
(1929) 02 AHC CK 0032
In the Allahabad High Court

Kundal Lal and Others

APPELLANT

Vs

Raj Behari Lal and Others

RESPONDENT

Date of Decision : 26-02-1929

Acts Referred:

Citation : (1929) 02 AHC CK 0032

Hon'ble Judges : Sulaiman, J;Sen, J

Bench : Division Bench

Judgement

Sulaiman, J.—First Appeal No. 444 of 1925 and First Appeal No. 196 of 1926 are connected, and are cross appeals by defendants and plaintiffs respectively arising out of the same suit 1929 A/65 & 66 for recovery of possession of the plaintiffs' share of the property and for the avoidance of a deed of relinquishment, dated 19th February 1924, executed by the plaintiffs' father. The plaintiffs are the sons of Ram Lal who was one of the sons of Nand Kishore. In 1901. Nand Kishore had two sons, Chaturbhoj and Ram Lal forming members of his joint family and he had a third wife Mt. Chandan Kuar, who was not the mother of either of the sons. Chaturbhoj instituted a suit for the partition of the family property in 1901 against his father and brother and at a subsequent stage, his stepmother, Mt. Chandan Kuar was also impleaded. The share of Chaturbhoj thus became one-fourth of the entire property. At that time Ram Lal was a minor and was impleaded under the guardianship of his father Nand Kishore. The judgment in the case, printed at p. 35, shows that the case was principally contested by Nand Kishore, and was ultimately decreed. A preliminary decree was passed for the partition of the family property and by a subsequent order, dated 28th May 1903 (p. 43) four lots of moveable properties were prepared out of which lot No. 3 was allotted to Chaturbhoj, lot No. 1 went to Mt. Chandan Kuar, lot No. 2 went to Ram Lal and lot No. 4 to Nand Kishore. The decree which was finally prepared on 28th May 1903 (p. 44), however, only mentioned lot No. 3, which had been allotted to the plaintiff Chaturbhoj, although the operative portion of the order passed by the Judge under which the partition made by the commissioner was confirmed had mentioned all the four lots separately. The zamindari property was

left undivided and a declaration of the shares of the coparceners only was given Chaturbhoj's one-fourth share was admittedly separated off. We also find that Mt. Chandan Kuar got her one-fourth share separated through the revenue Court.

2. A record of the partition proceedings is to be found at p. 71 which shows that there was an imperfect partition of a mahal under which patti No. 1 was allotted to Mt. Chandan Kuar separately, patti No. 2 to Chaturbhoj and patti No. 3 remained joint with Nand Kishore and Ram Lal. Ram Lal attained majority sometime in 1911. In 1924 he, jointly with his wife acting as the guardian of their minor sons, executed the deed of relinquishment referred to above which the plaintiffs now wish to impugn. Under this deed, he admitted that accounts had been settled between him and Nand Kishore and recited the manner in which they had agreed to adjust their accounts.

3. The plaintiffs came to Court on the allegation that Ram Lal was insane and the deed of relinquishment obtained by him was obtained under undue influence and was in no way binding on the plaintiffs. They claim that the family has been separate since the partition was made at the instance of Chaturbhoj, and that the share of Ram Lal and his sons has been one-fourth all along. They further claimed that Nand Kishore, who had continued to manage the property, was liable to render accounts and lastly they contended that no such account had been rendered and the deed of relinquishment purporting to close the account was not binding on them. They claimed an actual possession of the one-fourth share together with some property alleged to have been purchased with the money in the hands of Nand Kishore and also claimed mesne profits. The suit was contested mainly by the sons of Chandan Kuar, who had been born subsequent to the partition brought about by the suit of Chaturbhoj. They pleaded that although Chaturbhoj separated, Nand Kishore and Ram Lal continued to be joint and the family was joint, when these defendants were born with the result that they all shared in that half of the property, which remained in the possession of Nand Kishore. They further pleaded that the property which has been subsequently acquired has been acquired not out of the money belonging to Ram Lal but out of the joint family fund, in which all the parties are interested. They of course pleaded that the relinquishment by Ram Lal was binding on him and it was no longer open to his sons to reopen the accounts.

