

(1942) 07 CAL CK 0009
In the Calcutta High Court

Kunja Lal Bhuiya

APPELLANT

Vs

Hara Lal Bhuiya

RESPONDENT

Date of Decision : 13-07-1942

Acts Referred:

Contract Act, 1872 — Section 19A

Citation : AIR 1943 Cal 162

Hon'ble Judges : Pal, J

Bench : Division Bench

Judgement

Pal, J.—This appeal is by the plaintiff in a suit for declaration of his title to certain specified shares in the suit lands and for accounts. The relationship between the plaintiff and the defendant will appear from the following geneological table:

LALIT BHUIYAN died 1289 B.S. | _____ | |
Nanda Lal Krishna Lal predeceased Lalit) died 1311 B.S. died 1282 B.S. | | | |
Hara Lal Kunja Lai (plaintiff) (defendant) born 1280-1281 B.S. born 1295 B.S.
2. In the plaint the properties are given in three schedules. Schedule "ga" gives the homestead and schedule "kha" gives the khas lands. The plaintiff claims no relief in respect of the properties given by him in these schedules. In Schedule "ka" the plaintiff gives the tenanted lands. Excepting lots 18 and 19 there is no dispute that the lands of this schedule are joint between the parties; and there is no dispute in the present suit that in lot 7 their joint interest is six annas, that lot 87 is owned by them in 16 annas, and, that in the rest their joint interest is nine annas. The Court of first instance found that the lots 18 and 19 no longer belong to the parties. This finding is no longer disputed. The plaintiff's case is that he has half share in these joint properties, namely, three annas share in lot 7, eight annas in lot 37 and four annas 10 gandas in the rest. His claim for account is founded on the case that on Lalit's death Krishna Lai managed the property till his death in 1311 B.S.; that at that time the defendant being only 17 or 18 years old, an agnate of the parties managed the property till the end of 1318 B. Section and that since 1319 B. Section the defendant has been managing the

property and consequently he is liable to render accounts for the period of his management. The defence inter alia is that Lalit Bhuiyan left a registered will whereby he bequeathed 2/3rd of his estate to Krishna Lai and 1/3rd to the plaintiff; that this will was not probated but that in 1301 B. Section there was a family arrangement whereby the plaintiff and Krishna Lai agreed to take as desired by Lalit in his will; that since then this family arrangement has all along been acted upon; and that consequently the plaintiff's share in the properties will be two annas in lot 7, 1/3rd in lot 37 and three annas in the rest (excluding, of course, lots 18 and 19).

3. As regards the claim for accounts the defence is : (1) that the defendant did not manage the property during the period in question; the properties were in the joint management of the plaintiff and the defendant; (2) that the family being a joint Hindu family (a) the plaintiff's claim for account without a suit for partition is not maintainable; (b) the plaintiff cannot recover anything on the basis of the account. The learned Munsif decreed the suit in part. He declared the plaintiff's title to the extent admitted by the defendant and made the defendant liable "to file a statement and account of the joint properties excepting properties 18, 19 and funds." The defendant was made liable to render accounts for the period from 1388 to 1343. The extent of the decree will appear from the decree itself of the learned Munsif. In giving this decree the learned Munsif found : (1) (a) that there was a family arrangement on the basis of Lalit's will; (b) that this family arrangement had been acted upon all along by the plaintiff, the defendant and the defendant's father; (c) that the plaintiff had all along been aware of the state of things; (2)(a) that the plaintiff and the defendant still constitute a joint Hindu family; (b) that the plaintiff lived in separate mess from 1304 B.S.; (c) that the defendant managed the property as karta of the joint family since 1319 B.S.; (d) that the defendant failed to prove that the plaintiff managed the property at any time; (3)(a) that it is settled principle of law in Bengal that any coparcener may, without bringing a suit for partition, require the manager to account for his dealings with the coparcenary property and the income thereof: 13 W.R.F.B. 75 : 13 W.R.F.B. 75 : 5 Beng. L.R. 347 (F.B.), Abhaychandra Roy v. Pyari Mohan Guho; (b) that no decree can be passed against the manager on the basis of the account taken, so long as the family remains joint : 15 I.C. 616 : 15 O.C. 244 : 15 I.C. 616 Sarat Kumari Debi v. Bhola Nath Banerji at p. 618; (c) that the defendant will be liable to account for the existing assets; but that no money relief can be allowed against him unless there be partition; (d) that the defendant's story that the plaintiff took from him the collection papers of 1340-1341 is not true; (i) that the liability of a karta to account is restricted to a period of six years prior to the institution of the suit: 25 C.W.N. 356 : AIR 1921 WB. 571 : 58 I.C. 877 : 32 C.L.J. 25 : 25 C.W.N. 356 Biawambar Halder v. Girbala Dasi.

