

(1891) 04 AHC CK 0004
In the Allahabad High Court
Case No : First Appeal No. 146 of 1889

Mahabir Prasad Misr and Others

APPELLANT

Vs

Mahadeo Dat Misr and Others

RESPONDENT

Date of Decision : 29-04-1891

Acts Referred:

Citation : (1891) 04 AHC CK 0004

Final Decision : Disposed Of

Judgement

Straight and Tyrrell, JJ.—This is a somewhat peculiar case. It will be convenient to state a few facts by way of preliminary to the order I am about to make in this case. The suit was brought by the plaintiffs, appellants, against the defendants" upon the ground that their fathers and the ancestor of the defendant Mahadeo Dat Misr had been members of a joint and undivided Hindu family in possession of joint and undivided immovable property; that in 1881, in consequence of some misunderstanding, separation of food and residence had taken place; that subsequently the defendants had by their improper action deprived the plaintiffs of their share in the joint enjoyment of the joint family property; and they sought to have that joint possession and enjoyment restored to them as before. It is not necessary to discuss the statements contained in the written statement of the defendants; it is enough to remark that, on the 27th March 1889, a petition was filed by the plaintiffs and the defendants in the Court of the Subordinate Judge of Gorakhpur, stating that they had mutually agreed to be bound by the deposition of Mah?r?ja Udai Narain Mal, the owner of the r?j of Manjholi in the manner contemplated by ss. 10 and 11 of the Oaths Act, A commission was issued for the examination of the Mah?r?ja, and on two occasions, that is, on the 8th April 1889, and on the 29th April. 1889, questions were put to him to which replies were given. Upon the strength of those depositions the Subordinate Judge of Gorakhpur passed a decree in favor of the defendants, holding that the answers given by the R?ja precluded the claim of the plaintiffs and established the separate proprietary title of the defendants to the property in respect of which the suit had been brought for declaration of the

plaintiffs" joint interest therein. It is against this decree that this first appeal has been preferred, and the contention on the part of the appellants, firstly, was that a proper construction of the Raja's deposition showed that the plaintiffs had succeeded in establishing their joint title to the property in dispute. Mr. Colvin, who argued the case on behalf of the appellants, contended that the answers contained in these depositions were so hazy and ambiguous that they were wholly insufficient to justify the decision of the Court below. Mr. Spankie for the respondents strenuously urged that, at least as to some of the points, the statements of the Raja were specific enough, and that, according to the last answer given by him in his second deposition, it was clear that the defendants did acquire and were in sole proprietary possession of the property in suit; I cannot agree with this latter contention. Both my brother Tyrrell and myself have perused more than once the two depositions of the R?ja and we think that they do not convey to our minds any clear or precise expression or statement as to the nature of the rights of the several parties in the property in suit. It is at least abundantly clear that at the time the property in dispute came into possession of the parties, either by gift or purchase, they were members of a joint and undivided Hindu family. That being so, the presumption would be that the property so acquired would be the property of that joint and undivided Hindu family until the contrary was proved. Before passing such, a decree as has been made in the present case upon the strength of the statements of the R?ja, it was essential that his statements should have been very clear and definite in respect of the specific title acquired by the respective parties as to the several properties in dispute. These depositions do not convey to our minds any such impression, and although I should always be strongly disinclined to assist a party to an agreement under the Oaths Act in getting out of it, yet I am bound to see that the object of the parties when they entered into it has been satisfactorily accomplished by the deposition of the referee, and, if that object has not been accomplished, then that a further deposition should be obtained, or if that is impossible, as is the case here, owing to the R?ja's death, that the question should be tried in the ordinary way by the Court. We decree the appeal, reverse the decree of the Court below and remand the case to the Court of the Subordinate Judge of Gorakhpur for Restoration to the file of pending cases and disposal according to law. Costs of the appeal and costs incurred in the Court below will follow the result of the suit.