4. The learned Subordinate Judge has come to the conclusion that the family became separate after the suit of Chaturbhoj and that, therefore, Ram Lal and his sons were entitled to a one-fourth share which could not be diminished by the subsequent births of his younger brothers. He has further held that the plaintiffs have failed to establish that the deed of relinquishment was executed at the time when Ram Lal was of unsound mind and failed to prove the exercise of any undue influence. He has found that the deed of relinquishment is accordingly binding on the plaintiffs and the accounts must be deemed to have been fully adjusted. He has, however, omitted to give the plaintiffs a decree for mesne profits since the execution of the deed of relinquishment, although it is admitted

that the possession of the zamindari property has continued with Nand Kishore and the defendants, and the name of Ram Lal has not been separately recorded in the revenue papers. It will be convenient first to dispose of the question of fact whether the deed of relinquishment was obtained under undue influence or at a time when Ram Lal was of an unsound mind. This point is raised in F.A. No. 196 of 1926. The learned Subordinate Judge who heard the oral evidence produced by the plaintiffs was not impressed by it and after examining the statements of these witnesses has come to the conclusion that the evidence fails to establish that Ram Lal was of unsound mind. Ram Lal attained majority in 1911 and the settlement between him and Nand Kishore was not made till 1924 and there is no reason to suppose that any undue influence was exercised on Ram Lal. Having heard the learned advocate for the plaintiffs I am of opinion that this finding must be accepted.

5. The next question is whether the separation of Chaturbhoj brought about a disruption of the joint status of the whole family. These questions of law which arise are concluded by the pronouncements of their Lordships of the Privy Council in several leading cases. It was clearly laid down in *Balabux v. Rukhmabai* [1903] 30 Cal. 725 that when one coparcener separates from the others there remains no presumption that the latter remain united. Where it is necessary in order to ascertain the share of the outgoing member to fix the shares of others, his separation must be said to be the virtual separation of all. In such a case an agreement amongst the remaining coparceners to remain united or to reunite must be proved like any other fact. Their Lordships at p. 735 further expressed a doubt as to an agreement for reunion being validly made by or on behalf of a minor member of the family. That when there has been a separation among the members a reunion must be proved has been further laid down by their Lordships in the case of AIR 1925 93 (Privy Council) The law has been lately clarified by the recent pronouncement in AIR 1925 49 (Privy Council) Their Lordships have made it clear that the mere fact of the ascertainment of shares does not by itself necessarily lead to an inference that the family had separated, inasmuch as there may be other reasons for such ascertainment. This is in no way contrary to the rule of law laid down in *Balabux's* case [1903] 30 Cal. 725 that no presumption that they remained united remains. It is also clear that one member of a joint family may separate from the other members, while the other members may continue to remain joint. In AIR 1925 49 (Privy Council) their Lordships have laid down that without proving any special agreement amongst the remaining members, the fact that the remaining members continued to be joint may be inferred from the way in which their family affairs were carried on after the separation of the outgoing coparcener. Their Lordships have further remarked that if a joint Hindu family separates the members may agree to reunite, but such a reunion is of a very rare occurrence and must be strictly proved as any other disputed fact.

6. In view of these observations of their Lordships of the Privy Council, it follows, in my opinion, that the effect of the separation of Chaturbhoj was in the first