4. On appeal by the plaintiff to the Court of appeal below, the learned Subordinate Judge confirmed all these conclusions excepting the last one about which he held that the karta is liable to exhibit the accounts for the entire period

of his management. The learned Subordinate Judge affirmed the decree of the first Court with this modification that the defendant should exhibit the accounts for the entire period from 1819 to 1848 during which he had been found to manage the joint properties. Mr. Choudhuri appearing in support of the appeal contends : (1) that the family arrangement being a matter of agreement between the parties, and the relations subsisting between the parties at the alleged date of the arrangement being such that Krishna Lai was in a position to dominate the will of the plaintiff, the arrangement should have been held to be induced 1 by undue influence; (2) that in view of the relationship between the parties and in view of the admitted fact that the plaintiff has been in separate mess since 1804 B. Section the presumption of jointness raised by the Hindu law did not arise in this case, and consequently the findings arrived at by the Court below starting with such a presumption should be held to be erroneous; (3) that it is now settled law in Bengal that the karta of a joint family is liable to account to a coparcener, and that this liability involves also the liability to pay on the basis of such accounting; Mr. Chowdhuri relies on Benoy Krishna Ghose Chaudhuri Vs. Atul Krishna Ghose Chaudhuri and Others, at page 97 in support of this proposition of law.

5. A family arrangement is certainly a matter of agreement between the members of the family and we may assume that anything vitiating the agreement would vitiate the arrangement. The plaintiff denied the factual of the arrangement altogether. But it has been found by the Courts below that as a matter of fact such an arrangement was made. There is ample evidence to support this concurrent finding of the Courts below, and sitting in second appeal I shall not be justified in interfering with this finding of fact. Beyond denying the factum of the arrangement, the plaintiff made no case of its invalidity. Mr. Choudhuri contends that in view of the fact that on Lalit's death the plaintiff as a mere infant was under the protection of his uncle Krishna Lai, and, that even at the alleged date of arrangement, though he just attained majority, he was still dependent upon his uncle in every respect, the agreement should be presumed to have been induced by undue influence, specially in view of the fact that the transaction by which the young man was giving up his claim to half share in the inheritance in lieu of only one-third share in it, was prima facie unconscionable. Mr. Choudhuri further contends that in the absence of any finding that there was any antecedent dispute in the family, the agreement was without consideration, and consequently the agreement and the resultant arrangement were void. According to Mr. Choudhuri, therefore, invalidity attaches to the agreement both because of the method of its procurement, and because of its being void of substance.

6. As regards the invalidity attaching to the arrangement because of the method of its procurement, suffice it would to say that even assuming that the agreement was procured by undue influence, it only became voidable u/s 19A, Contract Act. The alleged undue influence, if any, of his uncle, must have ceased at least on the death of that uncle, and this event took place in 1311 B. Section

When a contract is procured by undue influence it is only a voidable one and consequently, as in the case of agreements procured by misrepresentation, this only gives the person under undue influence a right of choice or election. Such a right, once exercised is exhausted. So, if by notice expressly given or implied by conduct, the promisor [elects to affirm, he can never afterwards claim to avoid; similarly if he has once Selected to avoid, he can never afterwards be allowed to affirm in his own interests. There is no locus poenitentice in either case. There is ample evidence in this case that even after the cessation of the influence the plaintiff all along chose to proceed on the basis of the arrangement. He has no locus poenitentice. The choice made is now final.

