, there having been a dispute in a Hindu family regarding the claims of a Hindu widow, a document was drawn up which expressly and in terms assigned certain property to that lady for her sole absolute use and benefit, in her character of heiress and legal personal representative of her deceased husband. The immediate point for determination was whether the widow under this instrument took an absolute estate, or merely a life-estate devolving upon her death upon the heirs of her deceased husband. It was held that she took a life estate only and that the heirs of her deceased husband succeeded on her death to the corpus of the property. The facts in that case seem to be distinguishable from those of the present case, because it was conceded that the widow was entitled as of right to some share and the only question was as to the amount of her share. Nevertheless it has to be noted in the present case that Musammatt Genda was, at any rate, entitled to something. She was entitled to maintenance and when the brothers of her deceased husband, in lieu of her right to maintenance, chose to assign certain property to her on partition, the question arises whether, in the absence of any evidence one way or other, it ought not to be assumed that they intended to give her the ordinary life-estate of a Hindu widow, with reversion after her death to the heirs of her deceased husband. We have come to the conclusion, however, that it is not necessary to rest the decision upon any mere presumption. There are circumstances in the case which seem to us very strongly to indicate that the intention of the brothers at the time of partition was to deal with Musammatt Genda as the representative of her deceased husband and that they in fact dealt

with her in this capacity. It would be very difficult to understand on any other supposition why they should have given her, not merely a 1/4th share in the Immovable property, but her full rateable share in the moveable property and in the assets of the joint family business when those came to be divided. If they looked upon themselves as dealing with a widow who only required maintenance at their hands, they would surely never have handed over to her large sums in cash, as representing her late husband's share in the moveable property of the family and in the joint family business. They would scarcely have remained quiescent while she made considerable savings out of the property in her hands and acquired, property for herself, or for the benefit of her daughter's sons. They would scarcely have described the paper drawn up at the partition, on which they engrossed a list of the properties assigned to Musammat Genda, as the share of Lalji Mal. Moreover, the matter can be carried even further than this. There have been at least two litigations in this family, the particulars of which have been laid before us. The Learned Subordinate Judge alludes to them in his judgment and does so principally for the purposes of confirming his opinion that there was no partition in the family until after the death of Lalji Mal. It seems to us, however, that there are other significant circumstances connected with these litigations. Kallu Mal, brother of the plaintiff Sukh Lal, had another son named Paran Mal, and on the 8th of January 1911 this Paran Mal instituted a suit for possession by partition in respect of properties belonging to this family, on the allegation that he was the adopted son of Lalji Mal. Amongst the defendants were Manna Lal, Musammat Genda, the daughter of Bindraban, the plaintiff Sukh Lal and other members of the family. Musammat Genda in her written statement very clearly pleaded that her daughter's sons were the ultimate heirs and successors to Lalji Mal's share in the joint family estate. The suit was eventually decided upon a finding that Paran Mal had failed to prove his alleged adoption, but when it came to an apportionment of shares, it is obvious that Paran Mal was given the share in the joint family property which would come to him on the assumption that Lalji Mal's 1/4th share was properly in the possession of Musammat Genda and was not available for apportionment amongst the descendants of Shib Charan Lal. Even more important is the suit which was brought by Manna Lal after the death of Musammat Genda. There was a dispute between this gentleman and other members of the family, including the defendant, Jwala Prasad, and Manna Lal came into Court claiming separate possession over certain items of Zemindari property. He stated in his plaint that on the death of Musammat Genda the whole of the property which had been assigned to her on partition had descended to him by right of inheritance, though he did not explain the precise nature of this right. He contented himself with saying that he would bring a separate suit hereafter to enforce the right thus claimed. The important part of the case, however, lies in certain statements made by Manna Lal when he was examined on the 15th of July 1914 in the Court of the Subordinate Judge of Shahjahanpur. It must be remembered that any statements made by Manna Lal, who died before the institution of the present suit, favourable to the defendant's case, are provable not merely as statements

made against the interest of Manna Lal himself, but also because the plaintiffs in the present suit are, as regards a substantial portion of their claim, claiming through Manna Lal. Manna Lal's account of the partition of 1884 is to some extent confused by a misapprehension which had somehow grown up in his mind, to the effect that Shib Charan Lal as well as Lalji Mal had died before the partition. We now know that Lalji Mal died in 1879, the partition was in 1884, while Shib Charan Lal died in 1889. Allowing, however, for this apparently honest misconception in the mind of the deponent, there are passages in Manna Lal's deposition which have an important bearing on the question now in issue. He seems to have been expressly asked why four lots were prepared at the partition of 1884, if there were only himself and Bindraban alive at the time. He deposed as follows:- "There were three brothers and so four lots were prepared. As regards the brothers who had died, their respective shares were given to their heirs by common consent," He went on to say that it was in this way that property had been allotted to Musammatt Genda, but hastily added that this was only for her maintenance. When it was pressed upon him that this last assertion of his was not consistent with what he had said just before, he said that he had made a mistake in the first instance but that what he now said, namely, as to the assignment in Musammatt Genda's favour being only for her maintenance, was correct. When further pressed in: cross-examination, however, we find him recorded as making the following assertion:

When Musammatt Genda became the owner of a share, then her property will descend to her daughter's sons.

4. This is a literal translation of the words of the deposition as recorded in the vernacular. It is, of course, possible that the question had been put to Manna Lal in a hypothetical form and that he only meant to say that, if Musammatt Genda had received a share, then of course that share would descend to the heirs of her late husband. Considering however the deposition as a whole, the significant admissions with which it commenced and with which it ended seem to us of greater weight and importance than the somewhat halfhearted attempt made by Manna Lal to shuffle out of them in the middle of the deposition. Looking at this statement, along with the other items of evidence which we have already considered, it seems to us beyond question that, whatever may have been the motives influencing Shib Charan Lal, Manna Lal and Bindraban in the year 1884, they did join to confer upon Musammatt Genda in respect of the property assigned to her at the partition the ordinary estate of a Hindu widow, on the understanding that they were dealing with her as the representative of her late husband and with the deliberate intention that the share thus assigned to her should descend after her death to the heirs of Lalji Mal under the Hindu Law. The only serious argument that we can see against such a conclusion is that the conduct thus ascribed to the three brothers is too improbable to be believed, or, at any rate, to be believed upon the somewhat slender materials available on this record. It is, however, impossible for any one to say now what precise motives may have influenced the conduct of these three brothers in the year 1884.

Although we have accepted the finding that Lalji Mal died in a state of jointness with his brothers, we are bound to admit the possibility (when we come to deal with an argument of this sort) that the brothers were perfectly aware that the question of a separation of the family had been discussed in the life-time of Lalji Mal and that they were only honestly carrying out an arrangement which they knew had been virtually determined upon before, and which would have been carried out if Lalji Mal's death had not supervened. We need not do more than put this forward" as a suggestion to meet an argument based upon probabilities. Our decision we base upon what seems to us a fair and reasonable consideration of the evidence as a whole. The finding which we have recorded obviously disposes of the entire case, Jwala Prasad, defendant, is the rightful heir of all the properties in suit, whether he takes them by inheritance from Lalji Mal, or by inheritance from Musammat Genda, or under the Will of the latter; the plaintiffs suit must fail and should have been dismissed altogether. We accordingly dismiss the plaintiffs' appeal, allow the cross-appeal of the defendants, set aside the decree and order of the Court below and dismiss the plaintiffs' suit", with costs throughout, including in this Court fees on the higher scale.