

(1912) 08 CAL CK 0045
In the Calcutta High Court

Kulada Prosad Pandey and Others

APPELLANT

Vs

Haripada Chattopadhyaya and Others

RESPONDENT

Date of Decision : 12-08-1912

Acts Referred:

Citation : 17 Ind. Cas. 257

Hon'ble Judges : Beachcroft, J; Ashutosh Mookerjee, J

Bench : Division Bench

Judgement

1. The subject-matter of this litigation is ancestral Immovable property, owned at one time by a Hindu family of which one Amrita Lal Pandey was the head. The father of Amrita Lal Pandey, originally resident in Oudh, in 1857, migrated to Bengal, where he continued to live with his family in the District of Bankura, and acquired the properties now in dispute which passed after his death to his son. Amrita Lal had eight sons, of whom two, the husbands of the eighth and ninth defendants, respectively, died in his life-time in 1880 and 1883. Three other sons, the first and second plaintiffs and the fifth defendant, embraced the Christian faith; the first plaintiff became a convert in 1890, the second plaintiff in 1896, and the fifth defendant in 1904. On the 19th March 1900, Amrita Lal transferred the disputed property for a sum of Rs. 2,000 to the first four defendants, and he was joined in the execution of the conveyance by three of his sons, the fifth, sixth and seventh defendants. Amrita Lal died on the 26th December 1900. The third plaintiff, one of the sons of Amrita Lal, attained majority in 1905. On the 19th March 1907, the plaintiffs, the three sons of Amrita Lal, who had not joined him in the conveyance and of whom two were Christian at the time of the transfer while the other was and is still a Hindu, commenced the present action for a declaration that the transfer was not operative against them in respect of a three-sevenths share of the property, and for recovery of possession and mesne profits. The plaintiffs founded their claim on the assumption that the transfer had been effected for the satisfaction of illegal and immoral debts of their father, which they would not otherwise be presumably liable to satisfy out of their share of the ancestral property. The

purchasers defendants contested the claim and alleged that the plaintiffs, who had embraced Christianity, had lost all interest in the ancestral property, that the other plaintiff who was still a Hindu was liable to satisfy the debt, and that in any event his claim was barred by limitation as he had attained majority in 1902 and had failed to obtain cancellation of the conveyance within three years thereof. The Courts below have concurrently dismissed the suit. They have found that the debts satisfied by the consideration for the conveyance were neither illegal nor immoral, and that, consequently, the father could make a valid alienation of the ancestral property for the discharge of those debts. The plaintiffs have appealed to this Court and on their behalf the decision of the District Judge has been assailed on two grounds, namely, first, that the two plaintiffs, who had embraced Christianity during the life-time of their father, had, by reason of their conversion to the Christian faith, ceased to be members of a joint Hindu family and were, consequently, not liable to satisfy any debts incurred by their father; and, secondly, that the effect of the conversion of the first two plaintiffs to Christianity, was a complete dissolution of the family, and, that, from this point of view, it was not competent to Amrita Lal to alienate the share of the third plaintiff who did not join him in the conveyance and could not do so as he was an infant at the time. These positions have been controverted on behalf of the respondents as unsound in law, and it has further been suggested that the plaintiffs have sought to put forward a case inconsistent with that set out in the plaint, though it has not been disputed that it is in some measure conformable to the position taken up by the defendants in their written statement. Before we deal with the questions argued at the Bar, it is necessary to premise that the family must be taken, before the conversion of the first plaintiff to Christianity, to have been governed by the Mitakshara law. When the grandfather of the plaintiffs migrated from Oudh to Bengal, the presumption is that he carried with him the laws and customs as to succession and family relation prevailing in the Province from which he came: *Parbati Kumari v. Jagadis Chunder* 29 C. 433 : 29 I.A. 82 (P.C.) : 4 Bom. L.R. 365 : 6 C.W.N. 490. This presumption might have been, but has not been, rebutted by proof that the family has adopted the law and usage of the place to which it has migrated: *Surendra Nath v. Hiranmanee* 12 M.I.A. 81 : 1 B.L.R. (P.C.) 26 : 10 W.R. (P.C.) 35; *Gobind Chandra v. Radha Kristo* 31 A. 477 : 6 A.L.J. 591 : 3 Ind. Cas. 563; *Jagannath v. Narayan* 34 B. 553 : 12 Bom. L.R. 545 : 7 Ind. Cas. 459. We start, therefore, with the position that, in 1890, there was a Hindu family, consisting of Amrita Lal Pandey and his six sons, and owning Immovable property which had descended from the father of Amrita Lal. In 1880, one of the sons of Amrita Lal, the first plaintiff Kulada Prosad, became a convert to Christianity. What was the legal effect of this incident upon the family and upon the rights of Kulada Prosad himself? In so far as the latter question is concerned, it is clear that under the Caste Disabilities Removal Act (XXI of 1850), the conversion did not inflict on him forfeiture of rights or property or impair or affect in any way any right of inheritance. The inference is, therefore, irresistible that, notwithstanding his conversion, the first plaintiff retained his interest in the ancestral property. In so far as the question

