

(1915) 03 AHC CK 0031
In the Allahabad High Court

Radha Bai and Another

APPELLANT

Vs

Parsotam Rao Tantia and Another

RESPONDENT

Date of Decision : 09-03-1915

Acts Referred:

Citation : (1915) ILR (All) 318

Hon'ble Judges : Henry Richard, C.J; Pramada Charan Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Henry Richard and Pramada Charan Banerji, J.—This appeal arises out of a suit which related to property which at one time belonged to a man named Nana Narayan Rao. We do not for the moment specify the exact nature of the suit inasmuch as our decision upon a law point raised by the appellants depends to some extent upon the view we take of the nature of the suit. Nana Narayan Rao made a will in which he divided up his property between his three sons Ram Chander Rao, Vasudeva Rao and the defendant Parsotam Rao Tantia. Whilst dividing up the property he urged his family to continue to live together in an amicable and friendly way. There has been a good deal of litigation between the members of this family. In the first place a suit was brought by Ram Chander Rao, which was continued after his death in the name of his widow Janki Bai. Partition of the family property, or so much of it as had not already been divided by the will was claimed. Madho Rao and Parsotam Rao were defendants to that suit. It was pleaded by way of defence that the family constituted a joint Hindu family and that Musammat Janki as the widow of Ram Chander had no right to anything save maintenance. It was decided that the family was separate. Again Parsotam Rao brought a suit against Radha Bai, the present plaintiff, widow of Madho Rao, after the death of the latter for a declaration that the family was joint and that the widow Radha Bai had no interest. It was again decided that the family was separate. In the present suit the defendant Parsotam Rao pleads once more that the family is joint. In our opinion on the evidence and also as the

result of the previous litigation, we entirely agree with the decision of the court below that Ram Chander Rao, Vasudeva Rao and Parsotam Rao, the three sons of Nana Narayan Rao, did not constitute a joint Hindu family according to Hindu Law, in that they had specific shares in the property. Nevertheless while the family was in law separate, in many respects it differed very little from a joint Hindu family. So long as the three brothers lived they appear to have been on friendly terms, and it was only shortly before the death of Ram Chander that he brought a suit for partition. The court below has found, and we entirely agree with its finding, that the greater part, if not the whole of the property, was managed by one member of the family, who occupied the position of a manager. The family nevertheless were separate because notwithstanding the mode of enjoyment and management they were entitled to the property in specific shares. When the present suit was instituted there had already been a considerable amount of litigation and the courts had held that the family was not joint, and in bringing her present suit the plaintiff has claimed to be put into possession of a third of specific portions of the property. Amongst the items of property claimed was the sum of Rs. 69,790-8-8. This claim was in respect of certain debentures in the Cawnpore-Achnera State Railway. It appears that the defendant Parsotam Rao had invested the joint funds in debentures in this railway. In course of time Government paid off the debentures at a substantial premium and the money was received by the defendant. The court below decided in the first place that the family was separate. It has given the plaintiff a decree for partition of a portion of the immovable property and also for the sum of Rs. 69,790-8-8 mentioned above. It has made also a decree in respect of other items to which it is unnecessary specially to refer at present. Agreeing as we do with the court below the plaintiff was clearly entitled to partition, and in this respect we have no hesitation in saying that the decree of the court below ought to be affirmed.

2. The appellants have contended very strongly that the court below ought not to have made a decree in the plaintiff's favour for the sum of Rs. 69,790-8-8 on the ground that her claim in that respect, was barred by limitation. The money was paid over to the defendant on or before June, 1908, and the present suit was not instituted until the 2nd of April, 1912, that is to say, more than three years after the money was received by the defendant. The appellants accordingly contend that the plaintiff's claim in respect of the item was a claim for "money had and received to the use of the plaintiff" within the meaning of Article 62 of Schedule I to the Limitation Act. The way in which the plaintiff claimed this sum lends some colour to this contention, and had the present suit been a suit simply to recover this sum of money upon the allegation that the plaintiff being entitled to one-third of the debentures, and that all the redemption money had been paid to Parsotam as the person in whose name the debentures stood we might have been inclined to agree with the contention of the defendant that the claim came within the purview of Article 62, and that the suit ought to have been brought within three years. Reading, however, the plaint as a whole, and having regard to

the nature of the evidence and the defence, we think that the suit was in reality a suit for partition of the movable and immovable property which had been held by the three brothers and in which the plaintiffs husband had a third share. We have already pointed out that the property was managed by one member of the family. He appears to have received the rents and profits of the immovable property and to have invested and dealt with their money making investments in the ordinary course of business. When he received the money from Government in redemption of "the debentures, he still received it in his capacity of manager. When we speak of a manager we do not mean the managing member of a joint Hindu family, but the individual to whom this particular family entrusted the management of their affairs. In this view we think that the suit was a suit governed by Article 120, which provides a period of six years limitation for all suits not specifically provided for by the other articles in the schedule.

3. There was one other item to which Dr. Banerji specifically called our attention, namely, the dera (or collection house) in this village Lalpur. Dr. Banerji contends on behalf of his clients that while the village of Lalpur was specifically bequeathed to the plaintiff's husband, nevertheless as collections generally of several of the villages were made at this house, it must be regarded as joint property and should have been partitioned. The learned Subordinate Judge considers that the provisions of the will ought to be given effect to, which specifically gave the village of Lalpur to the plaintiff and that this house ought to be regarded as an appurtenant of that village. We see no reason to differ from the view taken by the learned Subordinate Judge. On full consideration of the entire case, we think the decree of the court below ought to be affirmed in its entirety. We accordingly dismiss the appeal with costs.