

(1929) 12 AHC CK 0072
In the Allahabad High Court

Ram Ghulam

APPELLANT

Vs

Kailash Narain

RESPONDENT

Date of Decision : 11-12-1929

Acts Referred:

Citation : (1929) 12 AHC CK 0072

Hon'ble Judges : Bennet, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bennet, J.—This is an appeal against an order brought by Ram Ghulam minor son of an insolvent Mulchand. It is claimed by the appellant that there was a partition between him and his father and that the property in dispute was allotted to appellant, and his mother gave some vague evidence to that effect. Two lambardars gave evidence that there . had been no partition, and there is also the fact to be taken into account that the appellant is only a boy of 14 years of age, and therefore it is improbable that a partition between him and his father would have taken place. Accordingly we agree with the finding of fact of the learned District Judge that there has been no partition between the appellant and his father.

2. A further point was taken that on the insolvency of a Hindu father the interest of his son in the joint family property does not vest in the receiver, and that the share of the son should be discharged. This argument of the appellant was supported by the ruling in Allahabad Bank Vs. Bhagwan Das Johari and Others, and reference was made to the ruling of their Lordships of the Privy Council reported in AIR 1925 18 (Privy Council) A later ruling of this Court reported in Om Prakash and Another Vs. Moti Ram interprets the ruling of the Privy Council in a different sense, and the interpretation placed upon that ruling in Om Prakash and Another Vs. Moti Ram has been followed in a Full Bench ruling reported in T.S. Balavenkata, Seetharama . Chettiar v. Official Receiver, Tanjore AIR 1926 Mad. 994. Following the ruling of Om Prakash and Another Vs. Moti Ram we find

that the receiver is entitled to sell not merely the share of the father that would fall on him at partition but the entire property in the father's hands belonging to the whole family consisting of himself and his son. Accordingly we dismiss this appeal with costs.