of the status of the family is concerned, it is equally indisputable that it ceased to be a joint Hindu Mitakshara family. This position has not been seriously controverted; but it has been ingeniously argued that, notwithstanding the conversion of one of the members to Christianity, they continued to hold the ancestral property subject to the operation of the rule of survivorship and of the principle which imposes a pious obligation on a Hindu son to pay his father's debts. This view, in our opinion, is opposed to the decision of the Judicial Committee in *Abraham v. Abraham* 9 M.I.A. 195 at p. 241 : 1 W.R. (P.C.) 1 where Lord Kings-down, referring to the position of a member of a Hindu family who has become a convert to Christianity, observed as follows: He becomes at once severed from the family and is regarded by them as an outcast. The tie which bound the family together is, so far as he is concerned, not only loosened but dissolved. The obligations consequent upon and connected with the tie must be dissolved with it. Parcenership may be put an end to by a severance effected by partition; it must equally be put an end to by severance which the Hindu Law recognises and creates. Upon the conversion of a Hindu to Christianity, the Hindu Law ceases to have any continuing obligatory force upon the convert. He may renounce the old law by which he was bound, as he has renounced his old religion, or, if he thinks fit, he may abide by the old law, notwithstanding he has renounced the old religion." Stress, however, has been laid by the respondents upon the concluding sentence of this passage, and it has been argued that a Hindu family converted to Christianity may continue to be joint even after conversion, and if the fact be established, effect will be given to it. In support of this position, reference has been made to *Francis Ghosal v. Gabri Ghosal* 31 B. 25 : 8 Bom. L.R. 770. This doctrine, even if it be assumed to be well founded, is of no assistance to the respondents; but it is worthy of note that there is divergence of judicial opinion on the subject: *Tellis v. Saldanha* 10 M. 69. Here the whole family was not converted to Christianity, and this circumstance differentiates the present case from *Jalbhai v. Louis Manoel* 19 B. 680 at p. 687 and *Lastings v. Gonsalves* 23 B. 539 at p. 543. If all the members of the family had become Christians, the position might possibly have been supported that, notwithstanding conversion, they adhered to the old law, and that, consequently, the rights of co-parcenership were not affected by their renunciation of the old religion. In the present case, such a theory cannot possibly be maintained; one of the members renounced the old religion, the others continued their adherence to the ancestral faith. If the family is deemed to have continued as a joint family with right of survivorship among the co-parceners, it could only have been by common consent of all the members; but there is no indication that the members of the family had, or indeed could have, any such intention. We must hold, then, that the first plaintiff, upon his conversion to Christianity, became at once severed from the family, and this view is supported by the cases of *Govind Krishna v. Abdul Quayyum* 25 A. 546 : (1903) A.W.N. 127 and *Khunni hall v. Gobind Krishna* 33 A. 356 : 38 I. A. 87 : 15 C.W.N. 545 (P.C.) : 8 A.L.J. 552 : 13 C.L.J. 575 : 13 Bom. L.R. 427 : 10 M.L.T. 25 : (1911) 2 M.W.N. 432 : 21 M.L.J. 645 : 10 Ind. Cas. 477 where their Lordships of the Judicial Committee reversed

the decision in *Gobind Krishna v. Khunni Lall* 29 A. 487 : 4 A.L.J. 365 : A.W.N. (1907) 151. In so far, therefore, as the first plaintiff is concerned, he is not bound by the conveyance of the 19th March 1900, and it is inoperative in respect of what was his share in ancestral property in 1890. His claim to recover possession thereof is also plainly not barred by limitation. By reason of his conversion, he ceased to be a member of the joint Hindu family, but then he continued to hold the property as joint owner. There is no evidence of his exclusion or assertion of hostile title against him, such as is essential to constitute adverse possession between co-owners *Jogendra Nath v. Baldeo Das* 35 C. 961 : 12 C.W.N. 127 : 6 C.L.J. 735 before the conveyance of the 19th March 1900, when his father professed to deal with the property, though he was not competent to do so under the law. No question of limitation, therefore, arises, as the suit has been commenced within twelve years from the date of the conveyance. The first plaintiff is thus entitled to recover possession of an one seventh share of the property on the basis that in 1890, upon the dissolution of the family which consisted at the time of Amrita Lal and his six sons, the plaintiff became entitled to such share.