instance to put an end to the presumption of jointness but it need not necessarily have had the effect of a complete disruption of the joint family. The burden of proving that the remaining members continued to be joint or that they reunited would be on the plaintiffs who assert such jointness. As Ram Lal was a minor member of the family at the time, I am doubtful as to whether a case of reunion, had it been set up on behalf of the plaintiffs, could have succeeded. But it does not follow that the plaintiffs are not entitled to show that in spite of the separation of Chaturbhoj, Nand Kishore and Ram Lal continued to be joint and there was no separation so far as the status of these two members was concerned. In view of the observations of their Lordships, the continuance of jointness is not the same thing as a reunion. The learned advocate for the defendants urges that inasmuch as Ram Lal was a minor at the time and his guardian was Nand Kishore, there can be no intention on the part of Ram Lal or Nand Kishore to bring about separation between them. He further points out that in the final decree which was drawn up by the Court, the share of Ram Lal was not actually separated and has relied on the admitted fact that there was no actual partition of their shares in the revenue Court and that all along Nand Kishore managed his own share and that of Ram Lal. No doubt these are circumstances which to some extent weigh on the side of the defendants. On the other hand, we have the clear fact that it was in the interest of Ram Lal that there should be a separation. The mothers of Chaturbhoj and Ram Lal were dead and Mt. Chandan Kuar, the third wife, had been newly married. The subsequent births of other brothers would have the effect of reducing the shares of Chaturbhoj and Ram Lal and it is not surprising that Chaturbhoj intervened and got his share separated off. It was equally for the benefit of Ram Lal that his share should remain intact and be not affected by the subsequent births in the family. It is also an admitted fact that Mt. Chandan Kuar, the mother of the present appellants, did proceed further in the matter and got her one-fourth share actually separated. Although the ascertainment of Mt. Chandan Kuar's share was necessary in order to determine the share which had to be allotted to Chaturbhoj, it seems to me that after Chaturbhoj had gone out with his share, in case the remaining members intended to remain joint, their shares would have been thrown into the hotchpot. The circumstance that Mt. Chandan Kuar, the mother of the present defendants, insisted on her share being separated shows that there was a general partition among the members of the family under which she was allotted a definite and specific share. The fact that the management of the shares of Nand Kishore and Ram Lal continued to be joint is obviously explained by the circumstance that Ram Lal was then a minor and his mother was dead. It therefore seems to me that there is nothing in the conduct of the members of the family subsequent to the partition which would show that Nand Kishore and Ram Lal continued to remain joint. Of course, there is no special agreement pleaded or proved. On the other hand, the circumstances indicate that there was a complete separation.

7. Last of all, there is the deed of relinquishment executed by Ram Lal and his

wife which I have held to have been executed voluntarily at a time when Ram Lal was possessed of a sound disposing mind. This document contains clear recitals" to the effect that the shares of Ram Lal and Nand Kishore had been separate though both were under the management of Nand Kishore. The executants have gone on to state that it had become necessary that accounts should be settled with Nand Kishore and that the whole income and mesne profits should be received and separate possession of the entire shares of moveable and immovable properties taken. They stated that the settlement of the account of the mesne profits from 1331F had accordingly been made and the amounts due from Nand Kishore had been realized after understanding the accounts and that all articles such as utensils, gold and silver ornaments, cash etc. in the possession of Nand Kishore had been received back and that not a single farthing on account of the executant's share remained due by Nand Kishore. The deed further recited that Nand Kishore had sold the share of Ram Lal along with his own share in certain villages in tahsils Atrauli and Iglas and with the sale consideration purchased in his own name some property in village Tholai and Mahmoodpur Janan and had got his name entered in public papers against the whole; and that the settlement with regard to this transaction was that Nand Kishore was solely responsible for the payment of the amount on the mortgage-deed, dated 16th December 1922, under which money was raised for the purchase and that Nand Kishore and Ram Lal were to divide the properties purchased half and half in lieu of Ram Lal's share which had been sold. This settlement of account between the parties not only shows that there had been a complete separation of the status and that Nand Kishore and Ram Lal had been separate ever since the partition of 1901, but further that the accounts between them were completely settled and adjusted and after the execution of this document no further sum remained due to Ram Lal.

8. The learned advocate for the plaintiffs has contended before us that the minor plaintiffs are in no way bound by the settlement of account by Ram Lal in case that settlement was not just and proper. Ram Lal was the head of the joint family consisting of himself and his two minor sons. He represented this family to the outside world and was fully competent to enter into contracts with the outside world for purposes of settlements of account. Nand Kishore should be deemed to be a stranger to the family. A settlement of account between Ram Lal as representing his family and Nand Kishore, the person who rendered account, was in the interest of the family and is binding, on the family. I do not think how the plaintiffs can now say that they are not bound by it or that Ram Lal had no authority to settle the accounts of behalf of the family.

