

(1873) 11 PRI CK 0007

In the Privy Council

Runjeet Singh; Gooman Singh and Doond Singh

APPELLANT

Vs

Kooer Gujraj Singh

RESPONDENT

Date of Decision : 08-11-1873

Acts Referred:

Citation : (1873) 1 IndApp 9

Hon'ble Judges : James W. Colville, Barnes Peacock, Montague E. Smith, Robert P. Collier, Lawrence Peel, JJ.

Judgement

Robert P. Collier, J. 1. This was a suit instituted by three members of a Hindu family, alleged to be joint, against the fourth, who was the head of that family, to obtain a partition of the joint property. The case has undergone a number of hearings and two or three remands, and has not come before their Lordships in as clear a shape as was possible. 2. It appears to their Lordships that two questions arise in the case, and two only. In the first place, this Hindu family having been beyond all question originally a joint one, and there having been from time to time partitions in this family, according to its custom, had there been, before this suit was instituted as between these parties, a partition? Their Lordships adhere to the doctrine laid down in the judgment of this Committee on the case of Appovier v. Rama Subba Aiyan 11 Moore's Ind. Ap. Ca. 75, that a partition may be effected by agreement, although no actual division of the property may have been made by metes and bounds or otherwise. If it clearly appears that the parties intended to make a final partition of their joint property, that intention will be given effect to by this board; and the first question is, whether such intention has been proved in this case? 3. It would appear that the Plaintiffs did obtain possession of certain portions of the estate of their ancestor by way of seer, as it is called; and it has been argued that they accepted these seer lands by way of partition in lieu of the share to which they would have been entitled. On the other hand, it has been contended that no partition was contemplated, but that the revenues of those seer lands were assigned to them in lieu, wholly or in part, of money payments by the head of the family in respect of their shares of the joint estate. 4. There have been two findings of the Courts

below to the effect that, notwithstanding these assignments of seer land, the Plaintiffs continued to be joint and undivided in estate with the Defendant, and had not lost their right now to insist on a partition of the joint family property. Their Lordships concur in those findings. The evidence which is most material, in their Lordships' view, upon this subject, appears to be that of Janhee Pershad Dichit, who was a zemindar and banker by profession, and appears to have been called in as an arbitrator between the parties. His statement is this: "The estate has not been partitioned, but they," that is, the Plaintiffs, "get for their maintenance; the deponent does not recollect how much the Plaintiffs do get, but in the year 1265 Fuslee, during the Mutiny, a dispute had arisen between the parties, and it was this, that Plaintiffs said they could not support themselves; either something more be added to their maintenance or they must get their share; but Newaz Singh" that is the Defendant, "declined to give them more, and said they should maintain themselves with what they already got. The dispute was referred to the deponent, who accordingly asked Newaz Singh to give the village Burkhunva and some more seer to Plaintiffs. Both parties consented to it, but the deponent did not settle whether Plaintiffs had any or no claim to any more share. If Plaintiffs claim to more share, telling that what has been allowed to them does not suffice their expenses, they are at liberty to do so. Newaz Singh is also the master of his will." Their Lordships understand from this, that the parties did not agree to a partition, and did not apply to this witness to arbitrate with a view to a partition, but that he expressed his opinion as to what would be a proper amount of seer land for them to receive in lieu of the payments in respect of their shares to which they were entitled, and he expressly says that his decision was not final even upon that point. And it further appears from his evidence, that if the Defendant had not thus agreed to increase their maintenance, the Plaintiffs would have insisted "on getting their share," or in other words on having a regular partition of the estate. 5. Their Lordships may observe that it would appear from the evidence of one of the witnesses for the Defendant, Hem Singh, and his brother, that the ancestor, Hindoo Singh, who made the last partition, which was in 1837, hold 300 bighas seer, but on partition got not only those 300 bighas, but 400 or 500 bighas more. It would clearly appear from that, that according to the custom of the family, the holding a certain amount of seer land was not inconsistent with the right to partition. Their Lordships have, on these grounds, come to the conclusion that there was no partition in this ease, and that the family continued to be a joint and undivided Hindu family. 6. The other question is, whether the claim was barred by limitation, and it is upon this point- that the judgment of the Financial Commissioner, which is under appeal, appears in a great measure to have proceeded. The Act applicable to the ease is Act XVI. of 1850, Section 1, Sub-section 13, which is in these terms, reading as much as is applicable to this matter: "To suits to enforce the w right to share in any property, moveable or immoveable, on the ground that it is joint property, the period of twelve years from the death of the person from whom the property alleged to be joint is said to have descended, or on whose estate the maintenance is alleged to be a

charge." That time has elapsed. Then come the material words: " Or from the date of the last payment to the Plaintiff, or any person through whom he claims, by the person in the possession or the management of such property or estate on account of such alleged share." 7. The question is, whether there has been a payment by the Defendant to the Plaintiffs in respect of their alleged share within twelve years before the commencement of the suit. 8. Their Lordships, entertaining the view which they have expressed, that there was no partition, but that the Plaintiffs took the seer land as equivalent to a payment in respect of their shares by the Defendant, are of opinion that the proceeds of those seer lands have been substantially payments by the Defendant within the meaning of that section, payments which have continued to the time of action brought, and that, therefore, the Statute of Limitation does not apply. 9. On these grounds their Lordships are of opinion that this suit is maintainable, and they will humbly advise Her Majesty that the decisions appealed against be reversed, and the order of the Extra Assistant Commissioner of the 4th of January, 1868, confirmed as it was by the Settlement Officer, Mr. Young, on the 24th of July, 1868, be confirmed, and their Lordships are of opinion that the Appellant should have the costs of this appeal.