2. We next proceed to consider the case of the second plaintiff who became a convert to Christianity in 1896. It has been contended on behalf of the appellant that when the first plaintiff became a convert in 1890, the legal effect was not merely his severance from the rest of the family but a complete dissolution of the entire family, and that from that time onwards, all the members must be taken in law to have been no longer members of the joint family. In support of this proposition, reference has been made to the decision of their Lordships of the Judicial Committee in the cases of *Ram Pershad v. Lakkpati Koer* 30 C. 231 : 30 I.A. 1 : 7 C.W.N. 162 : 5 Bom. L.R. 103; *Bala Bux v. Rukhmabai* 30 C. 725 : 30 I.A. 130 : 5 Bom. L.R. 432 : 7 C.W.N. 642 and *Balkishen v. Ram Narain* 30 C. 738 : 30 I.A. 139 : 5 Bom. L.R. 46 : 7 C.W.N. 578. These cases are, in our opinion, distinguishable and are of no assistance to the appellants. No doubt, there may be no presumption that when one co-parcener separates from the others, the latter remain united; the separation of one may be a virtual separation of all, and, in this sense, where it is asserted that the remaining members remained united or agreed to re-unite, the fact has to be established from all the circumstances of the case. In the case before us, the inference is irresistible that after the conversion of the first plaintiff to Christianity in 1890, the remaining members continued to form a joint Hindu family. In 1896, therefore, when the second plaintiff Gopeshwar embraced Christianity, he ceased to be a member of the joint family, and it became thereafter incompetent to his father to alienate his one-seventh share by the conveyance of the 19th March 1900. The second plaintiff is thus not bound by that conveyance, and, so far as he is concerned, no question of limitation arises, because his severance from the family took place within twelve years of the commencement of the suit. But a question of considerable nicety arises as to the terms, if any, subject to which he should be allowed to recover his share of the property. The debts, for the

satisfaction whereof the conveyance was executed, were in part incurred on the 18th March 1892, and 3rd August 1895, under mortgage-bonds executed by his father Amrita Lal. When in 1896 he became a convert to Christianity, he was liable to satisfy these debts, some of which in fact were charged upon the ancestral property. Consequently, he may, in our opinion, be justly called upon to bear a share of these debts. Reliance, however, has been placed by the appellants upon the cases of Krishnasami v. Ramasami 22 M. 519 and Rathna v. Aiyanaachariar 18 M.L.J. 599 : 4 M.L.T. 277 to show that it is not open to a Hindu father to deal with the property of his divided son so as to bind the latter, even though it be in respect of an antecedent debt, This doctrine, if it be assumed to be well founded, is, as is explained in the first of the cases mentioned, subject to the important qualification that the severance had not been made with a view to defraud or delay creditors. It is further worthy of note that the case of Krishnasami v. Ramasami 22 M. 519 was distinguished in Ramachandra v. Kondayya 24 M. 555. In the case before us, we are clearly of opinion that the plaintiff ought not to be allowed to recover his one-seventh share of the property except upon payment of" a proportionate share of the debts due under the bonds of the 18th March 1892 and 3rd August 1895 and of other debts which could be recovered by sale of his share of the ancestral property at the time of his conversion in 1898. This amount we have approximately determined to be Rs. 210. The second plaintiff is entitled to a decree on these terms.

3. We have finally to consider the case of the third plaintiff. He is plainly not entitled to any assistance from the Court. The theory that in 1890 or 1896, there was a complete disruption of the family and each member continued thereafter to live as a separate unit, has already been found unsustainable. Amrita Lal, therefore, was competent in 1900 to alienate the ancestral property in his hands, not merely in respect of his own interest but also that of his sons other than the first two plaintiffs. The third plaintiff must, consequently, be deemed bound by the conveyance of 1900.

4. It is worthy of note that an objection as to misjoinder of causes of action might possibly have been taken in the Court of first instance, if the case had been presented in that Court from the point of view developed here. No such objection, however, was taken, and it is obvious that the parties have not been prejudiced by the frame of the suit; consequently, as explained in the case of Sarala Sundari v. Srada Prasad 2 C.L.J. 602 effect could not be given to the objection of misjoinder even if it had been urged before us.

5. The result is that this appeal is allowed and the decrees of the Courts below discharged. The first plaintiff will have a decree for possession of one-seventh share of the disputed property with mesne profits only from the date of the suit, the amount to be determined by a supplementary proceeding in the Court of first instance. The second plaintiff will similarly have a decree for one-seventh share of the property with mesne profits from the date of the suit; but, in his case, the amount of mesne profits will be reduced by Rs. 210 which, we have held, is

payable by him to the contesting defendants. The claim of the third plaintiff will stand dismissed. Under the circumstances, we direct all the parties to bear their own costs of this litigation in all the Courts.