

(1904) 01 CAL CK 0012
In the Calcutta High Court

Sarada Prosad Ray

APPELLANT

Vs

Mahananda Ray

RESPONDENT

Date of Decision : 06-01-1904

Acts Referred:

Citation : (1904) ILR (Cal) 448

Hon'ble Judges : Stevens, J; Hill, J

Bench : Division Bench

Judgement

Hill and Stevens, JJ.—This was a suit by one of several brothers claiming by right of inheritance from his father one-sixth share in certain property, which, he asserted, had belonged to his father at the time of his death. The Munsif held that in respect of all the property in suit, save and except a parcel of land described as No. 31, the plaintiff has made good his case, and gave him a decree accordingly. With respect to the property No. 31, however, which, it was asserted by the defendant No. 2, had been purchased by him during the lifetime of the father, and of which he had since remained in exclusive possession, the Munsif found that the plaintiff had failed to establish his case that that property constituted any part of the estate of the, father, and so he dismissed the suit in respect of it. The plaintiff then appealed to the learned Judge. With regard to property No. 31, with which I may say we are now alone concerned, the learned Judge reversing the finding of the Munsif held that the burden of proving that it was his exclusive property lay upon defendant No. 2, but that as he had apparently given no evidence upon the point, the plaintiff, by virtue of the presumption, that while a Hindu family remains joint, all the property of the family including acquisitions made in the name of individual; members is joint family property, was entitled to a share in this property as well as in the rest. The appeal is confined altogether to the question whether in applying that presumption in the circumstances of the present case, the learned Judge was or was not right. I may mention that he appears, at the outset of his discussion of this point, to have misunderstood or misinterpreted, the finding of the Munsif, to which he refers: for the Munsif has not apparently committed himself to the

proposition that the family remained joint in property during the lifetime of the father, but was merely of opinion that during the lifetime of the father the family continued to be a joint Hindu family, if no separation has taken place. However, with regard to the question with which we are now immediately concerned, we think that the contention of the learned vakil for the appellant is well founded, and that to apply the presumption to which we have referred in the state of things existing during the lifetime of the plaintiff's father would not be a correct application of it: and that in law the burden, as the Munsif held, lay upon the plaintiff of making good his case, that this property No. 31, which has stood in the name of the second defendant and has been in his exclusive possession from a time anterior to the death of the father, in reality belonged to the father. It is only necessary, I think, to state that presumption in the terms in which the vakil for the respondent stated it to us, to perceive that it is inapplicable here. It is to be presumed, he said, that all property acquired by the members of a joint Hindu family is the property of the family as a whole. If this be true without qualification, it would obviously apply to the case of the father himself; while it must be conceded and is conceded that all his acquisitions are to be regarded as his own exclusively and that the sons take no interest in the property of the father, until his death, when their right arises by inheritance. It is perhaps hardly necessary that we should add that we are speaking only of families such as the family of the parties to this suit, which are governed by the Dayabhaga system of law and not of such as are governed by the Mitakshara.

2. For the reasons we have stated we think that the decision of the learned Judge cannot be sustained, and his decree accordingly must be set aside and the case remanded to him for decision in respect of the right to the ownership of the property No. 31, in the light of the observations which we have now made. In other respects his decree will be maintained.