7. Causes vitiating a contract in its substance or purpose are given in Section 23, Contract Act. Mr. Choudhury does not assail the purpose here. He urges want of consideration. But, in my opinion, avoidance of a likely future dispute is a good consideration and equally sustains a family arrangement. To meet the second point urged by Mr. Choudhuri, Mr. Das placed the plaint before me, and it appears that the plaintiff's own case as made in the plaint is one of jointness during the period in question. Besides, the presumption in question is really not any special rule of Hindu law. It arises from the normal course of conduct of the Hindus in this respect. No doubt joint living is gradually gaining disfavour. The law which governs life must be brought into and kept in touch with life. But, I believe, experience in this field has not yet been sufficient for the purpose of formulation of the resultant tendency. Till then the presumption shall hold good. The law regarding the karta's liability to account to the coparceners must be taken to have been settled by a Pull Bench of this Court in 13 W.R.F.B. 75 : 13 W.R.F.B. 75 : 5 Beng. L.R. 347 (F.B.) Abhaychandra Roy v. Pyari Mohan Guho. The position has recently been reviewed by Mitter and Akram JJ. in Benoy Krishna Ghose Chaudhuri Vs. Atul Krishna Ghose Chaudhuri and Others, at p. 97 and I respectfully agree with the view expressed therein.

8. But the question in the present case it whether a coparcener can recover from the karta the money that may be found due or the accounts being taken, in my opinion, he cannot. The legal relation in which a karta stands to the other members of the family has been considered in 301. A. 220 : 26 Mad. 544: 30 I.A. 220 : 8 Sar. 523 : 13 M.L.J. 287 (P.C.) Anna Malai v. Murugesu at p. 228; 48 I.A. 280 : AIR 1922 P.C. 71 : 61 I.C. 690 : 48 I.A. 280 : 44 Mad. 656 (P.C.) Perrazu v. Subbrayadu at pp; 26 Mad. 214 : 26 Mad. 214 Nunna Brathmayya Setti v. Chidaraboyina 22 ALL. 307: (1900) 22 All. 307 : 1900 A.W.N. 73, Muhammad Askari v. Radhe Ram Singh :16 Pat. 441 : Sirikant Lal and Another Vs. Sidheswari Prasad Narain Singh and Another, and 44 C.w.N. 93 . As has been observed in the last named case, the position of a karta cannot be defined in terms of any jural relations known to the western jurists. It cannot be given any known name. But all the same the relation between the karta and the members of the family is a jural one. Indeed modern law cannot effectually standardize behaviour except by means of jural relationship. The karta of a Hindu joint family as the head of that family, is given the power to control the income and the

expenditure; and the right of the karta arising out of this legal relation extends to the present custody of the surplus, if any. Consequently, so long as the family remains joint, the assets found out on accounting must be in the custody of the karta. Without partition or, without removal of the karta from his position as such karta, this custody of the assets cannot be sought to be disturbed. So long as the family remains joint, and so long as there is a karta of that family, no other coparcener will have, as against such karta, the right to the custody of the surplus or of any part of it. In my opinion, therefore, there has been no error in the decision of the Court of appeal below. The appeal accordingly fails and is dismissed with costs. The respondent has taken a cross objection to the decree of the Court of appeal below in so far as it awarded the appellant costs against the respondent. The Court is given discretion in the matter of costs. It is difficult to say that the Courts below did not exercise this discretion judiciously in awarding the plaintiff some costs. The cross-objection is accordingly dismissed but without costs to the appellant.