9. It cannot, however, be disputed that even after the deed of relinquishment Nand Kishore and the defendants appellants have remained in possession of the shares of Ram Lal and the plaintiffs Under an interlocutory order passed by this High Court certain monthly allowances were directed to be paid by the defendants to the plaintiffs. With the exception of the amounts so paid, the plaintiffs have not had the enjoyment of the one-fourth share. I would

accordingly dismiss with costs F.A. No. 444 of 1925 and would allow F.A. No. 196 of 1926 in part and modify the decree of the Court below by giving the plaintiffs a further decree for mesne profits from 19th February 1924 till the date of the delivery of possession. Future interest at 6 per cent. per annum on the amount of the mesne profits from the date of the delivery of possession till payment will be allowed. As the plaintiffs have failed substantially I would direct that the plaintiffs should pay the costs of this appeal to the defendants and should bear their own costs. The case would accordingly be sent down to the Court below for the passing of a final decree after the "mesne profits have been ascertained.

Sen, J.

10. The facts which have given rise to the present appeal have been set out in the judgment of my learned brother and need not be recapitulated. The mark and bent of the plaintiffs have been to get behind the partition in Chaturbhoj's suit and the deed of relinquishment dated 19th February 1924.

11. In 1901, Chaturbhoj instituted a suit for partition against his father Nand Kishore and his minor brother Ram Lal. The suit resulted in a preliminary decree, followed in the usual course by a final decree for partition and the shares of the various members of the family, including that of the stepmother Mt. Chandan Kuar were separately allotted. The plaintiffs, who are the sons of Ram Lal, come into Court on the allegation that there was no separation between Nand Kishore and the other members of the family barring Chaturbhoj and that they must be considered to be the members of a joint Hindu family.

12. The ideal Mitakshara family is a thing of the past. Its vestiges are to be found in obscure out of the way corners in rural areas outside the disrupting influences of the modern conditions of life. Where these influences are present, presumption in favour of the jointness of the family has consequently grown weak. Presumption in favour of its continuances has grown feebler. The influences which have brought about the change may form an interesting chapter of social dynamics but cannot be exhaustively enumerated and it is not necessary to enumerate them for the purposes of this case. Where on a partition, the shares of the various members of a Mitakshara family have been ascertained, the separation of the outgoing member is a virtual reparation of all and there can be no presumption of cohesion as against disintegration. In the present case no reunion has either been pleaded or proved. There is nothing, of course, to prevent the affinity of the other members of the family intending to remain and remaining joint. Complications may arise from the minority of individual members. There is nothing, however, to prevent a minor being taken inside the family fold through affection. To hold otherwise would be to introduce the sterilising influence of a deadlock which is not only opposed to the interest of the minor but would be in conflict with tradition and experience attending family lives amongst the Hindus belonging to this province.

13. The evidence in this case has been considered in detail and elaborately

analysed by my learned brother. I am in full accord with his conclusions. I find on the evidence (1) that Ram Lal was separate from Chaturbhoj; (2) that the separation of Chaturbhoj was the virtual separation of Ram Lal; (3) that the properties which were subsequently acquired in the name of Nand Kishore were so done with funds belonging in common to Ram Lal and Chaturbhoj and belonged to them in equal moieties; (4) that Ram Lal was not a person of unsound mind, (5) that the deed of relinquishment dated 19th February 1924 was executed by Ram Lal voluntarily and was not procured by any undue influence being brought to bear upon him, and (6) that the plaintiffs are entitled to mesne profits of the property in suit from 19th February 1924.

14. The deed of relinquishment dated 19th February 1924 must be considered to have been executed by Ram Lal as the manager of the joint family consisting of himself and his sons who figure as plaintiffs in the present action. There being nothing to show that the transaction in question was tainted by fraud or collusion or that the rights of the minor members of the family were not sufficiently protected, the document is not open to any challenge or impeachment. The plaintiffs have failed to prove any invalidating circumstance. Under the circumstances, the deed in question must be upheld. Ram Lal in his capacity as manager of a joint family, having acknowledged that Nand Kishore had rendered accounts, the plaintiffs as sons of Ram Lal were not entitled to rip the matter open by means of the present suit. I, therefore, am of opinion that F.A. No. 444 of 1925 should be dismissed and F.A. No. 196 of 1926 should be allowed in part on the lines proposed by my learned colleague.