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IN RE 'THE AVA' AND 'THE BRENHILDA.'

been ordered, should be furnished to the persons charged; which means, in my judgment, a copy of the report if it be a report, a statement of the case if the case be not embodied in a report. In this case, it appears on the face of the petition, that the proposed inquiry was ordered by the Lieutenant-Governor upon the ground of the report of a special Court. I think, therefore, that the furnishing of copies of that report to the persons charged before the investigation commences, is a condition precedent to the Court's cancelling or suspending their certificate.

The result is that, in my opinion, the objections to the jurisdiction fail, that the Court has power to make the investigation asked for, and that it should be held accordingly. But I also think it would be a futile inquiry, and could not usefully be held, unless the condition I have mentioned be complied with, if it has not been done already.

Attorneys for the Government: Messrs. *Sanderson* and *Co.*

Attorneys for Mr. Whittard: Messrs. *Orr* and *Harriss.*

APPELLATE CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Prinsep.

1879
June 11.

RADHA CHURN DASS (PLAINTIFF) *v.* KRIPA SINDHU DASS AND OTHERS (DEFENDANTS).*

Hindu Law—Presumption as to Unity of Hindu Family—Partial Separation.

The presumption of Hindu law that a family remains joint until a separation is proved, is not applicable where it is admitted that a disruption of the unity of such family has already taken place: a presumption under such circumstances cannot arise as to whether the other members of the family remained joint or became separate.

It is very doubtful whether, under the Hindu law, any partial partition of the family property can take place except by arrangement.

BABOO *Annoda Persaud Bannerjee*, Baboo *Chunder Madhub Ghose*, and Baboo *Umbica Churn Bose* for the appellant.

* Regular Appeal, No. 277 of 1877, against the decree of W. Wright, Esq., Subordinate Judge of Cuttack, dated the 29th of June 1877.

Baboo *Mohesh Chunder Chowdhry* and Baboo *Aubinash Chunder Bannerjee* for the respondents.

The facts of this case appear sufficiently from the judgment of the Court (GARTH, C.J., and PRINSEP, J.), which was delivered by

GARTH, C. J.—Janmojoy, Jankee, and Kandai were three brothers, forming a joint undivided Hindu family under the Mitakshara law. Radha Churn, the plaintiff, was the third and youngest son of Janmojoy, and was adopted by Kandai. Jankee, it is admitted, separated from the family many years ago. Radha Churn, as the heir of one of the two remaining brothers, now sues the defendant—who, as he states, represents the other brother Janmojoy—for a half-share of the remaining ancestral estate. It appears that, on the death of Sham Soonder, the eldest son of Janmojoy, the defendant Kripa Sindhu succeeded in establishing his claim to a certificate under Act XXVII of 1860; and that this has given rise to the present suit, though the status of Kripa Sindhu is not here raised, since he is admittedly the son of the second son of Janmojoy, and, therefore, in either capacity a member of the family. The other persons made defendants also hold doubtful positions in this family, one of them being the son of the plaintiff, who, it is stated, was adopted by the son of Sham Soonder before he died, though that is denied by Kripa Sindhu. It is sufficient, for the purpose of this suit, only to mention these facts.

The plaintiff contends, that he, as heir of Kandai, lived in commensality with the elder branch of the family, represented by the heirs of Janmojoy, up to the 18th Joishto 1282 (corresponding with 30th May 1876), when he demanded, and was refused, his half-share of the family estate.

Kripa Sindhu, who alone contests this claim, states, that Jankee and the plaintiff separated from the elder branch of the family before the settlement, that is before 1843; and that, at any rate, owing to a custom prevalent in their family, he is not entitled to a full share, as the estate invariably belonged to the senior member of the family, the others being merely entitled to so much as would provide them with maintenance.

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The Subordinate Judge found that when Jankee separated, the family ceased to be joint, and that, consequently, the present suit is barred by limitation.

The plaintiff contends on appeal, that the lower Court has dealt erroneously with the case in point of law, because it has not given the plaintiff the benefit of the ordinary rule in such cases, that when once the family is shown to be joint, it is presumed to remain so, until an actual separation is proved. He says, moreover, that no direct proof of the plaintiff's separation has been adduced, and that it has not been shown what part, if any, of the ancestral property was appropriated to the plaintiff at the time of the alleged separation.

Now it is perfectly true that, for several generations back, that section of the family to which both the plaintiff and the defendants belong was undoubtedly joint; but then it is admitted on both sides that, about forty years ago, a separation of that section took place, by which one member, at least Jankee (the brother of the plaintiff's adoptive father), ceased to belong to the joint family.

The defendant Kripa Sindhu says, that, on that occasion, the plaintiff and his adoptive father Kaudai Dass also ceased to be members; while the plaintiff's contention is, that Jankee was the only seceding member.

However this may be, we think that the presumption of the continued unity of the joint family (which, undoubtedly, is the ordinary rule in these cases) cannot be applicable here, because when once it is admitted that a disruption of the unity has taken place, it is difficult to see how any presumption can arise, as to any other particular member or members having continued joint or became separate.

It seems indeed very doubtful, whether by the Hindu law any *partial partition* of the family property can take place except by arrangement.

Mr. Mayne, in his valuable book on Hindu law, lays it down in s. 416,—that "a partition may be partial, either as regards the *persons making* it, or the *property divided*," but the authorities to which he refers seem scarcely to support his position.

One can very well understand, that as regards separation,

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any member, or members of a family, might separate from the rest at their option: a mere declaration by one member *that he was separate* from the others would seem to be sufficient to effect the separation. But *partition* of the property is a different thing, because, in order to effect a just partition, it is necessary of course to ascertain the share to which each and every member of the family is entitled, and we have not been able to find any case in the books, in which either a suit has been brought for a *partial partition*, or a partial partition has been *adversely decreed*. (His Lordship then proceeded to consider the evidence, and dismissed the appeal.)

Appeal dismissed.

ORIGINAL CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Pontifex.

1879
Aug. 13.

COSSIM HOSSEIN SOORTU AND OTHERS (DEFENDANTS) *v.* LEE PHEE CHUAN (PLAINTIFF).

Construction of Document—Bill-of-Lading—Shipowner's Liability—Consignee.

A bill-of-lading, given by the defendants to the plaintiff for certain goods, contained a stipulation, that the goods were to be taken from the steamer's tackles by the consignees as fast as the steamer could discharge, failing which, the steamer's agents were to be at liberty to land the same into godowns, the cost of lighterage, godown rents, &c., thereby incurred to be borne by the respective consignees.

Held, that under this bill-of-lading the shipowners were entitled to charge for landing and wharfage, only in default of the consignees failing to take the goods from the steamer's tackles within reasonable time.

Held (*per* PONTIFEX, J.), that for the speedy discharge of their vessel the shipowners were entitled to land and wharf the goods, though not to charge for landing and wharfage, unless the plaintiff had had an opportunity of landing the goods himself.

THIS was a suit for damages, for the loss of 430 bundles of tobacco, part of a consignment of 434 bundles, which had been delivered by the plaintiff to the defendants at Calcutta, for the